

NORTHERN TERRITORY OF AUSTRALIA

TRAFFIC ACT

As in force at 1 November 2004

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 November 2004

TRAFFIC ACT

An Act to regulate traffic

Part I Preliminary

1 Short title

This Act may be cited as the *Traffic Act*.

2 Commencement

- (1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

ambulance means a vehicle specifically constructed or modified for the purpose of conveying persons to a place of medical treatment while being used for that purpose or while travelling to a place for that purpose.

authorized analyst means a person authorized under this Act to be an analyst.

bicycle means a 2 or 3 wheeled vehicle designed to be propelled by human power and includes a powered cycle.

blood test means a test of a sample of a person's blood carried out for the purpose of ascertaining the concentration of alcohol or the presence of another drug or substance in that person's blood.

breath analysis means an analysis of a sample of a person's breath carried out for the purpose of assessing the concentration of alcohol in that person's blood.

breath test means a test of a sample of a person's breath carried out for the purpose of ascertaining whether:

- (a) alcohol or another drug or substance; or
- (b) a concentration of alcohol equal to or exceeding 80 mg of alcohol per 100 mL of blood,

is present in that person's blood.

carriageway means a portion of a public street improved, designed or ordinarily used for vehicular traffic and includes the shoulders and areas at the side or centre of the carriageway used for the standing or parking of vehicles including parking bays, and, where a public street has 2 or more portions divided by a reservation, means each portion separately.

child means a person who has not attained the age of 18 years.

Commissioner means the Commissioner appointed under the *Police Administration Act*.

competent authority, in relation to a public street or public place, means the person, body or authority (which shall include the Territory) having the care, control and management of that street or place.

control area means an area declared under, or continued in force by, section 11 as a control area.

Deputy Director means the Deputy Director of Transport appointed under section 6(2).

Director means the Director of Transport appointed under section 6(1).

driver means a person driving, riding or in control of a vehicle.

emergency vehicle means a motor vehicle which is:

- (a) the property of the Territory and in the control of the Police Force of the Northern Territory;
- (b) the property of the Territory and in the control of the Northern Territory Fire and Rescue Service;
- (c) an ambulance; or
- (d) authorized as an emergency vehicle by the Registrar,

and which is sounding a siren, bell or repeater horn or flashing the prescribed lights.

footway includes a footpath, lane or other place intended exclusively for use by pedestrians and, except where bicycle use is expressly prohibited, by persons riding bicycles.

hospital means a hospital declared under section 6(2)(a)(i) of the *Medical Services Act*.

inspector means an inspector appointed under section 9.

intersection means a place where 2 or more public streets intersect or join and includes any area where vehicles travelling on different joining or intersecting public streets may collide.

lane line means a line marked on a carriageway to separate vehicles travelling in the same direction on the carriageway.

learner's licence means a licence granted under section 9 of the *Motor Vehicles Act*.

licence means a licence to drive a motor vehicle granted under the *Motor Vehicles Act*.

motor cycle means a motor vehicle which has 2 wheels or, where a side car is attached to the vehicle, has 3 wheels.

motor vehicle means a vehicle designed to be self propelled and includes a trailer when attached to a motor vehicle and a vehicle designed to be propelled by electric power obtained from overhead wires but not operated on rails, but does not include a motorized wheelchair which is not capable of travelling at a speed greater than 10 km/h or a powered cycle.

officer means an officer appointed under section 9.

pedestrian means a person on foot, on or in a toy vehicle, in a perambulator, or in a wheelchair which is not capable of travelling at a speed greater than 10 km/h.

powered cycle means a bicycle or other contrivance of a similar nature which is equipped with:

- (a) pedals which may be used as a means of propulsion; and
- (b) an engine, motor or other device which is capable of producing a power output not exceeding 200 W.

prescribed breath analysis instrument means a device prescribed under section 29 for the carrying out of breath analyses.

public place means a place (other than a public street) open to or used by the public or to which the public is permitted to have access whether on payment of a fee or otherwise, but does not include a track in an enclosed area used for motor vehicle or bicycle racing or speed trials.

public street means a street, road, lane, thoroughfare, footpath or place open to, or used by, the public and includes a road on land leased under the *Special Purposes Leases Act* for use as a road, but does not include:

- (a) a road, or part of a road, which is closed under the *Control of Roads Act* or the *Local Government Act*; or
- (b) a street, road, lane, thoroughfare, footpath or other place under construction,

and not open to or used by the public.

registered, in relation to a motor vehicle, means registered under the *Motor Vehicles Act*.

Registrar means the Registrar of Motor Vehicles appointed under the *Motor Vehicles Act*.

reservation means a physical provision, including markings, made on a public street to divide it longitudinally and includes a nature strip adjoining a footway, but does not include a separation line or a lane line which is the only line between 2 adjoining traffic lanes.

resident of the Territory means a person who has resided continuously in the Territory for not less than 3 months.

separation line means a line marked on a carriageway to separate vehicles travelling in opposite directions on the carriageway.

solution of standard alcohol means a solution consisting of ethyl alcohol and distilled water in the proportion of 3.36 g of ethyl alcohol per litre of solution.

this Act includes the Regulations.

traffic control device means a traffic control signal or a light, sign, mark, structure or item placed, erected or displayed for the purpose of regulating, warning or guiding traffic.

traffic control signal means a device using a word, symbol, coloured light or a combination of them by means of which traffic may be controlled or regulated.

traffic infringement detection device means a device approved under section 44(1) as a traffic infringement detection device.

traffic island means a physical provision, including marking, made on a public street to guide traffic on the street, but does not include a traffic control device.

trailer means a vehicle without motive power constructed or adapted to be drawn by a motor vehicle.

vehicle means a conveyance or other device designed to be propelled or drawn by any means and includes a bicycle or an animal being driven or ridden, but does not include a train, or a wheelchair which is not capable of travelling at a speed greater than 10 km/h.

visiting motor vehicle means a motor vehicle which:

- (a) is registered in another country or in a State or in another Territory of the Commonwealth;
- (b) has affixed to it the current registration label and number plates required to be affixed by the law of that country, State, or other Territory; and
- (c) is temporarily in the Territory.

young person means a person who has attained the age of 8 years but has not attained the age of 14 years.

- (2) In this Act, a reference to the owner of a motor vehicle includes a reference to the operator (within the meaning of the *Motor Vehicles Act*) of the vehicle where an operator is nominated under section 92A of that Act.
- (3) In this Act, a reference to a person licensed to drive a motor vehicle is a reference to that person being licensed to drive a vehicle of a class permitted to be driven in accordance with that person's licence.

4 Act to bind Crown

Except where otherwise expressly provided, this Act binds the Crown in right of the Territory and, in so far as is possible, the Crown in all its other capacities.

5 Application of Act

Unless the contrary intention appears, this Act, in so far as it applies to or in relation to a driver, vehicle or pedestrian, applies only to or in relation to a driver, vehicle or pedestrian on a public street or in a public place.

Part II Administration**6 Director of transport, &c.**

- (1) The Minister may, by notice in writing, appoint a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*, to be the Director of Transport for the purposes of this Act.
- (2) The Minister may, by notice in writing, appoint a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*, to be the Deputy Director of Transport for the purposes of this Act.
- (3) The Deputy Director, while that person remains in office, shall have and may exercise, perform and discharge, subject to the control and direction of the Director, all the functions and powers of the Director, and all references in this Act or any other Act to the Director shall, so far as is necessary for the purpose of giving effect to this section, be read as including a reference to the Deputy Director.

7 Powers of Director

Subject to this Act, the Director has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Director's functions.

8 Direction of Minister

In the exercise of the powers and the performance of the functions vested in the Director under this Act, the Director is subject to the direction of the Minister.

9 Appointment of inspectors, &c.

- (1) The Director may appoint such inspectors and officers as the Director thinks necessary for the purposes of this Act.

- (2) In addition to the powers conferred, and the functions imposed, on an inspector or officer under this Act, an inspector or officer shall have and may exercise such powers and perform such functions of the Director as the Director determines.

10 Delegation

- (1) The Minister, the Director or the Registrar may, by instrument in writing, delegate to a person or competent authority any of their respective powers and functions under this Act, other than this power of delegation.
- (2) A competent authority may, by instrument in writing, delegate to a person any of its powers and functions under this Act, other than this power of delegation.
- (3) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister, the Director, the Registrar or the competent authority, as the case may be.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister, the Director, the Registrar or the competent authority.

Part III Control areas

11 Declaration of control areas

- (1) The Minister may, by notice in the *Gazette*, declare an area to be a control area for a period not exceeding 12 months.
- (2) The Minister may, on or before the expiration of the period specified in a notice under this section, declare, by notice in the *Gazette*, that a control area shall continue in force for a further period, not exceeding 12 months, as specified in the notice.
- (3) Where the Minister under this section declares an area to be, or to continue to be, a control area, the Minister, in the notice under subsection (1) or (2):
 - (a) shall specify the area in respect of which the control area is declared or declared to continue;
 - (b) shall specify the period during which the control area shall remain in force;

- (c) shall specify the provisions, if any, of this Act which shall not apply to and in relation to the control area;
 - (d) may declare that the provisions contained in the notice shall apply to and in relation to the control area:
 - (i) in substitution of specified sections of; or
 - (ii) in addition to,this Act; and
 - (e) may declare that a person who contravenes or fails to comply with a provision declared under subsection (3)(d) as applying to and in relation to a control area is guilty of an offence, including a regulatory offence, and liable on being found guilty to a penalty not exceeding 20 penalty units or 12 months imprisonment, or both.
- (4) With effect on and from the date a control area is declared under subsection (1), or declared to continue in force under subsection (2), the sections of this Act specified in the notice in accordance with subsection (3)(c) or (d) shall not apply to or in relation to the control area.
- (5) A provision declared under subsection (3)(d) as applying to and in relation to a control area shall, for the purposes of the application of that provision to and in relation to that area, be deemed to be a section of this Act.
- (6) Where the Minister makes a declaration under subsection (3)(e), a person who contravenes or fails to comply with the provision to which the declaration relates is guilty of an offence.
- (7) Section 63(1)(c), (8), (9) and (10) of the *Interpretation Act* shall apply to and in relation to a notice declaring a control area where, in that notice, the Minister has, under subsection (3)(d), declared a provision contained in the notice to apply to and in relation to the control area (other than a notice declaring that provision to continue to apply to and in relation to that area) as if that notice were, for the purposes of those subsections of the *Interpretation Act*, a regulation.

Part IV Erection and operation of traffic control devices

12 Erection of or interference with traffic control devices

- (1) A person shall not, without the consent in writing of the competent authority:
 - (a) erect, establish or display; or
 - (b) interfere with, alter or take down,
a traffic control device on a public street or public place.
- (2) A person shall not erect, establish, place, display or maintain anything on a public street or public place which:
 - (a) interferes with the effectiveness of a traffic control device;
 - (b) may prevent a driver approaching a traffic control device from clearly seeing that device or any part of it;
 - (c) may distract the attention of a driver approaching a traffic control device from that device;
 - (d) may prevent a driver on a public street or public place from clearly seeing the street or place ahead of that driver; or
 - (e) purports to be, or is an imitation of, or is similar to:
 - (i) a traffic control device; or
 - (ii) a flashing light of a type fitted to an emergency vehicle.
- (3) The owner of a light shall not use it or permit it to be used where the Director has, by notice in writing to that owner, declared that the use of the light is a danger to traffic.
- (4) Where a person has erected, established, placed, displayed or maintained a thing on a public street or public place which, in the opinion of the Director or the competent authority, contravenes section 12(2), the Director or competent authority may direct that person to remove it in such time as the Director or competent authority specifies.
- (5) The Director or the competent authority may, where a person given a direction under subsection (4) fails to comply with the direction within the specified time, remove the thing or cause it to be removed, and the cost of that removal shall be a debt due and payable by that person to the Territory (where the direction is given

by the Director) or the competent authority.

13 Competent authority may erect traffic control devices

- (1) Subject to subsection (2), a competent authority may:
 - (a) erect, establish, place or display a traffic control device on, near or above a public street or public place;
 - (b) erect or establish a traffic island or reservation on a public street or public place;
 - (c) mark a road marking on a carriageway or kerb of a public street or public place; or
 - (d) alter or remove a traffic control device, traffic island, reservation or road marking.
- (2) A traffic control device shall be in the prescribed form.

14 Minister may direct competent authority

- (1) Subject to subsection (2), the Minister may direct a competent authority (other than the Territory) to remove or alter:
 - (a) a traffic control device which is not in the prescribed form; or
 - (b) a traffic control device, traffic island, reservation or road marking established, placed or displayed by the competent authority.
- (2) The Minister shall not give a direction under subsection (1) in or in relation to the establishing, placing or displaying of a traffic control device, traffic island, reservation or road marking unless the Minister is satisfied that such a direction is necessary to ensure consistency in the Territory in the establishing, placing or displaying of such devices, islands, reservations or road markings.
- (3) A competent authority shall comply with a direction given under subsection (1).

15 Removal of hazardous sign, &c.

- (1) Where, in the opinion of the Director, a light, signal, flag, notice or other device is or is likely to be a hazard to traffic on a public street or public place, the Director may, by notice in writing to the owner of the light, signal, flag, notice or device, require the owner to remove it within the time specified in the notice.

- (2) A person served with a notice under subsection (1) who fails to comply with that notice is guilty of an offence.
- (3) Where a person served with a notice under subsection (1) fails to comply with that notice in the specified time, the Director may, without affecting the person's liability under subsection (2), remove, or cause to be removed, the light, signal, flag, notice or device, and the cost of that removal shall be a debt due and payable by that person to the Territory.
- (4) For the purposes of removing, or causing to be removed, a light, signal, flag, notice or device under subsection (3), the Director or a person authorized by the Director may enter on the land on which the light, signal, flag, notice or device is situated with such assistance as, and take whatever action, the Director or the authorized person considers necessary to remove it.

16 Court may order restitution

Where a person is found guilty of an offence under this Act in relation to a traffic control device, the court may, in addition to finding the person guilty, where damage was caused by the person to the traffic control device in committing the offence, order that person to pay the cost of the repair or replacement of the device.

17 Traffic control devices deemed to be lawfully erected

- (1) Where, under this Act, a traffic control device is erected, established, placed or displayed, it shall be deemed to be lawfully erected, established, placed or displayed and its presence to be consistent with its traffic control purpose, unless the contrary is proved.
- (2) A traffic control device which substantially conforms with the prescribed dimensions, shape, colour, position, direction, angle or other features of a particular traffic control device shall be deemed to be a traffic control device of that kind.

18 Evidence of traffic control device

Unless the contrary is proved, evidence that a traffic control device was erected, established, placed or displayed on, near or above a carriageway or an intersection or the surface of a public place is evidence that it was erected, established, placed or displayed by the competent authority in accordance with this Act.

**Part V Driving under influence of intoxicating liquor
or drugs, &c.****19 Driving under influence of intoxicating liquor or drug or with
high alcohol-blood content**

(1) A person shall not, on a public street or public place:

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if that person is under the influence of intoxicating liquor or a drug or psychotropic substance to such an extent as to be incapable of having proper control of the motor vehicle.

Penalty: For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence – 20 penalty units or imprisonment for 12 months.

(2) A person shall not, on a public street or public place:

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if there is a concentration of alcohol in that person's blood equal to 80 mg or more of alcohol per 100 mL of blood.

(3) The penalty for an offence against subsection (2) is:

- (a) for a first offence, where the court is satisfied that at the time of the offence the concentration of alcohol in the blood of the person found guilty of the offence was equal to:
 - (i) not less than 80 mg but less than 150 mg of alcohol per 100 mL of blood – 7.5 penalty units or imprisonment for 6 months; or
 - (ii) 150 mg or more of alcohol per 100 mL of blood – 10 penalty units or imprisonment for 12 months; and
- (b) for a second or subsequent offence – 20 penalty units or imprisonment for 12 months.

(4) A person to whom this subsection applies shall not, on a public street or public place:

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if alcohol is present in that person's blood.

Penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence – 7.5 penalty units or imprisonment for 6 months.

(5) Subsection (4) applies to a person who:

- (a) has not attained the age of 18 years;
- (b) is the holder of a learner's licence;
- (c) is both the holder of a licence and a learner's licence when driving a motor vehicle of a class specified in the learner's licence;
- (d) is the holder of a licence which is provisional by virtue of section 10A of the *Motor Vehicles Act* or section 42; or
- (e) is not licensed, other than by virtue of the fact that the person has failed to renew his or her licence, or is not otherwise permitted by section 32(1) to drive a motor vehicle.

(6) Except as prescribed, a person shall not, on and from a date specified by the Minister by notice in the *Gazette*, on a public street or public place:

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if there is a concentration of alcohol in that person's blood equal to 50 mg or more of alcohol per 100 mL of blood.

Penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence – 7.5 penalty units or imprisonment for 6 months.

(7) A person approved under section 25B of the *Motor Vehicles Act* as a driving instructor (***driving instructor***):

(a) shall not, on a public street or public place:

- (i) drive;
- (ii) start the engine of; or
- (iii) put in motion,

a motor vehicle in which a person is a passenger for the purpose of being taught by the driving instructor to drive the motor vehicle; or

(b) shall not, on a public street or public place, permit a person to:

- (i) drive;
- (ii) start the engine of; or
- (iii) put in motion,

a motor vehicle in which the driving instructor is a passenger for the purpose of teaching that person to drive the motor vehicle, if alcohol is present in the driving instructor's blood.

Penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence – 7.5 penalty units or imprisonment for 6 months.

(8) A person to whom this subsection applies shall not, on a public street or public place:

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if alcohol is present in that person's blood.

Penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence – 7.5 penalty units or imprisonment for 6 months.

- (9) Subject to the Regulations, subsection (8) applies to a person:
- (a) who:
 - (i) has not attained the age of 25 years and has not held, in the Territory or elsewhere, a licence to drive a motor vehicle for a continuous period of 3 years; and
 - (ii) is a person to whom subsection (5) does not apply; or
 - (b) who is the driver of a motor vehicle:
 - (i) having a **gross vehicle mass**, within the meaning of the *Motor Vehicles (Standards) Regulations*, of more than 15 t;
 - (ii) in or on which **dangerous goods**, within the meaning of the *Dangerous Goods Act*, are being conveyed and on which signs are required to be affixed in accordance with regulation 59 of the *Dangerous Goods Regulations*;
 - (iii) which is a **commercial passenger vehicle**, within the meaning of the *Commercial Passenger (Road) Transport Act*;
 - (iv) fitted or equipped so as to seat more than 12 persons, including the driver;
 - (v) in or on which more than 12 persons, including the driver, are travelling; or
 - (vi) which has a space designed primarily for the carriage of goods when a person is travelling in that space.

20 Refusing to submit to breath analysis

- (1) A person shall not, on being required under this Act to submit to a breath analysis, refuse or fail to:
- (a) submit to; or

- (b) provide, in accordance with the directions of the person carrying out the breath analysis, a sample of breath sufficient for the completion of,

the breath analysis.

Penalty: For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence – 20 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that it would have been detrimental to the defendant's medical condition at the time when required so to do for the defendant to have submitted to a breath analysis or that the defendant had other reasonable grounds for refusing or failing to submit to a breath analysis.
- (3) A person shall not, on being required under this Act to give a sample of blood for the purposes of having a blood test carried out to ascertain the concentration of alcohol in that person's blood, refuse or fail to:
- (a) give that sample of blood;
 - (b) comply with an arrangement made under this Act for taking the person to a hospital or of taking a sample of the person's blood; or
 - (c) provide, in accordance with the directions of the person taking the blood sample, a sample of blood sufficient for the completion of the blood test.

Penalty: For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence – 20 penalty units or imprisonment for 12 months.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant satisfies the court that it would have been detrimental to the defendant's medical condition at the time when required so to do for the defendant to have given the sample of blood or that the defendant had other reasonable grounds for refusing or failing to give the sample.

- (5) It is not reasonable grounds for refusing or failing to submit to a breath analysis or give a blood sample that the defendant had consumed intoxicating liquor after the defendant ceased to drive a motor vehicle.
- (6) Where a person is found guilty of an offence against subsection (3) and the court is satisfied that :
- (a) the person was required to give the blood sample because the person entered a hospital for examination or treatment of injuries; and
 - (b) at the time of the accident in respect of which the person received the injuries that person was not driving a motor vehicle,

it shall not sentence the person to a term of imprisonment, cancel the person's licence or impose a fine greater than \$50 and the person's licence shall not be cancelled by virtue of that finding of guilt notwithstanding section 39, and the offence shall not constitute a second or subsequent offence for the purposes of section 49(2).

- (7) For the purposes of subsection (1), a person shall be deemed to have failed to submit to a breath analysis if that person by that person's actions or inactions, in any way, prevents a member of the Police Force from requiring that person to submit to a breath analysis.

20A Immediate suspension offence

- (1) In this section, ***immediate suspension offence*** means:
- (a) a second or subsequent offence against section 19(1) or (2);
 - (b) an offence against section 19(2) for which the penalty is that specified in section 19(3)(a)(ii); or
 - (c) an offence against section 20.
- (2) If a person is charged with an immediate suspension offence, any member of the Police Force may, after charging the person but before the charge is determined by a court, give to the person a notice in the form approved by the Director informing the person that he or she is disqualified from driving a motor vehicle until the charge is determined and requiring the person to surrender immediately to the member giving the notice any licence document held by the person.

- (3) For the purposes of this section a person is charged with an immediate suspension offence when a copy of the charge signed by a member of the Police Force is given to the person.
- (4) Immediately on the giving of the notice under subsection (2) the accused person is by force of this section disqualified from driving a motor vehicle and any licence held by the person is suspended until the charge is determined by a court.
- (5) A member of the Police Force who gives a notice under subsection (2) shall cause notice of that fact to be sent immediately to the Registrar.
- (6) A person who, without just cause or excuse (the onus of proving which lies on the person), refuses or fails to surrender a licence document as required by a notice under subsection (2) is guilty of an offence.
- (7) If a person is disqualified under this section from driving a motor vehicle, the person is, during the period of disqualification, disqualified from holding or obtaining a further licence.
- (8) A person shall not, while he or she is disqualified from obtaining a licence, apply for a licence.
- (9) A person to whom a notice is given under subsection (2) may appeal against the notice to the Local Court.
- (10) A person who appeals under subsection (9) shall give 14 days written notice of the appeal to the Registrar and to the clerk of the Local Court setting out the particulars of the alleged exceptional circumstances justifying the cancellation of the notice.
- (11) In determining the appeal the Local Court shall hear any relevant evidence tendered by the applicant and by or on behalf of the Registrar and any evidence of a medical practitioner required by the court.
- (12) On an appeal under subsection (9) the Local Court may make an order:
 - (a) confirming the notice; or
 - (b) cancelling the notice.
- (13) The Local Court shall not make an order under subsection (12)(b) unless it is satisfied that exceptional circumstances exist which justify the making of the order.

- (14) An order of a Local Court under subsection (12) is final and conclusive and has effect accordingly.

21 Other evidence may be given

Subject to this Act, in any proceedings in a court:

- (a) evidence other than the result of a breath analysis or blood test may be given for the purposes of showing the concentration of alcohol in the blood of a person or showing that a person was or was not under the influence of intoxicating liquor or another drug; and
- (b) the court may find that a person was, at the relevant time, under the influence of intoxicating liquor or a drug or psychotropic substance to such an extent as to be incapable of having proper control of a motor vehicle without there being evidence of the concentration of alcohol in the person's blood at that time or on evidence that there was present in that person's blood at that time a concentration of alcohol less than 50 mg of alcohol per 100 mL of blood.

22 Results of breath analysis or blood test

- (1) Where, in any proceedings in a court, the court is satisfied that one or 2 breath analyses were carried out on a sample or samples of a person's breath before the expiration of 2 hours after the event referred to in section 23(1) or (2) as a result of which the breath analysis was or analyses were carried out, the person shall be deemed, whether or not evidence is given that the person consumed alcohol after the time of the event, to have had, at the time of the event, a concentration of alcohol in his or her blood not less than the concentration, or the lower concentration, assessed by the analysis or analyses.
- (2) Where, in any proceeding in a court, the court is satisfied that a breath analysis was not carried out on a sample or samples of a person's breath but a blood test was carried out on a sample of that person's blood taken before the expiration of 4 hours after that person entered a hospital after:
- (a) the event referred to in section 23(1) or (2); or
- (b) the motor vehicle accident referred to in section 25(1);

as a result of which the blood test was carried out, the person shall be deemed, whether or not evidence is given that the person consumed alcohol after the time of the event or accident, to have had, at the time of the event or accident, a concentration of alcohol in his or her blood not less than the concentration ascertained by

the test.

- (3) In this section **event**, in respect of section 23(1)(a), means the last act of driving a motor vehicle by a person referred to in that section before that person is required to undergo a breath test or breath analysis.

23 Requirement to submit to breath test

- (1) A member of the Police Force may require a person to undergo a breath test or breath analysis, or both, if the member has reasonable cause to suspect that the person:
- (a) has committed an offence against section 19;
 - (b) was the driver of a motor vehicle at the time of an accident on a public street or public place in which the motor vehicle was involved; or
 - (c) was in an accident on a public street or public place owing to the presence of a motor vehicle and that person has, or had at the time of the accident, alcohol in his or her blood.
- (2) Notwithstanding subsection (1), a member of the Police Force may require a person who is driving a motor vehicle on a public street or public place to undergo, at or near the place where the requirement is made, a breath test or breath analysis, or both, and, for the purpose of enabling the member to make such a request that member or any other member may, if necessary, direct that person, by signal or otherwise, to stop the motor vehicle that person is driving.
- (2A) A person who fails to comply with a direction under subsection (2) is guilty of an offence.

Penalty: 200 penalty units or imprisonment for 12 months.

- (3) A person driving a motor vehicle shall, for the purposes of subsection (2), be regarded as still driving that motor vehicle notwithstanding that:
- (a) the motor vehicle is stationary; or
 - (b) the person has alighted from it.
- (4) A requirement or direction under subsection (2) may be made by a member of the Police Force whether or not the member has grounds for suspecting that a person has consumed intoxicating liquor.

- (5) Where a member of the Police Force under subsection (2) requires a person to undergo a breath test or breath analysis, that person shall comply with the requirement in the presence of that member or another member of the Police Force and in accordance with such directions, if any, given by that member or that other member.
- (6) Where, after requiring a person to undergo a breath test in accordance with this section, a member of the Police Force reasonably believes that alcohol is present in that person's blood, whether as a result of such a test or not, that person is liable to submit to a breath analysis.
- (7) Where:
- (a) it appears to a member of the Police Force from the results of a breath test on a sample of a person's breath that there is present in the person's blood:
 - (i) any alcohol, where the person is a person referred to in section 19(5), (7) or (9); or
 - (ii) a concentration of alcohol equal to or exceeding 50 mg of alcohol per 100 mL of blood; or
 - (b) a person, on being required under this section to submit to a breath test, refuses or fails to:
 - (i) submit to the breath test; or
 - (ii) provide, in accordance with the directions of a member of the Police Force carrying out the test, a sample of breath sufficient for the completion of the breath test,
- a member of the Police Force may arrest that person without warrant and the member or another member may take that person to a police station or police stations or such other place or places as the member considers desirable and there detain or cause that person to be detained for the purpose of carrying out a breath analysis.
- (8) A member of the Police Force may require a person who has been arrested under subsection (7) to submit to a breath analysis.
- (9) A person who has submitted to a breath analysis of a sample of that person's breath as required under this section may be required by a member of the Police Force to submit to one other breath analysis of another sample of that person's breath in respect of the same occurrence.

- (10) A person who has submitted to a breath analysis as required under this section may, at any time prior to or at the time of receiving the prescribed statement but not otherwise, request the person who carried out the analysis to carry out one other breath analysis on another sample of that person's breath and the person who carried out the analysis shall, subject to this section, carry out or arrange for the breath analysis to be carried out in pursuance of subsection (9).
- (11) A member of the Police Force shall not require a person to submit to a breath test or breath analysis under this section:
- (a) if it appears to the member that the person has:
 - (i) injuries and the member is satisfied that it may be detrimental to the person's medical condition for that person to submit to the breath test or breath analysis within 2 hours after the event referred to in subsection (1) or (2); or
 - (ii) a physical disability which prevents that person from providing a sample of breath for, or a sample sufficient for the completion of, a breath test or breath analysis; or
 - (b) at any time after the expiration of 2 hours after the event referred to in subsection (1) or (2).

24 Right to communicate with medical practitioner

- (1) A person who is in custody following that person undergoing a breath analysis or after giving a sample of blood under this Act may request the person who carried out the breath analysis or who took the blood sample to permit that person to communicate with a medical practitioner for the purpose of requesting the medical practitioner to:
- (a) examine that person; and
 - (b) take a sample of that person's blood.
- (2) A person to whom a request under subsection (1) is made shall make such arrangements as are reasonable in the circumstances for the person who made the request to communicate with a medical practitioner.

25 Requirement to give blood sample

- (1) Subject to section 26, the Minister administering the *Public Health Act* shall ensure, for the purpose of having a blood test carried out by an authorized analyst, that a sample of blood is taken as soon

as practicable from each person who has apparently attained the age of 15 years who enters a hospital for examination or treatment of injuries which may have been received in a motor vehicle accident.

- (2) Where a member of the Police Force does not, by reason of section 23(11)(a), require a person to submit to a breath test or breath analysis, that member or another member may, subject to subsection (6), require that person to give a sample of blood for the purposes of having a blood test carried out by an authorized analyst.
- (3) Where, in pursuance of subsection (2), a person is required to give a sample of blood:
 - (a) a member of the Police Force shall make arrangements for the person to be taken to a hospital and for a sample of that person's blood to be taken; and
 - (b) subject to section 26, the person in charge of the hospital shall ensure that the sample is taken as soon as practicable.
- (4) Subject to subsection (5), a blood sample which is taken in pursuance of this section is the property of the Commissioner.
- (5) The person who takes a blood sample in pursuance of this section may make approximately half of the sample available to the person from whom it was taken.
- (6) Where a member of the Police Force has not required a person to submit to a breath test or breath analysis by reason of section 23(11)(a)(ii), that member or another member shall not, under subsection (2), require that person to give a sample of blood for the purpose of having a blood test carried out by an authorized analyst unless the member reasonably believes that the concentration of alcohol in that person's blood is such that the person has committed an offence against this Act.

26 Right to take blood

- (1) For the purposes of section 25, a member of the staff of a hospital who is a medical practitioner or under the direct supervision of a medical practitioner may:
 - (a) take a sample of the blood of a person who is unconscious or apparently incapable of consenting to the giving of the sample; or
 - (b) require a person to give a sample of blood.

- (2) A member of the staff of a hospital is not required to take a sample of a person's blood under section 25 if that member believes on reasonable grounds that:
- (a) the concentration of alcohol in the person's blood is already known;
 - (b) the taking of the sample would be detrimental to the person's medical condition;
 - (c) the injuries of the person were not received in a motor vehicle accident or the motor vehicle accident happened more than 12 hours before the person entered the hospital; or
 - (d) a period of more than 4 hours has elapsed since the person entered the hospital.
- (3) No action or proceedings for assault, whether in or outside the Territory, shall lie against a person who takes a blood sample for the purposes of this Act.

27 Evidence by certificate

- (1) In any proceedings in a court, a certificate in the relevant prescribed form purporting to be signed by:
- (a) a person authorized by the Commissioner under this Act to use a prescribed breath analysis instrument for the purposes of this Act;
 - (b) a member of the staff of a hospital; or
 - (c) an authorized analyst,
- is prima facie evidence of the matters stated in the certificate and the facts on which they are based.
- (2) For the purposes of subsection (1), the Regulations may prescribe forms of certificate to be used by different persons on different occasions.

28 Calling of witnesses

In any proceedings in a court, where a party intends to call as a witness a person whose evidence may be received by way of certificate under section 27, that party shall:

- (a) give not less than 14 days notice in writing of that intention to the other party; and

- (b) call the person in accordance with the procedures of the relevant court to give his or her evidence.

29 Breath analysis instrument

- (1) The Regulations may provide:
 - (a) that a device for the carrying out of a breath analysis is a prescribed breath analysis instrument; and
 - (b) for the proper use of a prescribed breath analysis instrument, for the purposes of this Act.
- (2) A court shall not receive evidence that a prescribed breath analysis instrument, when it is in good working order and used in accordance with the Regulations relating to its use, does not give a true and correct assessment of the concentration of alcohol in a person's blood.

29AA Interpretation

In sections 27, 28 and 29:

- (a) a reference to proceedings in a court includes a reference to a preliminary examination under Part V of the *Justices Act*; and
- (b) a reference to a court includes a reference to a Justice conducting a preliminary examination under Part V of the *Justices Act*.

Part VA Impounding and forfeiture of motor vehicles for certain offences

Division 1 Preliminary

29AB Definitions

In this Part, unless the contrary intention appears:

forfeiture order means an order made under section 29AG(1)(c)(ii).

impounding order means an order made under section 29AG(1)(a), 29AG(1)(b) or 29AG(1)(c)(i).

last offence has the meaning in section 29AE.

offender has the meaning in section 29AE.

police officer means a member of the Police Force.

prescribed driving offence means an offence against a prescribed provision of this Act by the driver of a motor vehicle.

storage premises, for a motor vehicle, means the premises where the vehicle is kept under an impounding order.

29AC Traffic infringement notice counted as first offence

For this Division, an offender has been found guilty of a prescribed driving offence on the first of 2 or more occasions if:

- (a) a traffic infringement notice has been issued, and not withdrawn, under the Regulations to the offender for the offence; or
- (b) the person has been found guilty of the offence.

29AD Effect of impounding and forfeiture orders

- (1) An impounding order for a motor vehicle does not affect the rights of a credit provider to repossess the vehicle under the Consumer Credit (Northern Territory) Code and sell it.
- (2) The making of an impounding order or forfeiture order for a motor vehicle arising out of the commission of a prescribed driving offence is in addition to any other penalty that may be imposed for the offence.

Division 2 Impounding and forfeiture orders

29AE Application of Division

This Division applies if the driver of a motor vehicle (the offender) is found guilty of a prescribed driving offence (the last offence) within 2 years after having previously been found guilty of a prescribed driving offence.

29AF Application for impounding or forfeiture order

- (1) Within 28 days after the offender is found guilty of the last offence, a police officer may apply to the Local Court for an impounding order or forfeiture order for the vehicle driven by the offender when the last offence was committed.
- (2) However, subsection (1) does not apply if the vehicle was being unlawfully used, had been stolen or was a rental vehicle.

29AG Making of order

- (1) On hearing the application, the Local Court may:
 - (a) if the offender has been found guilty on 2 occasions of a prescribed driving offence, order that the vehicle be impounded for 48 hours;
 - (b) if the offender has been found guilty on 3 occasions of a prescribed driving offence, order that the vehicle be impounded for a stated period of not more than 3 months; or
 - (c) if the offender has been found guilty on 4 or more occasions of a prescribed driving offence, order that the vehicle:
 - (i) be impounded for a stated period of not more than 3 months; or
 - (ii) be forfeited to the Territory.
- (2) However, the Court must not make an impounding order or forfeiture order if it is satisfied impounding or forfeiting the vehicle will cause severe financial or physical hardship to the owner or usual driver of the vehicle.
- (3) In addition, the Court must not make an impounding order or forfeiture order if the owner of the vehicle raises the defence mentioned in subsection (4) and the Court is satisfied the defence has been made out.
- (4) It is a defence for an owner of the vehicle to prove the prescribed driving offence happened without the knowledge and consent of the owner.
- (5) The Court may, in an impounding order or forfeiture order for the vehicle:
 - (a) order the owner to deliver the vehicle to a police officer by a stated time at a stated place; or
 - (b) authorise a police officer, without warrant, to enter any place the police officer reasonable suspects is a place where the vehicle may be found and search for, seize and remove it.

29AH Costs of impounding

- (1) The offender is liable to pay the costs of removing and keeping the vehicle under an impounding order or forfeiture order.

- (2) For subsection (1), the owner of the storage premises for the vehicle is taken to be a warehouseman under the *Warehousemen's Liens Act* and that Act (other than section 7) applies to the vehicle.
- (3) If, after the end of the period of impounding of the vehicle under an impounding order, the owner of the vehicle does not recover it, Parts III, IV and V of the *Disposal of Uncollected Goods Act* apply to the sale or disposal of the vehicle by the owner of the storage premises.

29AI Return of vehicle after impounding

- (1) When the period of impounding of the vehicle ends, the owner of the vehicle is entitled to recover it from the owner of the storage premises for the vehicle.
- (2) The owner of the storage premises must return the vehicle to its owner on request.
- (3) However, subsection (2) does not apply if the costs of removing and keeping the vehicle have not been paid.

29AJ Effect of forfeiture order

On the making of a forfeiture order for the vehicle:

- (a) the vehicle becomes the property of the Territory; and
- (b) a right of a person to enforce any security interest against another person by taking possession of the vehicle is extinguished.

Division 3 Provisions about forfeiture

29AK Disposal of forfeited vehicle

The Commissioner of Police may dispose of a motor vehicle forfeited to the Territory under a forfeiture order in the way the Commissioner considers appropriate, including by selling it.

29AL Application of proceeds of sale

If, under section 29AK, the Commissioner of Police sells the vehicle, the proceeds of the sale must be paid as follows:

- (a) first – in payment of the expenses of the sale;
- (b) second – in payment of the cost of removing and keeping the vehicle;

- (c) third – if there is an amount owing to a person under a security interest registered for the vehicle under the Registration of Interests in *Motor Vehicles and Other Goods Act* or a corresponding law of another jurisdiction – in payment of the amount owing to the registered holder of the interest;
- (d) fourth – to the Consolidated Revenue Account.

29AM Third party protection from forfeiture order

- (1) A person, other than the offender, who did not appear at the hearing of an application for a forfeiture order and has an interest in a motor vehicle forfeited to the Territory under the order may apply to the Local Court for an order under subsection (5).
- (2) Unless the Court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.
- (3) The Court may give leave for a later application if it is satisfied the delay in applying was not because of the applicant's neglect.
- (4) Unless the Court gives leave, a person who was given notice of the application for the forfeiture order cannot apply to the Court for an order under subsection (5).
- (5) On an application, the Court may make an order:
 - (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the vehicle; and
 - (b) directing the Territory:
 - (i) if the vehicle is still vested in the Territory – to transfer it to the applicant; or
 - (ii) if the vehicle is no longer vested in the Territory – to pay to the applicant the value of the applicant's interest in the vehicle after taking into account any amount paid under section 29AL(c) to the holder of a security interest.
- (6) The Court must, and may only, make the order if it is satisfied:
 - (a) the applicant would, apart from the forfeiture, have a genuine interest in the vehicle; and
 - (b) the prescribed driving offence for which the forfeiture order was made happened without the knowledge and consent of the applicant.

- (7) For all applications, including applications for leave to apply:
 - (a) the applicant must give notice of the making of the application to the Commissioner of Police; and
 - (b) the Commissioner is a party to the application.

Division 4 Miscellaneous provisions

29AN Offence to remove or interfere with impounded vehicle

- (1) A person must not:
 - (a) unlawfully remove an impounded motor vehicle from its storage premises; or
 - (b) interfere with an impounded motor vehicle held on its storage premises.

Penalty: 20 penalty units.

- (2) In this section:

impounded motor vehicle means a motor vehicle impounded under an impounding order, and includes anything fitted or attached to the vehicle, including for example, an accessory, body kit or stereo system.

29AO Review of Part

There is to be a review of the first 5 years of operation of this Part.

Part VI Offences

29A Effect of suspension of licence to drive or vehicle registration

- (1) If a person's licence to drive is suspended under this Act or another Act, the person is to be taken not to hold a licence to drive during the period of suspension.
- (2) If the registration of a vehicle is suspended under the *Motor Vehicles Act*, the vehicle is to be taken to not be registered during the period of suspension.

30 Dangerous driving or riding

- (1) A person shall not, on a public street or public place, drive or ride a vehicle negligently or recklessly or at a speed or in a manner dangerous to the public.

Penalty: 20 penalty units or imprisonment for 2 years.

- (2) In considering whether an offence has been committed under this section, the court shall have regard to all the circumstances of the case, including the nature, condition and use of the public street or public place on which the offence is alleged to have been committed, and the amount of traffic which was, or might reasonably have been expected to have been, on that public street or public place at the time.
- (3) Where a person is found guilty of an offence against subsection (1) by reason of driving a motor vehicle on a public street or public place recklessly or at a speed or in a manner dangerous to the public, the person's licence shall, by force of the finding of guilt, be cancelled and that person shall be disqualified from holding a licence:
- (a) for a first offence – for a period of 6 months; and
 - (b) for a second or subsequent offence – for a period of 12 months,
- or such longer period as the court thinks fit.
- (4) Subsection (1) in so far as it relates to the driving of a motor vehicle at a speed dangerous to the public does not apply to the driver of a motor vehicle which is:
- (a) being driven or used by a member of the Police Force in the execution of that member's duty;
 - (b) being driven by a member of the Northern Territory Fire and Rescue Service, within the meaning of the *Fire and Emergency Act*, to a place in answer to a call for the services of the Northern Territory Fire and Rescue Service, or whilst it is in use at a fire or other emergency; or
 - (c) an ambulance.

30A Driving at dangerous speed

- (1) A person must not drive a vehicle at a speed that is 45 km/h or more faster than the speed limit specified in the Regulations.

Penalty: 20 penalty units or imprisonment for 2 years.

- (2) Where a person is found guilty of an offence against subsection (1), the person's licence is, by force of the finding of guilt, cancelled and the person is disqualified from holding a licence:

- (a) for a first offence – for a period of 3 months; or
(b) for a second offence or subsequent offence – for a period of 6 months,

or for such longer period as the Court thinks fit.

- (3) Subsection (1) does not apply to the driver of a motor vehicle that is:

- (a) being driven or used by a member of the Police Force in the execution of that member's duty;
(b) being driven by a member of the Northern Territory Fire and Rescue Service, within the meaning of the *Fire and Emergency Act*, to a place in answer to a call for the services of the Northern Territory Fire and Rescue Service, or whilst it is in use at a fire or other emergency; or
(c) an ambulance.

31 Driving while disqualified

- (1) Where a person is disqualified from holding a licence for a period, that person shall not during that period:

- (a) obtain a licence; or
(b) drive a motor vehicle on a public street or public place.

Penalty: Imprisonment for 12 months.

- (2) Where a person is found guilty of an offence against subsection (1) the court may disqualify that person from holding a licence for such further period as it thinks fit.

32 Driving while not licensed

- (1) A person shall not drive a motor vehicle on a public street or public place:
- (a) unless that person:
 - (i) holds a licence;
 - (ii) is temporarily in the Territory and holds a licence or permit to drive a motor vehicle granted in:
 - (A) the country or a State or other Territory of the Commonwealth in which that person usually resides; and
 - (B) when required, holds a current international driving permit granted in accordance with the terms of the 1949 United Nations Convention on Road Traffic;
 - (iii) holds a learner's licence; or
 - (iv) is temporarily in the Territory and holds a licence or permit (however referred to) granted in the country or the State or other Territory of the Commonwealth in which that person usually resides which permits the person to drive a motor vehicle to gain experience for the purpose of obtaining a licence to drive a motor vehicle,and is driving in accordance with the conditions, if any, of the licence or permit, and the motor vehicle is one which the person is permitted by the licence or permit to drive; or
 - (b) if:
 - (i) that person is disqualified from holding a licence in a State or another Territory of the Commonwealth, during the period that the disqualification is in force; or
 - (ii) the Registrar has revoked or suspended the person's entitlement to drive a motor vehicle under section 101B of the *Motor Vehicles Act*, during the period that the revocation or suspension is in force.
- (2) A person shall not employ, permit or suffer a person to drive a motor vehicle on a public street or public place if that person is not, by virtue of subsection (1), permitted to drive that motor vehicle.
- (3) For the purposes of subsection (1)(a) or (2), a person who is a resident of the Territory shall be deemed not to hold a licence to

drive a motor vehicle unless that person is, under section 8A(3) of the *Motor Vehicles Act*, exempted from the requirement to be licensed, notwithstanding that that person is the holder of a licence to drive that motor vehicle granted under a law of a country or of a State or another Territory of the Commonwealth relating to the licensing of persons to drive motor vehicles.

- (4) In a prosecution for an offence against subsection (1)(a) or (2) relating to a person who is deemed not to hold a licence to drive a motor vehicle by virtue of subsection (3), an averment in the complaint that the person is a resident of the Territory is prima facie evidence of that fact.

33 Driving unregistered vehicle

- (1) A person shall not:

- (a) drive; or
(b) employ, permit or suffer a person to drive,

on a public street or public place a motor vehicle which is not registered.

Penalty: 20 penalty units or imprisonment for 12 months.

- (2) An inspector or a member of the Police Force who has reason to believe that a motor vehicle is not registered may remove a number plate which is attached to that vehicle.

- (3) For the purposes of this section:

- (a) a visiting motor vehicle in relation to which there is in force a policy of insurance complying with the provisions of a law in force in a State or another Territory of the Commonwealth requiring the owner or driver of a motor vehicle to be insured against liability in respect of the death of or bodily injury to a person caused by or arising out of the use of the motor vehicle;

- (aa) a motor vehicle being driven by the shortest practicable route to a repair workshop:

- (i) that is located within a reasonable distance in the circumstances;
(ii) that has the services of an inspector appointed under the *Motor Vehicles Act*; and

(iii) where arrangements for the presentation of the vehicle have been made in advance,

for the purpose of the vehicle being inspected or repaired in order for it to be registered;

- (b) a motor vehicle being driven by the shortest practicable route to the nearest office of the Registrar or police station, for the purpose of registering that vehicle;
- (c) a motor vehicle being removed or operated in pursuance of a licence granted under section 137 of the *Motor Vehicles Act* or a licence or other document, granted under a provision of an Act of a State or another Territory of the Commonwealth, which permits the driving of a vehicle not registered under such an Act;
- (d) a motor vehicle being driven in pursuance of, and in accordance with, a pastoral vehicle permit granted under section 137B of the *Motor Vehicles Act*;
- (da) a motor vehicle being towed, moved or driven under section 47(4);
- (e) a vehicle which is the property of the Commonwealth or an authority of the Commonwealth; and
- (f) a motor vehicle registered under the *Interstate Road Transport Act* of the Commonwealth,

shall be deemed to be registered.

- (4) A person shall not drive a visiting motor vehicle on a public street or public place unless that person complies with the conditions, restrictions or limitations (if any) imposed in respect of its registration in the country, State or Territory of the Commonwealth where it is registered and:
 - (a) that person can establish, to the satisfaction of the Registrar, that within the period of 3 months immediately preceding that day, it had been outside the Territory; or
 - (b) the vehicle is, under section 8A(1) of the *Motor Vehicles Act*, exempted from the requirement for registration.
- (4A) For the purposes of subsection (1), a motor vehicle is to be deemed to be not registered, notwithstanding that it is registered under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of motor vehicles, where it is being driven in contravention of a condition, restriction or

limitation imposed in respect of its registration in that country, State or Territory.

(5) For the purposes of subsection (1), a motor vehicle shall be deemed to be not registered, notwithstanding that it is registered under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of motor vehicles, where it is being driven by a person who is:

(a) a resident of the Territory; and

(b) the owner of the vehicle,

and the vehicle has been in the Territory continuously for:

(c) more than 28 days; or

(d) where the Registrar has, under section 8A(1) of the *Motor Vehicles Act*, exempted the vehicle from the requirement for registration for a period, for more than that period.

(6) For the purposes of subsection (5)(b), but without limiting that subsection, a person shall be deemed to be the owner of a motor vehicle if it is registered under a law of another country or of a State or another Territory of the Commonwealth in the name of that person or in the name of a spouse, de facto partner, dependant or parent, who is a resident of the Territory, of that person.

(7) In a prosecution for an offence against subsection (1) in respect of a motor vehicle which is deemed not to be registered by virtue of subsection (5), an averment in the complaint that:

(a) a person is a resident of the Territory; or

(b) the vehicle in respect of which an alleged offence was committed had been in the Territory continuously for a specified period,

is prima facie evidence of the matters averred.

(8) This section does not apply to a vehicle to which section 33A applies.

33A Driving unregistered heavy vehicle

(1) A person shall not:

(a) drive; or

(b) employ, permit or suffer a person to drive,

on a public street or public place a heavy vehicle which is not registered.

Penalty: In the case of a natural person – 20 penalty units or imprisonment for 12 months.

In the case of a body corporate – 100 penalty units.

- (2) Where a heavy vehicle that is a visiting motor vehicle:
- (a) is registered in the configuration in which the vehicle was driven at the time of the alleged offence under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of motor vehicles and the registration is not void outside of, or of effect only within, the State or Territory in which registration occurred; or
 - (b) was, at the time of the alleged offence, driven in a configuration specified in a permit issued under section 107B of the *Motor Vehicles Act* in relation to the vehicle,
- and there is in force in relation to the vehicle a policy of insurance complying with the provisions of a law in force in a State or another Territory of the Commonwealth requiring the owner or driver of a motor vehicle to be insured against liability in respect of the death of or bodily injury to a person caused by or arising out of the use of the motor vehicle and the policy is not void outside of, or of effect only within, the State or Territory in which registration occurred, the heavy vehicle shall be deemed to be registered.
- (3) Subject to subsection (4), where an owner of a vehicle is found guilty of an offence against subsection (1) in relation to the vehicle, the owner shall, in addition to the penalty, if any, imposed under subsection (1), pay to the Registrar an amount equal to the amount, at the time at which the offence occurred, payable under section 13 of the *Motor Vehicles Act* for 12 months registration of the vehicle in the configuration in which the vehicle was driven at the time of the offence.
- (4) The Regulations may prescribe that the penalty specified in subsection (3) does not apply to certain specified classes of offences against that subsection and that penalty shall accordingly not apply to those offences.
- (5) An inspector or a member of the Police Force who has reason to believe that a heavy vehicle is not registered may remove a number plate which is attached to that vehicle.

(6) For the purposes of this section:

- (a) a heavy vehicle being driven by the shortest practicable route to the nearest office of the Registrar or police station, for the purpose of registering that vehicle;
- (b) a heavy vehicle being removed or operated in pursuance of a licence granted under section 137 of the *Motor Vehicles Act* or a licence, granted under a law of a State or another Territory of the Commonwealth, which permits the driving of a vehicle not registered under such an Act;
- (c) a heavy vehicle being driven in pursuance of, and in accordance with, a pastoral vehicle permit granted under section 137B of the *Motor Vehicles Act*;
- (d) a heavy vehicle being towed, moved or driven under section 47(4);
- (e) a heavy vehicle which is the property of the Commonwealth or an authority of the Commonwealth; and
- (f) a heavy vehicle registered under the *Interstate Road Transport Act* of the Commonwealth,

shall be deemed to be registered.

(7) A person shall not, on a public street or public place, drive a heavy vehicle that is a visiting motor vehicle, unless that person is driving the heavy vehicle in compliance with the conditions, restrictions or limitations (if any) imposed in respect of its registration in the country, State or Territory of the Commonwealth where it is registered and:

- (a) that person can establish, to the satisfaction of the Registrar, that within the period of 3 months immediately preceding that day, it had been outside the Territory; or
- (b) the vehicle is, under section 8A(1) of the *Motor Vehicles Act*, exempted from the requirement for registration.

(7A) For the purposes of subsection (1), a heavy vehicle that is a visiting motor vehicle is to be deemed to be not registered, notwithstanding that it is registered under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of heavy vehicles, where it is being driven in contravention of a condition, restriction or limitation imposed in respect of its registration in that country, State or Territory.

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- (8) For the purposes of subsection (1), a heavy vehicle shall be deemed to be not registered, notwithstanding that it is registered under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of motor vehicles, where it is being driven by a person who is:
- (a) a resident of the Territory; and
 - (b) the owner of the vehicle,
- and the vehicle has been in the Territory continuously:
- (c) for more than 28 days; or
 - (d) where the Registrar has, under section 8A(1) of the *Motor Vehicles Act*, exempted the vehicle from the requirement for registration for a period, for more than that period.
- (9) For the purposes of subsection (8)(b), but without limiting that subsection, a person shall be deemed to be the owner of a heavy vehicle if it is registered under a law of another country or of a State or another Territory of the Commonwealth in the name of that person or in the name of a spouse, de facto partner, dependant or parent, who is a resident of the Territory, of that person.
- (10) In a prosecution for an offence against subsection (1) in respect of a heavy vehicle which is deemed not to be registered by virtue of subsection (9), an averment in the complaint that:
- (a) a person is a resident of the Territory; or
 - (b) the vehicle in respect of which an alleged offence was committed had been in the Territory continuously for a specified period,
- is prima facie evidence of the matters averred.
- (11) For the purposes of this section:
- configuration** has the meaning it has in the *Motor Vehicles Act*.
- heavy vehicle** means a vehicle to which, if the vehicle were required to be registered in the Territory, the Road Transport Charges Laws of the Territory as defined in the *Road Transport Charges (Northern Territory) Act* would apply.

33B Person may be cautioned

- (1) If a person contravenes section 32, 33 or 33A because the person's licence to drive or the registration of the vehicle is suspended

because the person (or the owner of the vehicle) is a fine defaulter, a member of the Police Force may, if satisfied that the person was unaware of the suspension, caution the person and (if necessary) permit the person to continue to drive the vehicle to a nominated place instead of charging the person with an offence.

- (2) A person who has been previously cautioned under this section for contravening section 32, 33 or 33A is not entitled to be cautioned again on another occasion in respect of the same suspension.
- (3) It is a defence to a charge of contravening section 32, 33 or 33A if the person charged proves that he or she was given permission to drive under subsection (1).

34 Driving uninsured or improperly insured vehicle

- (1) Subject to subsection (4), a person shall not drive or permit to be driven on a public street or public place a motor vehicle in respect of which a current compensation contribution has not been paid under Part V of the *Motor Vehicles Act*.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

In both cases, the minimum penalty is:

- (a) for a first offence – 5 penalty units; and
- (b) for a second or subsequent offence – 10 penalty units.

- (2) Subject to subsection (4), the owner of a motor vehicle shall not use or permit it to be used for a purpose which, under Part V of the *Motor Vehicles Act*, requires a compensation contribution to be paid greater than that paid for that vehicle at the time it was registered.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

In both cases, the minimum penalty is:

- (a) for a first offence – 5 penalty units; and
- (b) for a second or subsequent offence – 10 penalty units.

- (3) Subsections (1) and (2) do not apply to or in relation to a motor vehicle which is deemed under section 33(3) or section 33A(2) or (6) to be registered.
- (4) Notwithstanding that a minimum penalty is prescribed for an offence against subsections (1) and (2) the Regulations may provide that the minimum penalty shall not apply to certain classes of offences against those subsections and that minimum penalty shall accordingly not apply to those offences.

35 Driving motor vehicle registered on conditions, &c.

- (1) If the Registrar has under the *Motor Vehicles Act* registered or renewed the registration of a motor vehicle subject to conditions, a person driving the motor vehicle must comply with those conditions.
- (2) If the Registrar has under section 102A of the *Motor Vehicles Act* endorsed on a certificate of registration a direction that the motor vehicle is not to be driven except between the times specified in the endorsement, a person driving the motor vehicle must comply with the direction.

Part VII Prosecutions of offences, penalties, &c.

36 Laying of complaint

- (1) A complaint for an offence against this Act may be made by any person.
- (2) Where a complaint is made by a person (other than the Director, an inspector, a member of the Police Force or a person authorized by a statutory corporation to make complaints on its behalf under this Act) and the proceedings are dismissed or the complaint is withdrawn, the court may, if it thinks fit, order that person to pay to the defendant, in addition to any costs, such compensation as it thinks reasonable.

37 Offence to due to accident

- (1) A person is not liable to be found guilty of an offence against this Act if that person proves, to the satisfaction of the court hearing the case, that the offence could not have been avoided by any reasonable efforts on that person's part.
- (2) It is a defence to a prosecution for an offence against this Act if the defendant satisfies the court that the action the defendant took was reasonable in the circumstances and intended to evade a dangerous situation which had arisen through no fault or negligence on the defendant's part.

38 Proof of speed

- (1) A person shall not be found guilty of an offence of or relating to exceeding a prescribed speed limit solely on the evidence of one witness to the effect that, in the opinion of the witness, the person was driving the vehicle at a speed faster than that permitted for that vehicle.
- (2) A complaint for an offence of or relating to driving a vehicle at a speed exceeding a prescribed speed limit shall specify the speed at which, or faster than which, it is alleged the defendant drove the vehicle.
- (3) Evidence may be given in any proceedings in a court for the purpose of showing the speed at which a vehicle was travelling at a particular time by reference to the calculation of the speed of that vehicle as shown on a traffic infringement detection device and, where evidence is so given, it shall be prima facie that the vehicle was travelling at the speed so calculated at that time.

39 Cancellation of licence

- (1) Where a court finds a person is guilty of an offence against a section specified in Column 1 of Schedule 1, the person's licence is, by force of the finding of guilt, cancelled and the person is disqualified from holding a licence:
 - (a) for the first offence, for the period specified in column 3; or
 - (b) for the second or subsequent offence, for the period specified in column 4,of that Schedule opposite the relevant section in Column 1, or such longer period as the court thinks fit, but if the finding relates to:
 - (e) an offence against section 20, or an offence in which the concentration of alcohol in the person's blood is equal to or more than 150 mg of alcohol per 100 mL of blood, committed within 3 years after committing an offence against section 19(2) for which the penalty was that specified in section 19(3)(a)(ii) or (b) or against section 20, the person's licence is, by force of the finding, cancelled for such period, being not less than 5 years, as is fixed by the court and the person is disqualified from holding a licence for that period; or
 - (f) an offence against section 19(1) or (2) or 20 committed by a person referred to in section 19(9)(b)(i) or (iii), the person's licence is, by force of the finding, cancelled for such period as is prescribed in Schedule 1 in relation to an offence of that kind or such longer period as the court thinks fit, and the

person is by force of this section disqualified from obtaining a licence to drive a vehicle referred to in section 19(9)(b)(i) or (iii) for a period of 5 years.

- (2) For the purposes of this section:
- (b) a reference to a second or subsequent offence includes, in addition to an offence which under section 49(2) is to be read as a second or subsequent offence, a finding of guilt (whether or not resulting in an order to dismiss a charge) made under section 4(1)(b) of the *Criminal Law (Conditional Release of Offenders) Act* in respect of a person charged with an offence against any section referred to in section 49(2); and
 - (c) the period during which a person is disqualified from holding a licence in respect of an offence against section 19(2) shall be ascertained by reference to the concentration of alcohol in the blood of the offender as specified in Column 2 of Schedule 1.
- (3) A court by which a person is found guilty shall, at the time of making the finding, specifically find that the offence to which the finding of guilt relates is the first, second or subsequent relevant offence for the purposes of subsection (1)(a), or (b).
- (3A) Where a person, who was disqualified from driving a motor vehicle under section 20A(4), is in respect of the same offence disqualified from holding a licence under this section, the court must make an order that the period of disqualification from holding a licence under this section is the period that equals the period of disqualification imposed under this section less the actual period for which the person was disqualified from driving under section 20A.
- (4) The court shall cause notice of a being found guilty referred to in subsection (1) and its finding under subsection (3) to be forwarded to the Registrar.

40 Disqualification where offender not licensed

Where a person who does not hold a licence is found guilty of an offence against this Act, where, by force of the being found guilty the person's licence would or may, if the person held one, be cancelled, that person shall be disqualified from holding a licence for the period provided by the section to which the offence relates, or as otherwise ordered by the court in accordance with that section.

41 Cancellation of licence

- (1) Subject to this Act, where a person is found guilty of an offence against this Act, the court may cancel the person's licence and disqualify the person from holding another licence for such period as the court thinks fit.
- (2) The cancellation of a licence and disqualification from holding another licence in respect of an offence against this Act is in addition to any other penalty imposed by the court for the offence.
- (3) A reference to the cancellation of a person's licence in this section or any other section of this Act shall be read as a reference to the cancellation of that person's licence to drive any motor vehicle.

42 Continuation of provisional licence

Subject to this Act, where a person who is the holder of a licence granted under section 10 of the *Motor Vehicles Act*, which is provisional by virtue of section 10A of that Act, is found guilty of an offence against this Act or the *Motor Vehicles Act*, the court may, in addition to imposing any other penalty on that conviction, and notwithstanding section 10A(2) of the *Motor Vehicles Act*, order that the person's licence shall, for the purposes of that Act and this Act, continue to be provisional for a further period of not less than 3 months and not more than 12 months after the expiration of the period referred to in section 10A(2) of that Act, as the court thinks fit and specifies in the order.

43 Appeals against findings of guilt, cancellations, &c.

- (1) Where:
 - (a) a person has been found guilty of an offence against this Act;
orand as a consequence of the being found guilty or the finding:
 - (ba) the person's licence is cancelled; or
 - (bb) the person is disqualified from holding a licence for a period;and:
 - (bc) the person has duly instituted an appeal to the Supreme Court from the conviction, order or finding in respect of the offence,then on and from the date when the court by which the order or conviction was made is satisfied that an appeal has been duly instituted and until the determination of the appeal, this Act does

not apply to or in relation to that person being found guilty in so far as it would, but for this section:

- (c) cause that person to cease to be licensed or be deemed to be licensed;
 - (d) require the delivery of that person's licence to the Registrar for cancellation; or
 - (e) cause that person to be disqualified from being granted a licence or from holding a licence.
- (2) Unless the Supreme Court on the hearing of an appeal quashes conviction, order or finding sets aside the finding:
- (a) the period, if any, during which the appellant is disqualified from being granted or holding a licence to drive a motor vehicle ends, subject to any order the Supreme Court makes on the hearing of the appeal, on the date which is as many days after the date on which it would have ended if there had been no appeal as there are days in the period between the institution and the determination of the appeal; and
 - (b) subject to any order the Supreme Court makes on the hearing of the appeal, the appellant is not licensed or shall not be deemed to be licensed during the period commencing on the determination of the appeal and ending on the date which is as many days after the determination as there are days in the period between the institution and the determination of the appeal.
- (3) A person may appeal to the Supreme Court against a finding of the court under section 4(1)(b) of the *Criminal Law (Conditional Release of Offenders) Act* that a charge for an offence against this Act is proved, and the finding shall be taken to be an adjudication of the court for the purposes of Division 2 of Part VI of the *Justices Act*.

Part VIII Miscellaneous

43A Special provisions for races, &c.

- (1) On the application of a person, the Minister may, in writing, declare that an event that is to be held on a public street or public place is an event to which this section applies and may order that:
- (a) a public street or public place on which the event is to be held and any adjacent or adjoining public street or public place is closed to traffic for a specified period; and

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- (b) a person taking part in the event is exempted, in relation to a public street or public place on which the event is to be held, from the duty to observe an Act, regulation, or by-law, prescribing a rule to be observed on public streets or public places by pedestrians or the drivers of vehicles.
- (2) An order under this section shall only be made:
- (a) with the consent of the competent authority of a public street or public place that is to be closed;
- (b) after the Minister responsible for the administration of the *Territory Insurance Office Act* has notified the Minister that satisfactory arrangements are in place to protect the Territory from any liability, and the Territory Insurance Office from any liability under the *Motor Accidents (Compensation) Act*, that may arise out of the holding of the event; and
- (c) after the Minister is satisfied that the organisers of the event have arranged a level of insurance that is adequate, in the Minister's opinion, to meet any liability that may arise out of the holding of the event.
- (3) An applicant under this section shall give public notice of the event, by such means as the Minister requires, not less than 7 days prior to the date of the event.
- (4) An order under this section may be subject to such conditions as the Minister thinks fit to impose.
- (5) Where the Minister is satisfied that a condition to which an order is subject has not or is not being complied with, the Minister may vary, cancel, or suspend for such period as the Minister thinks fit, the order.
- (6) An order under this section renders lawful anything done in accordance with the order.
- (7) An order under this section may apply to the whole or a part of a public street or public place.
- (8) For the purposes of an event to which this section applies, the Director may appoint such persons as he or she thinks fit to be officials.
- (9) A person appointed as an official under subsection (8) shall be provided with an identification card by the Director, and the person shall, at all times when exercising his or her powers under subsection (10), display the identification card.

- (10) A person appointed as an official under subsection (8) may give such reasonable directions to a person on a public street or public place, other than a member of the Police Force, as are, in the person's opinion, necessary for the safe and efficient conduct of an event to which this section applies.
- (11) In addition to any other power to regulate traffic given by this or any other Act, a member of the Police Force may give such reasonable directions to a person on a public street or public place, including a person appointed as an official under subsection (8), as are, in the member's opinion, necessary for the safe and efficient conduct of an event to which this section applies.
- (12) A direction under subsection (10) or (11) may include clearing vehicles or persons from a public street or public place or part of a public street or public place or temporarily closing a public street or public place or part of a public street or public place.
- (13) A person shall not contravene or fail to comply with a condition to which an order under this section is subject.
- (14) A person to whom a direction under subsection (10) or (11) is given shall not contravene or fail to comply with the direction.
- (15) In this section, event means an organised sporting, recreational or other similar activity, whether the persons taking part are in competition with other persons or not, and includes a race and practice for a race.
- (16) No action or proceeding shall lie against the Minister or the Minister responsible for the administration of the *Territory Insurance Office Act* in respect of anything done or omitted to be done by him or her in good faith and purporting to be for the purposes of this section.

43B Exemptions

- (1) The Registrar may, by notice in the *Gazette*, exempt a motor vehicle of a class specified in the notice, subject to such conditions, if any, as the Registrar thinks fit, from the application of some or all of the provisions of this Act.
- (2) In determining whether to exempt a motor vehicle under subsection (1), the Registrar shall have regard to:
 - (a) the speed capacity;
 - (b) the likelihood of infrequent use on public streets or public places; and

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- (c) such other special considerations or characteristics of the vehicle as the Registrar thinks fit,

of a vehicle of the relevant class.

44 Traffic infringement detection device

- (1) The Director may, by notice in the *Gazette*, approve a device of a kind specified in the notice as a traffic infringement detection device subject to such conditions as are specified in that notice, including conditions specifying the frequency with which, and the manner in which, the device shall be tested by a person approved under subsection (2).
- (1A) The Director must not approve under subsection (1) an apparatus that produces a photographic image or an electronic image as a traffic infringement detection device unless it is capable of producing an image or images in respect of the commission of an offence that:
- (a) is or are in an unalterable format; and
 - (b) alone indicates or jointly indicate the following:
 - (i) a code identifying the device that recorded the image;
 - (ii) a code identifying the place where the device recorded the image;
 - (iii) a code identifying the person responsible for the use of the device at that location;
 - (iv) the date and the time when the image was recorded;
 - (v) the vehicle and the number plate of the vehicle;
 - (vi) where the offence is one of exceeding a prescribed speed limit :
 - (A) the prescribed speed limit; and
 - (B) the speed of the vehicle;
 - (vii) where the offence is one of contravening or failing to comply with an instruction of a traffic control signal by proceeding on a public street beyond a stop line or a part of the signal while a light that is a red circle or a red arrow is displayed facing a driver, the number of seconds between the time the light was displayed and the time the driver proceeded beyond the stop line or the

part of the signal;

(viii) the prescribed information, if any.

- (2) The Commissioner may, by notice in the *Gazette*, approve a person as a person qualified to test the accuracy of a traffic infringement detection device.
- (3) A traffic infringement detection device is not to be used for or in relation to the detection of an offence unless it has been tested by a person approved under subsection (2) in accordance with the notice approving the device under subsection (1).

44A Proof of certain matters relating to use of infringement detection devices

In proceedings for an offence against this Act:

- (a) evidence may be given by a member of the Police Force or an officer of the use by the member or officer of a traffic infringement detection device in relation to the detection of the offence, and the evidence is prima facie evidence of the offence;
- (b) a certificate purporting to be signed by a person approved under section 44(2), or a copy of the certificate, produced by the prosecution and purporting to certify that the traffic infringement detection device specified in the certificate:
- (i) is a traffic infringement detection device within the meaning of this Act; and
 - (ii) was tested by a person approved under section 44(2) in accordance with the notice approving the devices under section 44(1) on a specified day in respect of a specified period, and was shown by the test to be accurate to the extent indicated in the certificate,

is, without proof of the signature, evidence of the facts certified and that the device was accurate to that extent;

- (c) where the offence is one of driving a vehicle at a speed that is faster than a prescribed speed limit, the production by the prosecution of an image that was recorded by a traffic infringement detection device, and that indicates the information specified in section 44(1A), is evidence that at the time and place indicated on the image the motor vehicle appearing in the image was driven at the speed indicated on the image; and

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- (d) where the offence is one of contravening or failing to comply with a traffic control signal by proceeding on a public street beyond a stop line or a part of the signal while a light that is a red circle or a red arrow is displayed facing a driver, the production by the prosecution of an image that was or images that were recorded by a traffic infringement detection device, and that indicates or jointly indicate the information specified in section 44(1A), is evidence that at the time and place indicated on the image the driver of the vehicle appearing in the image or both images proceeded beyond the stop line or the part of the signal while a light that was a red circle or red arrow was facing the driver.

45 Offence against regulations not to affect damages in respect of death of, or injury to, child

Notwithstanding any other law of the Territory, in civil proceedings in respect of injury to a child or young person arising out of the use of a motor vehicle, damages recoverable by the child or young person shall not be reduced by reason only that an act or omission by a person constituted an offence under this Act relating to the obligations of a driver of a motor vehicle to children and young persons in a motor vehicle.

46 Liability at common law and by statute

Nothing in this Act affects the liability of a person by virtue of any other law (including the common law) in force in the Territory.

46A Breath analysis instruments at licensed premises – readings not admissible as evidence

- (1) Evidence of the taking of a test indicating the presence or concentration of alcohol in the blood of a person by a breath analysis instrument installed in premises licensed under the *Liquor Act*, or of the results of such a test, is not admissible in any court or tribunal in any proceedings, whether civil or criminal.
- (2) A licensee in respect of premises licensed under the *Liquor Act* shall not install a breath analysis instrument on the premises unless the instrument complies with the Australian Standard relating to such instruments.

47 Duties and powers of police, &c.

- (1) A member of the Police Force shall do all things in that member's power to ensure that this Act is duly observed.
- (2) For the purposes of subsection (1), a member of the Police Force may drive, use, ride on or be carried or drawn by, any vehicle or

animal the driver of which has been given a direction or order under this Act and that member shall not be liable for the payment of any fare ordinarily chargeable for such use, hire or carriage.

- (3) Where a driver or person in charge of a vehicle is arrested or otherwise lawfully detained by a member of the Police Force and that driver or person is unwilling or unable, for whatever reason, to move or secure the vehicle, the member may:
- (a) park and secure the vehicle at or near the place where the driver or person is arrested or detained; or
 - (b) arrange for it to be towed, moved or, where considered by the member to be safe to do so, driven to a police station or other place,

without liability for any damage or loss which may occur to the vehicle or to anything in it.

- (4) Where a vehicle is not registered, a member of the Police Force may take charge of the vehicle and may arrange for it to be towed, moved or, where considered by the member to be safe to do so, driven, to a police station or other place without liability for any damage or loss which may occur to the vehicle or to anything in it.
- (5) Where a vehicle is, under subsection (3) or (4), towed, moved or driven to a police station or other place, the vehicle may be kept at that station or place until the costs of towing or moving it and of detaining it are paid to the Territory.
- (6) Where, at the expiration of 3 months after a vehicle has been taken charge of under subsection (3) or (4), the costs referred to in subsection (5) have not been paid, the Commissioner may, by public auction, dispose of the vehicle and the money, if any, obtained from the sale of the vehicle shall, after payment of the costs referred to in subsection (5), be paid into the Public Account, within the meaning of the *Financial Management Act*, in accordance with the requirements of that Act.
- (7) A sale in accordance with subsection (6) shall be valid as against all persons.

48 Liability of insurers under policies of insurance

- (1) The fact that a person has undergone a breath test, submitted to a breath analysis or given a sample of blood for a blood test, the result of a breath test, breath analysis or blood test or the fact that a person has been convicted of an offence under section 19 (other than subsection (1)) or 20 is not, for the purposes of a contract of insurance, admissible as evidence of the fact that that person was

at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this subsection precludes the admission of any other evidence to show any such fact.

- (2) A reference in a contract of insurance to a concentration of alcohol equal to or exceeding that prohibited by a law applicable in a State or Territory, or words to that effect, shall be construed, for the purposes of the contract of insurance, as a reference to the concentration specified in section 19(2).
- (3) Subsections (1) and (2) have effect notwithstanding anything contained in a contract of insurance and a covenant, term, condition or provision of a contract of insurance, to the extent that the operation of this section is excluded, limited, modified or restricted, is void.

49 Second or subsequent offence

- (1) For the purposes of this Act, a reference to a second or subsequent offence against a provision of this Act (other than section 19(1), (2) or (4) or 20), shall be read as a reference to an offence committed against that provision by a person who has previously been found guilty of:
 - (a) that offence; or
 - (b) a similar offence against the *Traffic Act* as in force immediately before the commencement of this Act.
- (2) For the purposes of this Act, a reference to a second or subsequent offence against section 19(1), (2) or (4) or 20 shall be read as a reference to an offence committed against that provision by a person who has previously been found guilty of:
 - (a) that offence;
 - (b) an offence against any of those subsections or section 20; or
 - (c) any offence against section 8(1), (2) or (4) or section 8A of the *Traffic Act* as in force immediately before the commencement of this Act.
- (3) In this section, a reference to an offence being committed against a provision includes a finding of guilt in relation to the offence.

50 Attempts to commit offence against section 19

A person who attempts to commit an offence against section 19 is guilty of that offence.

51 Regulatory offences

An offence against or a contravention or failure to comply with this Act (other than sections 29AN(1), 30, 30A and 31) is a regulatory offence.

52 General penalties

A person who contravenes or fails to comply with a provision of this Act in respect of which no penalty, other than by this section, is provided, is guilty of an offence.

Penalty: 20 penalty units or imprisonment for 12 months.

53 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may provide for:
 - (a) the exemption of certain persons from the application of all or part of the Regulations;
 - (b) the erection and operation of, and obedience to, traffic control devices;
 - (c) the regulation or prohibition of persons driving vehicles including:
 - (i) driving on the left, in reverse, at intersections or on beaches, footways, reservations and traffic islands;
 - (ii) the overtaking or passing of vehicles;
 - (iii) giving way to vehicles;
 - (iv) the parking or standing of vehicles or leaving vehicles unattended;

- (v) the turning, starting and stopping of vehicles;
- (vi) the towing of vehicles; and
- (vii) the number of hours which a person may drive a vehicle;
- (d) the regulation of pedestrians on public streets and public places;
- (e) the regulation of persons on or near railway level crossings;
- (f) the prescribing or determining by the Registrar of speed restrictions and the use of traffic infringement detection devices including the testing and operation of such devices;
- (g) the lights, warning signs and equipment to be fitted to vehicles and the use of such lights, warning signs and equipment;
- (h) the regulation of the use of bicycles and toy vehicles on public streets or public places;
- (j) freeways, bus lanes, bicycle ways, truck lanes, truck priority lanes and transit lanes;
- (k) the safety of persons in or on vehicles;
- (m) the authorization of persons carrying out breath analyses;
- (n) the securing of loads on vehicles and the measures to be taken in the event of the loss of material from vehicles;
- (p) the regulation or prohibition of persons obstructing public streets or public places;
- (q) the regulation or prohibition of persons holding:
 - (i) processions, parades or other events; or
 - (ii) vehicle trials, speed tests or races,on public streets or public places;
- (r) the control of animals on public streets or public places;
- (s) the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or the *Motor Vehicles Act* or the Regulations made under that Act;

- (t) the service of notices on persons alleged to have infringed this Act or the *Motor Vehicles Act* or the Regulations made under that Act and particulars to be included in such notices;
 - (u) the proof of ownership of a vehicle and other evidentiary matters in respect of offences committed against the Regulations;
 - (w) the sale or disposal of abandoned vehicles;
 - (y) penalties not exceeding 20 penalty units or imprisonment for 6 months, or both, for offences against the Regulations; and
 - (z) the forfeiture of goods on conviction for an offence against the Regulations.
- (3) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether:
- (a) wholly or partly, or as amended by the Regulations;
 - (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
 - (c) as amended after the making of the Regulations, but only where the Director has published in the *Gazette* a notice that the particular amendment is to be incorporated in the Regulations.
- (4) The Regulations may prescribe different penalties for different classes of offender for an offence against the Regulations.
- (5) The Regulations may:
- (a) make different provision in relation to:
 - (i) different persons or matters; or
 - (ii) different classes of persons or matters; or
 - (b) apply differently by reference to stated exceptions or factors.

54 Savings and transitional

- (1) In this section a reference to:
- (a) the former Act is a reference to the *Traffic Act* as in force immediately before the commencement of this Act; and

- (b) the commencement of this Act is a reference to the commencement of this Act other than sections 1 and 2.
- (2) Notwithstanding the commencement of this Act, the provisions of the former Act and the Regulations made under that Act shall apply to and in relation to a prosecution or legal proceeding for an offence against that Act which continues or is commenced after that commencement as if this Act had not come into operation.
- (3) Where, immediately before the commencement of this Act, a person was an authorized analyst under the former Act, that person shall, on the commencement of this Act, be deemed to be an authorized analyst appointed under this Act.
- (4) Where, immediately before the commencement of this Act, a member of the Police Force was authorized under section 8M of the former Act to use a prescribed instrument, that member shall, on the commencement of this Act, be deemed to be authorized to use a prescribed instrument under this Act.
- (5) Where, before the commencement of this Act:
- (a) a sign, signal, flag, notice, beacon or other device was erected, placed or displayed; or
- (b) a road marking on a carriageway or kerb was made,
- for the purposes of the former Act, that sign, flag, notice, beacon, device or road marking shall, on the commencement of this Act, be deemed to be a traffic control device placed, erected or displayed by the competent authority in accordance with, and for the purposes of, this Act.
- (6) Where, immediately before the commencement of this Act, an apparatus was a traffic speed analyser approved under the former Act, that apparatus shall, on the commencement of this Act, be deemed to be a traffic infringement detection device approved under this Act and a test required to be carried out on the apparatus under the former Act shall be deemed to be a test carried out under this Act until such time as a test is carried out, or is required to be carried out, under this Act.
- (7) Where, immediately before the commencement of this Act, a person was approved under section 56AB(2) of the former Act as a person qualified to test the accuracy of a traffic speed analyser, that person shall, on the commencement of this Act, be deemed to be a person qualified to test the accuracy of a traffic infringement detection device appointed under this Act.

- (8) Where, before the commencement of this Act, a person referred to in section 55AA(1) of the former Act instituted an appeal to the Supreme Court and that appeal has not been determined at the time of the commencement of this Act, section 43 shall, on that commencement, apply to and in relation to that appeal as if it were an appeal against a conviction under this Act and the court in which the order or conviction was made shall be deemed to be satisfied an appeal has been duly instituted.

55 Repeal

- (1) Subject to subsection (2), the Ordinances and Acts listed in Schedule 2 are repealed.

Schedule 1 Minimum disqualification period

Column 1	Column 2	Column 3	Column 4
Section	Concentration of alcohol in blood in grams per 100 mL of blood	First offence	Second or subsequent offence
			section 39
Section 19(1)		6 months	12 months
Section 19(2)	08 or more but less than .15	6 months	12 months
	.15 or more	12 months	18 months
Section 19(4)		3 months	6 months
Section 20		12 months	18 months

Schedule 2 Acts repealed

section 55

Ordinance, Act	Number and year
<i>Traffic Ordinance 1949</i>	No. 8, 1949
<i>Traffic Ordinance 1952</i>	No. 14, 1952
<i>Traffic Ordinance 1954</i>	No. 12, 1954
<i>Traffic Ordinance 1956</i>	No. 27, 1956
<i>Traffic Ordinance 1957</i>	No. 37, 1957
<i>Traffic Ordinance 1958</i>	No. 5, 1958
<i>Traffic Ordinance 1959</i>	No. 15, 1959
<i>Traffic Ordinance 1960</i>	No. 8, 1961
<i>Traffic Ordinance 1961</i>	No. 28, 1961
<i>Traffic Ordinance 1962</i>	No. 46, 1962
<i>Traffic Ordinance (No. 2) 1966</i>	No. 31, 1966
<i>Traffic Ordinance 1966</i>	No. 10, 1967
<i>Traffic Ordinance 1968</i>	No. 41, 1968
<i>Traffic Ordinance (No. 2) 1968</i>	No. 42, 1968
<i>Traffic Ordinance (No. 3) 1968</i>	No. 69, 1968
<i>Traffic Ordinance 1969</i>	No. 5, 1970
<i>Traffic Ordinance 1970</i>	No. 64, 1970
<i>Traffic Ordinance 1971</i>	No. 13, 1971
<i>Traffic Ordinance (No. 2) 1971</i>	No. 35, 1971
<i>Traffic Ordinance (No. 3) 1971</i>	No. 48, 1971
<i>Traffic Ordinance 1972</i>	No. 23, 1972
<i>Traffic Ordinance (No. 2) 1972</i>	No. 51, 1972
<i>Traffic Ordinance (No. 3) 1972</i>	No. 71, 1972
<i>Traffic Ordinance 1973</i>	No. 47, 1973
<i>Traffic Ordinance (No. 2) 1973</i>	No. 48, 1973
<i>Traffic Ordinance (No. 3) 1973</i>	No. 80, 1973
<i>Traffic Ordinance (No. 4) 1973</i>	No. 84, 1973
<i>Traffic Ordinance 1974</i>	No. 10, 1974
<i>Traffic Ordinance (No. 2) 1974</i>	No. 11, 1974
<i>Traffic Ordinance (No. 3) 1974</i>	No. 31, 1974
<i>Traffic Ordinance 1975</i>	No. 5, 1975
<i>Traffic Ordinance 1976</i>	No. 24, 1976
<i>Traffic Ordinance (No. 2) 1976</i>	No. 56, 1976
<i>Traffic Ordinance (No. 3) 1976</i>	No. 7, 1977
<i>Traffic Ordinance 1977</i>	No. 33, 1977
<i>Traffic Ordinance 1978</i>	No. 17, 1978
<i>Traffic Act (No. 2) 1978</i>	No. 131, 1978
<i>Traffic Act (No. 3) 1978</i>	No. 132, 1978
<i>Traffic Act 1979</i>	No. 106, 1979
<i>Traffic Act (No. 2) 1979</i>	No. 134, 1979
<i>Traffic Act (No. 4) 1979</i>	No. 139, 1979

<i>Traffic Act (No. 3) 1979</i>	No. 161, 1979
<i>Traffic Amendment Act 1981</i>	No. 20, 1981
<i>Traffic Amendment Act (No. 2) 1981</i>	No. 83, 1981
<i>Traffic Amendment Act (No. 3) 1981</i>	No. 112, 1981
<i>Traffic Amendment Act (No. 4) 1981</i>	No. 113, 1981
<i>Traffic Amendment Act 1982</i>	No. 81, 1982
<i>Traffic Amendment Act (No. 2) 1982</i>	No. 82, 1982
<i>Traffic Amendment Act 1983</i>	No. 16, 1983
<i>Traffic Amendment Act 1984</i>	No. 13, 1984
<i>Traffic Amendment Act 1986</i>	No. 23, 1986
<i>Traffic Amendment Act 1987</i>	No. 16, 1987

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Traffic Act 1987 (Act No. 44, 1987)***

Assent date	21 October 1987
Commenced	20 June 1988 (<i>Gaz S30, 15 June 1988</i>)

Traffic Amendment Act 1988 (Act No. 13, 1988)

Assent date	3 June 1988
Commenced	20 June 1988 (s 2, s 2 <i>Traffic Act 1987 (Act No. 44, 1987)</i> and <i>Gaz S30, 15 June 1988</i>)

Statute Law Revision Act 1988 (Act No. 66, 1988)

Assent date	22 December 1988
Commenced	22 December 1988

Traffic Amendment Act 1989 (Act No. 25, 1989)

Assent date	15 June 1989
Commenced	15 June 1989

Traffic Amendment Act (No. 2) 1989 (Act No. 64, 1989)

Assent date	7 November 1989
Commenced	7 November 1989

Traffic Amendment Act 1992 (Act No. 32, 1992)

Assent date	2 June 1992
Commenced	1 January 1994 (<i>Gaz G51, 22 December 1993, p 4</i>)

Amending Legislation***Traffic Amendment Act 1992 Amendment Act 1993 (Act No. 52, 1993)***

Assent date	29 September 1993
Commenced	29 September 1993

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and Gaz S53, 29 June 1993)

Traffic Amendment Act 1993 (Act No. 61, 1993)

Assent date 5 October 1993
 Commenced 5 October 1993

Traffic Amendment Act 1994 (Act No. 8, 1994)

Assent date 16 March 1994
 Commenced 1 November 1994 (Gaz S54, 28 October 1994)

Amending Legislation

Statute Law Revision Act 1994 (Act No. 50, 1994)

Assent date 20 September 1994
 Commenced 20 September 1994

Traffic Amendment Act (No. 2) 1994 (Act No. 63, 1994)

Assent date 24 October 1994
 Commenced 1 November 1994 (s 2, s 2 *Traffic Amendment Act 1994* (Act No. 8, 1994) and Gaz S54, 28 October 1994)

Statute Law Revision Act 1994 (Act No. 50, 1994)

Assent date 20 September 1994
 Commenced 20 September 1994

Traffic Amendment Act (No. 2) 1994 (Act No. 1, 1995)

Assent date 9 February 1995
 Commenced 9 February 1995

Fire and Emergency (Consequential Amendments) Act 1996 (Act No. 15, 1996)

Assent date 19 April 1996
 Commenced 1 May 1996 (s 2, s 2 *Fire and Emergency Act 1996* (Act No. 14, 1996) and Gaz S10, 1 May 1996)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Traffic Amendment Act 1996 (Act No. 25, 1996)

Assent date 25 June 1996
 Commenced 25 June 1996

Traffic Amendment Act 1998 (Act No. 2, 1998)

Assent date 25 March 1998
 Commenced 25 March 1998

Traffic Amendment Act (No. 2) 1998 (Act No. 99, 1998)

Assent date 29 December 1998
 Commenced 9 February 1999 (s 2, s 2 *Motor Vehicles Amendment Act (No. 2) 1998* (Act No. 98, 1998) and Gaz S4, 9 February 1999)

Statute Law Revision Act 1999 (Act No. 27, 1999)

Assent date 18 June 1999
 Commenced 18 June 1999

Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)

Assent date 11 December 2001
 Commenced 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 59, 2001) and Gaz G50, 19 December 2001, p 3)

Traffic Amendment Act 2003 (Act No. 54, 2003)

Assent date 18 September 2003
 Commenced 29 October 2003 (Gaz G43, 29 October 2003, p 4)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

Traffic Amendment Act 2004 (Act No. 30, 2004)

Assent date 4 June 2004
 Commenced s 6: 4 June 2004; rem: 1 November 2004 (s 2 and Gaz S34, 28 October 2004)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 9 *Traffic Amendment Act 1996* (Act No. 25, 1996)

4 SECTION 19(6) – SPECIFIED DATE

Pursuant to section 19(6), the date specified by the Minister was 1 December 1994 (Gaz G45, 9 November 1994, p 4).

5 SECTION 55 – TRAFFIC ACT 1987 (Act No. 44, 1987)

Despite the repeals effected by section 55(1) of the *Traffic Act 1987* (No. 44, 1987), pursuant to section 55(2) of that Act, Part IV of the *Traffic Act 1949-1987* continued to be in force and was deemed to form part of that Act until repealed by Gaz S7, 30 April 2003.

6 LIST OF AMENDMENTS

s 3 amd No. 15, 1996, s 4; No. 25, 1996, s 4; No. 54, 2003, s 4
 s 6 amd No. 28, 1993, s 3
 s 9 amd No. 2, 1998, s 3
 s 11 amd No. 50, 1994, s 16; No. 17, 1996, s 6; No. 54, 2003, s 11
 s 16 amd No. 17, 1996, s 6

ENDNOTES

s 19	amd No. 32, 1992, s 4; No. 17, 1996, s 6; No. 54, 2003, s 11
s 20	amd No. 17, 1996, ss 4 and 6; No. 54, 2003, s 11
s 20A	ins No. 8, 1994, s 4 amd No. 17, 1996, s 4; No. 2, 1998, s 4
s 21	amd No. 32, 1992, s 5
s 23	amd No. 32, 1992, s 6; No. 8, 1994, s 5; No. 54, 2003, s 5
s 27	amd No. 54, 2003, s 6
s 28	amd No. 54, 2003, s 7
s 29AA	ins No. 54, 2003, s 8
pt VA hdg	ins No. 30, 2004, s 4
pt VA	
div 1hdg	ins No. 30, 2004, s 4
s 29AD	ins No. 30, 2004, s 4
pt VA	
div 2 hdg	ins No. 30, 2004, s 4
ss 29AE –	
29AJ	ins No. 30, 2004, s 4
pt VA	
div 3 hdg	ins No. 30, 2004, s 4
ss 29AK –	
29AM	ins No. 30, 2004, s 4
pt VA	
div 4 hdg	ins No. 30, 2004, s 4
s 29AO	ins No. 30, 2004, s 4
s 29A	ins No. 60, 2001, s 17
s 30	amd No. 15, 1996, s 4; No. 17, 1996, s 6; No. 2, 1998, s 5; No. 54, 2003, s 11
s 30A	ins No. 2, 1998, s 6 amd No. 54, 2003, s 11
s 31	amd No. 64, 1989, s 2; No. 17, 1996, s 6;
s 32	amd No. 32, 1992, s 7; No. 99, 1998, s 4
s 33	amd No. 13, 1988, s 3; No. 25, 1996, s 5; No. 99, 1998, s 5; No. 54, 2003, ss 9 and 11; No. 1, 2004, s 62
s 33A	ins No. 25, 1996, s 6 amd No. 99, 1998, s 6; No. 54, 2003, s 11; No. 1, 2004, s 62
s 33B	ins No. 60, 2001, s 17
s 34	amd No. 25, 1996, s 7; No. 54, 2003, s 10
s 35	sub No. 99, 1998, s 7
s 37	amd No. 17, 1996, s 6
s 38	amd No. 17, 1996, s 6
s 39	amd No. 25, 1989, s 2; No. 8, 1994, s 6 No. 17, 1996, ss 4 and 6; No. 2, 1998, s 7; No. 27, 1999, s 15
ss 40 – 41	amd No. 17, 1996, s 6
s 42	amd No. 17, 1996, s 6
s 43	amd No. 25, 1989, s 3; No. 17, 1996, s 6
s 43A	ins No. 61, 1993, s 2
s 43B	ins No. 25, 1996, s 8
s 44	amd No. 2, 1998, s 8
s 44A	ins No. 2, 1998, s 9
s 46A	ins No. 1, 1995, s 2
s 47	amd No. 27, 1999, s 15
s 48	rep No. 13, 1988, s 4 ins No. 32, 1992, s 8
s 49	amd No. 17, 1996, ss 4 and 6
s 51	amd No. 30, 2004, s 5
s 52	amd No. 66, 1988, s 6; No. 54, 2003, s 11
s 53	amd No. 32, 1992, s 9; No. 54, 2003, s 11; No. 30, 2004, s 6