



New South Wales

Road Transport Legislation Amendment (Road Safety) Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Road Transport Act 2013*:

- (a) to include cocaine as a prescribed illicit drug, and
- (b) to bring the consequences for driving a motor vehicle while under the influence of drugs into line with those for doing so with a high range prescribed concentration of alcohol, and
- (c) to authorise a police officer to prevent a person suspected of being under the influence of alcohol or another drug from using a vehicle, and
- (d) to authorise the use of devices for the enforcement of offences relating to the use of a mobile phone by drivers of motor vehicles, and
- (e) to make other amendments of a minor, miscellaneous or consequential nature.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on 1 July 2018.

Schedule 1 Amendment of Road Transport Act 2013 No 18

Provisions relating to inclusion of cocaine as prescribed illicit drug

Schedule 1 [1]–[3] and [18] extend existing provisions prohibiting a person from driving a motor vehicle with prescribed illicit drugs (such as cannabis, ecstasy and speed) in the person's oral

fluid, blood or urine to include prohibiting a person from driving with cocaine in the person's oral fluid, blood or urine.

Provisions relating to consequences for driving motor vehicle while under influence of drugs or alcohol

Schedule 1 [4] brings the penalties that apply for a person who, while under the influence of alcohol or another drug, drives or attempts to drive a motor vehicle or occupies the seat next to a learner driver who is driving a motor vehicle into line with the penalties for a person who does so with a high range prescribed concentration of alcohol in the person's breath or blood.

Schedule 1 [16] and [17] make similar amendments with respect to the period of disqualification applicable to, and the immediate suspension of the driver licence of, a person who drives or attempts to drive a motor vehicle while under the influence of alcohol or another drug.

Provisions relating to mobile phone use offence cameras

Schedule 1 [5] allows the Governor to approve devices to photograph drivers of motor vehicles for the purpose of enforcing an offence against the statutory rules involving the use of a mobile phone by the driver of a motor vehicle.

Schedule 1 [6]–[12], [14] and [15] make consequential amendments including amendments relating to the information to be included in or with such photographs and the admissibility of those photographs in evidence.

Provision relating to prevention of driving by persons suspected of being under influence of drugs

Schedule 1 [13] allows a police officer to prohibit a person from driving for 48 hours if the police officer is of the opinion that a person is under the influence of alcohol or any other drug, or a combination of drugs, and the person has been arrested after failing to undergo or pass a sobriety assessment.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Marine Safety Act 1998*, which currently prohibits persons from operating vessels with prescribed illicit drugs in the person's oral fluid, blood or urine, as a consequence of the amendments made by Schedule 1 [1]–[3] and [18].

Schedule 2.2 amends the *Transport Administration Act 1988* to provide that fines and penalties recovered for offences relating to the use of a mobile phone by the driver of a motor vehicle captured by approved traffic enforcement devices are payable to the Community Road Safety Fund and may only be used for the purposes of that Fund.



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New South Wales

Road Transport Legislation Amendment (Road Safety) Bill 2018

No. , 2018

A Bill for

An Act to amend the *Road Transport Act 2013* to make further provision with respect to drug use by drivers and the enforcement of mobile phone use offences; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Road Transport Legislation Amendment (Road Safety) Act 2018*.

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2 Commencement

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This Act commences on 1 July 2018.

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Schedule 1	Amendment of Road Transport Act 2013 No 18	1
[1] Section 4 Definitions		2
	Insert after paragraph (c) of the definition of <i>prescribed illicit drug</i> in section 4 (1):	3
	(d) cocaine.	4
[2] Section 111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine		5
	Omit “or cocaine” wherever occurring in section 111 (3) (including the heading to that subsection).	6 7
[3] Section 111 (4)		8
	Omit the subsection. Insert instead:	9
	(4) If a person is charged with an offence against subsection (3), the offence is proved if the court is satisfied beyond reasonable doubt that morphine was present in the blood or urine of the defendant (whether or not in combination with any other drugs).	10 11 12 13
[4] Section 112 Use or attempted use of a vehicle under the influence of alcohol or any other drug		14 15
	Omit the penalty to section 112 (1). Insert instead:	16
	Maximum penalty:	17
	(a) in the case of a first offence—30 penalty units or imprisonment for 18 months, or both, or	18 19
	(b) in the case of a second or subsequent offence—50 penalty units or imprisonment for 2 years, or both.	20 21
[5] Section 134 Approval of devices by Governor		22
	Insert after section 134 (1) (g):	23
	(h) photographing the driver of a vehicle using a mobile phone in contravention of the statutory rules.	24 25
[6] Section 134 (2) (f2)		26
	Insert after section 134 (2) (f1):	27
	(f2) in the case of a device that photographs the driver of a vehicle using a mobile phone in contravention of the statutory rules—the registration number of the vehicle,	28 29 30
[7] Section 135 Definitions		31
	Insert at the end of the definition of <i>detectable traffic offence</i> in section 135 (1):	32
	(e) a mobile phone use offence.	33
[8] Section 135 (1), definition of “mobile phone use offence”		34
	Insert in alphabetical order:	35
	<i>mobile phone use offence</i> means an offence against the statutory rules involving the use of a mobile phone by the driver of a motor vehicle.	36 37

[9] Section 135 (2) (h)	1
Insert at the end of section 135 (2) (g):	2
, and	3
(h) an approved traffic enforcement device is <i>approved for mobile phone use offences</i> if it is approved under section 134 for the use referred to in section 134 (1) (h).	4 5 6
[10] Section 138 Admissibility of photographs taken by devices—generally	7
Insert after section 138 (1) (e):	8
(f) in the case of proceedings for a mobile phone use offence—a photograph that is tendered as:	9 10
(i) being taken by means of the operation, on a day specified on the photograph, of an approved traffic enforcement device that is approved for mobile phone use offences, and	11 12 13
(ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the statutory rules.	14 15
[11] Section 139 Admissibility of photographs taken by devices—unauthorised vehicle use offences	16 17
Insert “and section 139A” after “In this section” in section 139 (4).	18
[12] Section 139A	19
Insert after section 139:	20
139A Admissibility of photographs taken by devices (other than a device approved for mobile phone use offences) for mobile phone use offences	21 22
(1) A photograph of a vehicle:	23
(a) taken by an approved traffic enforcement device (other than a device approved for mobile phone use offences) that is evidence under this Division of a detectable traffic offence (other than a mobile phone use offence), or	24 25 26 27
(b) taken by an approved toll camera that is evidence of a toll offence against section 250A of the <i>Roads Act 1993</i> ,	28 29
may also be tendered in evidence in proceedings for a mobile phone use offence involving the driver of the vehicle.	30 31
(2) For this purpose, the provisions of this Division or section 250A of the <i>Roads Act 1993</i> that apply in relation to the tendering, admission and use in evidence of a photograph for the detectable traffic offence (for which the device is approved) or toll offence of which the photograph is also evidence are taken to extend to the tendering, admission and use in evidence of the photograph for the mobile phone use offence.	32 33 34 35 36 37
(3) Nothing in this section prevents a photograph taken by an approved traffic enforcement device being tendered and used in evidence both in proceedings for a mobile phone use offence and proceedings for a detectable traffic offence (other than a mobile phone use offence) or toll offence.	38 39 40 41

[13] Section 148EA	1
Insert after section 148E:	2
148EA Additional power to prevent driving by persons who are under the influence of alcohol or other drugs following failure to submit to (or pass) sobriety assessment	3
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Without limiting the power of a police officer under section 148E (1), a police officer who arrests a person under clause 14 of Schedule 3 may prohibit the person from driving a motor vehicle for a period of 48 hours.	6
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	8
[14] Section 183 Definitions	9
Insert at the end of paragraph (f) of the definition of <i>appropriate approved traffic enforcement device</i> in section 183 (1):	10
	11
, or	12
(g) in the case of a mobile phone use offence—an approved traffic enforcement device that is approved for mobile phone use offences or approved toll camera (within the meaning of section 250A of the <i>Roads Act 1993</i>) that has taken a photograph which may be tendered in evidence under section 139A in proceedings for such an offence.	13
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[15] Section 183 (1), definition of “camera recorded offence”	18
Insert after paragraph (g):	19
(h) a mobile phone use offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an appropriate approved traffic enforcement device for the offence.	20
	21
	22
[16] Section 205 Disqualification for certain major offences	23
Omit “or 112 (1)” wherever occurring in section 205 (2) (b) and (3) (b).	24
[17] Section 224 When immediate licence suspension notice may be issued by police officer	25
	26
Omit “offence against section 110 (4) or (5),” from section 224 (1) (b).	27
Insert instead “an offence against section 110 (4) or (5), 112 (1),”.	28
[18] Schedule 3 Testing for alcohol or drug use	29
Omit “prescribed illicit drug, morphine or cocaine” from clause 32 (3) (a).	30
Insert instead “prescribed illicit drug or morphine”.	31

Schedule 2	Amendment of other Acts	1
2.1	Marine Safety Act 1998 No 121	2
[1]	Section 25 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine	3
	Omit “or cocaine” wherever occurring in section 25 (3) (including the heading to that subsection).	4 5
[2]	Section 25 (4)	6
	Omit the subsection. Insert instead:	7
	(4) If a person is charged with an offence against subsection (3), the offence is proved if the court is satisfied beyond reasonable doubt that morphine was present in the blood or urine of the defendant (whether or not in combination with any other drugs).	8 9 10 11
[3]	Schedule 1 Testing for alcohol and drug use	12
	Omit “prescribed illicit drug, morphine or cocaine” from clause 33 (3) (a).	13
	Insert instead “prescribed illicit drug or morphine”.	14
2.2	Transport Administration Act 1988 No 109	15
[1]	Section 80H Payments into Community Road Safety Fund	16
	Insert after section 80H (1) (a):	17
	(a1) all fines and penalties recovered for camera recorded mobile phone use offences, and	18 19
[2]	Section 80H (4)	20
	Insert in alphabetical order:	21
	<i>camera recorded mobile phone use offence</i> means a mobile phone use offence (within the meaning of Division 5 of Part 5.3 of the <i>Road Transport Act 2013</i>) in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the appropriate approved traffic enforcement device (within the meaning of Division 2 of Part 7.3 of that Act) for the offence.	22 23 24 25 26 27