

(3) Before submitting to the Governor any regulations recommended by the Trust, the Minister shall submit a draft of the regulations to the Board and shall have regard to any comments with respect to the draft regulations that may be made by the Board.

(4) The regulations may—

- (a) in such cases as may be prescribed, require any document, information, or particulars required by or under this Act to be furnished or given to the Treasurer, or to the Board, or to the Trust to be verified by a statutory declaration; and
- (b) impose a penalty, not exceeding one hundred dollars, for an offence against the regulations.

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## ROAD SAFETY (ALCOHOL AND DRUGS).

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No. 77 of 1970.

AN ACT to protect the public against certain persons who drive vehicles after consuming intoxicating liquor or drugs and to restrict the right of such persons to hold driver's licences; and to amend the *Evidence Act* 1910 and the *Traffic Act* 1925. [11 January 1971.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### PART I.

#### PRELIMINARY.

**1**—(1) This Act may be cited as the *Road Safety (Alcohol and Drugs) Act* 1970. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpre-  
tation.

**2—(1)** In this Act, unless the contrary intention appears—

- “approved analyst” has the meaning assigned to that expression by subsection (5) of section three;
- “approved operator” has the meaning assigned to that expression by subsection (6) of section three;
- “breath analysing instrument” means any apparatus that is designed for ascertaining, by analysis of a person’s breath, the concentration of alcohol present in his blood (being apparatus of a type approved by the Governor by notice in the *Gazette*);
- “breath analysis” means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person’s breath, the concentration of alcohol present in his blood;
- “breath test” means a test for the purpose of indicating the concentration of alcohol present in a person’s blood, carried out on that person’s breath by means of a device (not being a breath analysing instrument) of a type approved for the purposes of such a test by the Governor by notice in the *Gazette*;
- “first-year driver” means a person holding a provisional licence who—
  - (a) has not held that licence or any other provisional licence for the periods that in the aggregate exceed twelve months;
  - (b) has not held a driver’s licence, other than a provisional licence or a learner’s licence; and
  - (c) has not held a licence or other authority issued elsewhere than in this State for periods that in the aggregate exceed twelve months;
- “learner’s licence” means any driver’s licence of a kind prescribed as a licence issued for the purpose of enabling a person to learn to drive a motor vehicle;
- “medical practitioner” means a legally-qualified medical practitioner;
- “prescribed concentration” means a concentration of 0.08 grammes of alcohol in 100 millilitres of blood;
- “qualified nurse” has the meaning assigned to that expression by subsection (7) of section three;
- “supervising analyst” means the supervising analyst appointed under subsection (1) of section three.

(2) In this Act, unless the contrary intention appears, the expressions “drive”, “driver’s licence”, “motor vehicle”, “provisional licence”, “public street”, “registering authority”, and “vehicle” have the same meaning as they have for the purposes of the *Traffic Act 1925*.

(3) References in this Act to the liability of a person to submit to a breath analysis or a medical examination shall be construed as references to such a liability arising under any of the following provisions of this Act, namely:—

- Subsection (1) of section eight;  
 Subsection (2) of section eight; or  
 Subsection (2) of section nine,

and, in relation to any such liability, or any direction or request given in pursuance thereof, or any other matter arising in consequence thereof, the time of the relevant occurrence has, for the purposes of this Act, the meaning assigned to that expression in the provision by virtue of which the liability arises.

(4) A reference in this Act to the driving of a vehicle or a motor vehicle shall be construed as including a reference to the having charge of that vehicle or motor vehicle and exhibiting a manifest intention or disposition to drive or to attempt to drive it.

**3**—(1) The Governor may under and in accordance with the *Public Service Act 1923* appoint a supervising analyst for the purposes of this Act. The supervising analyst, &c.

(2) No person shall be appointed the supervising analyst unless he is an approved analyst or has the qualifications prescribed for the purposes of paragraph (b) of subsection (5) of this section.

(3) A person appointed as the supervising analyst may hold office as such in conjunction with any other office in the Public Service.

(4) The supervising analyst has such functions as may be prescribed in relation to the following matters, that is to say:—

- (a) The maintenance, testing, and use of breath analysing instruments required for the purposes of this Act;
- (b) The training of persons to be approved operators, and the instruction of approved operators; and
- (c) The making and keeping of records relating to the maintenance, testing, and use of breath analysing instruments required for the purposes of this Act.

(5) For the purposes of this Act an approved analyst is—

- (a) the Government Analyst; or
- (b) any other person, being a person possessing prescribed qualifications, who is an officer of the Public Service or is employed on the teaching staff of the University of Tasmania and who is declared by the Governor, by notice in the *Gazette*, to be an approved analyst for the purposes of this Act.

(6) For the purposes of this Act an approved operator is a police officer who is authorized by the Commissioner of Police in accordance with regulations under this Act to operate breath analysing instruments.

(7) For the purposes of this Act a qualified nurse is a person who is registered as a general nurse under the *Nurses' Registration Act 1952* and who is declared by the Governor, by notice in the *Gazette*, to be a qualified nurse for the purposes of this Act.

## PART II.

OFFENCES RELATED TO THE TAKING OF ALCOHOL AND DRUGS AND  
THE DETECTION THEREOF.*Division I—Driving under the influence of alcohol or drugs.*

Driving  
while under  
the influence  
of intoxicating  
liquor or  
drugs.

**4** A person who drives a vehicle while under the influence of—

(a) intoxicating liquor; or

(b) a drug,

to such an extent as to be incapable of having proper control of the vehicle, is guilty of an offence.

Powers of  
arrest, &c.

**5**—(1) A police officer may arrest without warrant any person found offending against section four and may take charge of and remove any vehicle in the charge of, or driven by, the person so arrested, and remove the same to any convenient place for safe-keeping.

(2) Upon the hearing of any proceedings against a person who has been arrested under this section in respect of the circumstances occasioning the arrest, a court may order him to pay any costs or expenses incurred in connection with the taking charge, removal, or custody of that vehicle as provided by that subsection, if it is of opinion that there was reasonable ground for incurring the same.

(3) Nothing in this section prejudices or affects the operation of section forty-one A of the *Traffic Act 1925*.

Driving with  
excessive  
concentration  
of blood  
alcohol.

**6**—(1) Any person who drives a motor vehicle while alcohol is present in his blood in a concentration greater than the prescribed concentration is guilty of an offence.

(2) Any first-year driver who drives a motor vehicle while alcohol is present in his body is guilty of an offence.

Consumption,  
&c., of  
intoxicating  
liquor in  
motor  
vehicles.

**7**—(1) No person shall drive a motor vehicle while he is consuming intoxicating liquor.

(2) No person shall drive a motor vehicle while any person in the vehicle is, to his knowledge, consuming intoxicating liquor.

(3) No person shall, in a motor vehicle that is in motion, consume any intoxicating liquor.

(4) A person who contravenes any provision of this section is guilty of an offence and liable to a penalty of one hundred dollars.

*Division II—Examination of persons for alcohol or drugs.*

**8**—(1) Where a person drives a motor vehicle and a police officer has reasonable grounds for suspecting that that person may have consumed intoxicating liquor, that person becomes liable to submit to a breath analysis; and in relation to the liability thus arising the time at which that person drove that vehicle is for the purposes of this Act the time of the relevant occurrence.

Liability for breath analysis as result of conduct.

(2) Where a police officer reasonably believes that, at any particular time—

- (a) a person while a motor vehicle was in motion was the driver thereof and committed an offence under the *Traffic Act 1925*; or
- (b) a person was driving a motor vehicle when, that vehicle being in motion, it was involved in an accident,

that person becomes liable to submit to a breath analysis; and, in relation to the liability thus arising, the time mentioned in the foregoing provisions of this subsection is, for the purposes of this Act, the time of the relevant occurrence.

(3) Without prejudice to the generality of the provisions of subsection (2) of this section a police officer may, for the purposes thereof, deduce from the manner in which a motor vehicle is driven that the driver thereof had consumed intoxicating liquor.

(4) Where a person has become liable to submit to a breath analysis a police officer may request that person to submit, at or near the place where the request is made, to a breath test in accordance with the directions of that officer; and any person who, without reasonable excuse fails or refuses to comply with a request made to him by a police officer under this subsection is guilty of an offence.

(5) Where a person (other than a first-year driver) who has become liable under this section to submit to a breath analysis submits to a breath test in accordance with the directions of a police officer he shall be deemed to have ceased to be so liable unless it appears to that officer that the result of the breath test indicates that alcohol may be present in the blood of that person in a concentration greater than the prescribed concentration.

**9**—(1) Where a police officer reasonably believes that a person drove a motor vehicle in a public street while he was in such a condition as to be incapable of driving that vehicle without risk of danger to other persons and is of the opinion (as the result of a breath test or a breath analysis or otherwise) that that condition did not arise, or did not wholly arise, from the presence of alcohol in his body he may request that person to submit to a medical examination.

Liability for medical examination where condition may not be due to alcohol.

(2) Where a request is made of any person under subsection (1) of this section that person becomes liable to submit to a medical examination; and, in relation to the liability thus arising, the time at which he was last driving a motor vehicle before the request was made is for the purposes of this Act the time of the relevant occurrence.

(3) The medical examination referred to in this section is an examination by a medical practitioner directed to ascertaining whether the condition of the person submitting to the examination arises wholly or partially from the taking or administration of drugs, and, if such be the case, the nature of those drugs.

(4) Where in the course of such a medical examination as is referred to in this section the medical practitioner by whom the examination is being carried out informs the person submitting to the examination that it is necessary or desirable in order to effect the purpose of the examination for an analysis to be made of a sample of the blood or urine of that person, the obligation of that person to submit to that examination shall be deemed to include an obligation to submit to the taking of a sample of his blood or to furnish a sample of his urine, as the case may be.

Enforcement  
of obligation  
to submit  
to breath  
analysis or  
medical  
examination.

**10**—(1) A police officer may request a person who is liable under this Part to submit to a breath analysis or a medical examination to proceed to such place by such means and with such person as the officer may indicate and there submit himself to that analysis or that examination.

(2) If a person fails or refuses to comply with a request made under subsection (1) of this section, or is in such a condition or behaves in such a manner as to give reasonable grounds for believing that he will not comply with the request, a police officer may take him into custody and convey him or cause him to be conveyed to some appropriate place, and there detain him or cause him to be detained, for so long as is necessary to enable a direction to be given to him under subsection (4) of this section.

(3) A police officer shall not exercise his powers under subsection (2) of this section in respect of any person unless that officer has reasonable cause to believe that the breath analysis or medical examination can be carried out, within three hours of the time of the relevant occurrence, at or near the place to which that person is to be, is being, or has been, conveyed in the exercise of those powers.

(4) Where a person who is liable to submit to a breath analysis or a medical examination is at a place where that analysis or medical examination can forthwith be carried out a police officer may direct him there to submit to the analysis or examination.

(5) Where a person is at a hospital for medical treatment or is being attended by a medical practitioner for medical treatment, a police officer shall not direct that person to submit to a breath analysis unless he notifies the medical practitioner in charge of that treatment of his intention to make the direction and that medical practitioner does not object on the grounds that compliance therewith, would, in his opinion, be prejudicial to the proper care or treatment of that person.

(6) Where a person is liable to submit to a breath analysis a police officer, if—

(a) a medical practitioner has objected to the submission of that person to such an analysis on the grounds referred to in subsection (5) of this section;

- (b) it appears to that officer that it may be dangerous to that person's medical condition to submit to the analysis;  
or
- (c) it appears to that officer that, by reason of that person's condition, it is not practicable for that person to submit to the analysis,

may direct that person to submit to the taking of a sample of his blood for analysis.

(7) No direction shall be given under this section to a person requiring him to submit to a breath analysis, or to a medical examination, or to the taking of a sample of his blood, after the expiration of three hours from the time of the relevant occurrence and a person is not required under this section to submit to a breath analysis, or to the taking of a sample of his blood, or to a medical examination that is begun after the expiration of that period.

(8) Where a motor vehicle is involved in an accident in a public street a police officer may, in the prescribed manner, place on, or attach to, the clothing or body of any person whom that officer reasonably believes may have been the driver of that vehicle, a prescribed means of identification, if the officer is satisfied that that person is in such a condition as to be unable to understand or comply with any request or direction that, assuming that person to have been the driver of that vehicle at the time of the accident, could otherwise be given to him under this section.

**11**—(1) As soon as practicable after a person has submitted to a breath analysis the approved operator by whom the breath analysing instrument was operated shall read over to him and hand to him a written statement, in such prescribed form as is appropriate to the case, that indicates the concentration of alcohol in the blood of that person as determined by that analysis.

Rights and obligations on completion of breath analysis.

(2) The forms prescribed for the purposes of this section are those set out in the first schedule unless other forms are prescribed for those purposes by regulations under this Act.

(3) A first-year driver who is handed a statement under this section indicating that he has alcohol in his blood and any other person who is handed such a statement indicating that the concentration of alcohol in his blood is greater than the prescribed concentration may forthwith request a police officer to arrange for the taking of a sample of that person's blood for analysis and, if that person so requests, it is the duty of the police officer to whom the request is made to arrange for that sample to be taken within three hours of the time of the relevant occurrence by a medical practitioner or a qualified nurse.

(4) A person who has made a request under subsection (3) of this section is not liable for the expenses incurred in the making or carrying out the arrangements referred to in that subsection in response to the request.

**12**—(1) Where a medical practitioner believes that a person is by reason of his physical condition incapable of giving his consent to the taking of a sample of his blood or to a medical examination

Examination, &c., of persons incapable of consenting thereto.

to which, under this Division, he has been or could be directed to submit, that medical practitioner shall, nevertheless, at the request of a police officer, take a sample of the blood of that person or carry out that examination, as the case may be.

(2) Notwithstanding subsection (1) of this section a medical practitioner may refrain from taking a sample of the blood of a person or carrying out a medical examination of a person if he is of the opinion that it would be prejudicial to the proper care or treatment of the person to do so.

(3) Where a request is made of a medical practitioner under subsection (1) of this section in respect of any person, any sample of the blood or urine of that person that has been taken in the course of, or in connection with, the medical treatment of that person and is available for analysis may, if the medical practitioner in immediate charge of the treatment so desires, be treated as having been taken in pursuance of the request.

(4) No request shall be made under this section for the taking of the sample of the blood of any person after the expiration of three hours from the time of the relevant occurrence and where a request is made under this section for the taking of a sample of the blood of that person the taking of that sample shall begin within three hours of the time of the relevant occurrence.

(5) Where a medical practitioner is in immediate charge of the medical treatment of a person whose clothing or body bears such a means of identification as is referred to in subsection (8) of section ten, that medical practitioner may take a sample of the blood of that person unless that person, being in a condition to refuse to submit to the taking of the sample, objects to its being taken.

Duties of  
medical  
practitioners  
and nurses in  
relation  
to taking  
of blood  
samples, &c.

**13**—(1) Except as otherwise expressly provided therein, nothing in this Act shall be construed as requiring a medical practitioner or a qualified nurse to take a sample of the blood or urine of any person, or carry out a medical examination of any person.

(2) Where a medical practitioner has refused to take, or refrained from taking, a sample of the blood of a person for the purposes of this Act, or has refused to make, or refrained from making, a medical examination of a person for those purposes, on the grounds that to do so would, in his opinion, be prejudicial to the proper care or treatment of that person, he shall, if so requested by a police officer—

- (a) express an opinion on the question whether that person has or, if he is in hospital, had, at the time of his admission to the hospital, alcohol in his body; and
- (b) to the best of his ability answer any relevant questions put to him by the police officer in relation to that question.

(3) Where a medical practitioner or qualified nurse takes a sample of a person's blood or urine for analysis for the purposes of this Act it is the duty of that practitioner or nurse to comply with the following provisions of this section so far as they are applicable to him.



(4) Where regulations under this Act prescribe the manner in which a sample of blood is to be taken that sample shall be taken in that manner.

(5) The sample of blood or urine shall be divided into two parts, each part being enclosed in a suitable container, and one of those parts shall be tendered as soon as is practicable to the person from whom the sample was taken, and the other shall be forwarded, as soon as is practicable, to an approved analyst.

(6) Where the sample of blood or urine is taken from a person who, by reason of his physical condition is incapable of giving his consent to the taking of the sample or its submission for analysis, the medical practitioner by whom the sample was taken shall, as soon as is in his opinion practicable (having regard to that person's physical condition) notify that person in writing—

(a) that the sample has been taken for analysis for the purposes of this Act; and

(b) that he may object to its being analysed, but if he does so, he will be guilty of an offence under this Act.

(7) In relation to samples of blood references in this section to a suitable container shall be construed as references to a container supplied by an approved analyst holding an office in the Public Service for the submission of samples of blood for analysis for the purposes of this Act.

(8) An approved analyst to whom a sample of the blood or urine of a person is forwarded pursuant to subsection (5) of this section shall, within forty-eight hours of analysing the sample, forward or give to that person and such police officer as may be prescribed a certificate in writing of the result of the analysis.

(9) The certificate referred to in subsection (8) of this section made in respect of a sample of blood shall state the concentration of alcohol in that sample, expressed in grammes of alcohol in 100 millilitres of blood, as determined by that analysis, unless the sample was taken pursuant to an obligation arising under section nine.

**14**—(1) Any person who, having been taken into custody under subsection (2) of section ten—

Offences under  
Division II.

(a) escapes or attempts to escape from that custody; or

(b) obstructs or hinders his conveyance to any place under that subsection,

is guilty of an offence.

(2) Any person who, having been directed under subsection (4) of section ten to submit to a breath analysis, fails or refuses, without reasonable excuse, to submit to a breath analysis in accordance with the directions of an approved operator is guilty of an offence.

(3) Any person who, having been directed under subsection (4) of section ten to submit to a medical examination, fails or refuses without reasonable excuse—

(a) to submit to that examination; or

(b) to submit to the taking of a sample of his blood or to furnish a sample of his urine in pursuance of the obligation arising under subsection (4) of section nine, is guilty of an offence.

(4) Any person who, having been directed under subsection (6) of section ten to submit to the taking of a sample of his blood for analysis, fails or refuses without reasonable excuse to submit to the taking of a sample of his blood in accordance with the direction is guilty of an offence.

(5) A person who, on being notified under subsection (6) of section thirteen that a sample of his blood or urine has been taken for analysis, objects, without reasonable excuse, to that sample being analysed is guilty of an offence.

(6) Any person who, having been requested under subsection (4) of section eight to submit to a breath test, does anything before he submits to that test with intent to alter the concentration of alcohol in his blood is guilty of an offence.

(7) Any person who, having become liable to submit to a breath analysis does anything, before he submits, in pursuance of that liability, to a breath analysis or the taking of a sample of his blood, with intent to alter the concentration of alcohol in his blood is guilty of an offence.

#### *Division III—Supplementary provisions.*

Identification  
of offenders.

**15**—(1) A police officer may require a person to whom a request has been made, or a direction has been given, under Division II of this Part or whom that officer has reasonable grounds for believing has committed an offence under this Act to state his name and the address of his place of abode.

(2) A person who—

(a) refuses or fails to comply with a requirement made by a police officer under this section; or

(b) in response to any such requirement, furnishes that officer with information that is false,

is guilty of an offence.

Certain  
proceedings  
before  
stipendiary  
magistrate.

**16** Proceedings for an offence under Division I or under Division II of this Part shall be heard by a stipendiary magistrate sitting alone.

Penalties, &c.

**17**—(1) A person who is guilty of an offence under section four is liable to a penalty of—

(a) if he has not been previously convicted of such an offence or an offence under subsection (1) of section forty-one of the *Traffic Act* 1925, five hundred dollars or six months' imprisonment, or both; or

(b) if he has been so previously convicted, one thousand dollars or twelve months' imprisonment, or both.

(2) A person who is guilty of an offence under subsection (1) of section six or an offence under section fourteen (not being an offence under subsection (1) of that section) is liable to a penalty of—

- (a) if he has no previous conviction within the meaning of section twenty, three hundred dollars;
- (b) if he only has one such previous conviction, four hundred dollars or one month's imprisonment, or both; or
- (c) if he has more than one such previous conviction, five hundred dollars, or three months' imprisonment, or both.

(3) A person who is guilty of an offence under subsection (2) of section six is liable to a penalty of one hundred dollars, and any such offence shall be deemed to be a prescribed offence for the purposes of section thirty-six of the *Traffic Act 1925*.

(4) The *Alcohol and Drug Dependency Act 1968* applies in respect of an offence under subsection (1) of section six (notwithstanding that the offence may not be punishable with imprisonment) as it applies in respect of offences punishable with imprisonment, and where a person is convicted of an offence under that section and the court is satisfied that at the time of the commission of the offence the concentration of alcohol in his blood exceeded 0.15 grammes of alcohol in 100 millilitres of blood he may, for the purposes of paragraph (a) of subsection (1) of section thirty of that Act, be deemed at that time to have been under the influence of alcohol.

(5) A person who is guilty of an offence under subsection (4) of section eight is liable to a penalty of one hundred dollars.

(6) A person who is guilty of an offence under subsection (1) of section fourteen or section fifteen is liable to a penalty of one hundred dollars or one month's imprisonment.

**18**—(1) Where a person is convicted of an offence under section four the court shall, in addition to any other penalty it imposes on him, order him to be disqualified for obtaining or holding a driver's licence for such period as the court may determine, being a period—

Disqualification for driving.

- (a) if he has no previous conviction for an offence under subsection (1) of section forty-one of the *Traffic Act 1925* or under section four of this Act, of not more than three years;
- (b) if he has only one such previous conviction, of not more than five years; or
- (c) if he has more than one such previous conviction, of not more than ten years.

(2) Where a person is convicted of an offence under section six or section fourteen (not being an offence under subsection (1) of section fourteen) the court shall, in addition to any other penalty it imposes on him, order him to be disqualified for obtaining or holding a driver's licence for such period as the court may determine, being a period—

(a) if he has no previous conviction within the meaning of subsection (3) of this section, of not more than two years; or

(b) if he has such a previous conviction, of not more than five years.

(3) For the purposes of subsection (2) of this section a previous conviction means—

(a) in relation to a conviction for an offence under section six, a previous conviction for such an offence or for an offence under section forty-one B of the *Traffic Act 1925*; and

(b) in relation to a conviction for any other offence, a previous conviction for an offence under section fourteen (not being an offence under subsection (1) of that section) or for an offence under section forty-one c of the *Traffic Act 1925*.

(4) A person who, except in so far as he is authorized to do so by a driver's licence issued pursuant to section nineteen, drives a motor vehicle in a public street while he is disqualified under subsection (1) of this section, or under section forty-one of the *Traffic Act 1925*, for obtaining or holding a driver's licence is guilty of an offence and liable to six months' imprisonment.

(5) Where, in consequence of a conviction for an offence under section four, a person (being a person who has previously been convicted of such an offence) is disqualified for obtaining or holding a driver's licence, a registering authority in a subsequent application for a driver's licence made by that person, shall not issue the licence applied for unless it is satisfied, on the certificate of a medical practitioner that, at the time of the making of the application, the person making the application was not suffering from alcohol dependency within the meaning of the *Alcohol and Drug Dependency Act 1968*.

Special  
licences in  
case of  
hardship.

**19**—(1) Where, on the conviction for an offence under this Act or under section forty-one of the *Traffic Act 1925*, a person is or has been disqualified for obtaining or holding a driver's licence an order may be made under subsection (2) of this section authorizing the granting to him of a driver's licence that authorizes him to drive a motor vehicle subject to such conditions or restrictions as may be specified in the order, and, notwithstanding his being so disqualified, but subject otherwise to the *Traffic Act 1925*, a driver's licence may be issued to him that conforms with the terms of the order.

(2) In relation to the disqualification imposed on the conviction of a person for an offence referred to in subsection (1) of this section the order referred to in subsection (1) of this section may be made by the court by which he is convicted of the offence or, on an application made by him in the prescribed manner, by a stipendiary magistrate, but no such order shall be made unless the court or that magistrate is satisfied—

(a) that the disqualification will impose, or is imposing, undue hardship on that person or his dependants;

- (b) that the powers of this section should be exercised for the purpose of mitigating or alleviating that hardship; and
- (c) that the exercise of those powers for that purpose would not be contrary to the public interest.

(3) Where at the time at which a person became disqualified under this Division for obtaining or holding a driver's licence he did not hold a licence or held only a provisional licence any licence issued to him under subsection (1) of this section during the period during which he is so disqualified takes effect as a provisional licence, except that for the purposes of section ten AA of the *Traffic Act 1925* that licence shall be disregarded.

(4) No driver's licence shall be issued under this section to a person who is disqualified, otherwise than under this Division, for obtaining or holding a driver's licence, and if a person becomes so disqualified any driver's licence issued to him under this section is cancelled.

(5) Where a person who is disqualified under this Division for obtaining or holding a driver's licence is convicted of such an offence as is referred to in subsection (1) or subsection (2) of section eighteen any order previously made in respect of him under subsection (1) of this section ceases to have effect, and any driver's licence issued in pursuance thereof is cancelled.

(6) Subject to this section the *Traffic Act 1925* applies to driver's licences issued under this section as it applies to driver's licences issued under that Act.

**20**—(1) References in this Division to a previous conviction within the meaning of this section shall be construed as references to—

Previous convictions relevant to maximum penalties, &c.

- (a) any previous conviction for an offence under section four, section six, or section fourteen (not being an offence under subsection (1) of section fourteen); and
- (b) any previous conviction for an offence under section forty-one, section forty-one B, or section forty-one C of the *Traffic Act 1925* as that Act had effect before the commencement of this Act.

(2) Where arising from his driving a vehicle on any particular occasion a person is convicted of two or more of such offences as are referred to in subsection (1) of this section his convictions for those offences shall be treated for the purposes of this Division as one single conviction.

**21** Any covenant, term, condition, or other provision of a contract or other agreement to the extent that it purports to exclude or limit the liability of an insurer under any contract of insurance in the event of the owner or driver of a motor vehicle being convicted of an offence under section six or section fourteen is void.

Avoidance of certain provisions in contracts of insurance.

## PART III.

## EVIDENTIARY PROVISIONS.

*Division I—Evidence in certain criminal proceedings.*Application of  
Division I.

**22**—(1) This Division applies to any proceedings in respect of any crime or offence specified in subsection (2) of this section where the question—

- (a) whether a person was or was not under the influence of intoxicating liquor or has committed an offence under section four; or
- (b) as to the concentration of alcohol in the blood of any person,

at the time of the commission of the crime or offence is relevant.

(2) The following crimes and offences are the crimes and offences referred to in subsection (1) of this section, that is to say:—

- (a) The crime of manslaughter arising out of the driving of a motor vehicle;
- (b) An offence under this Act; and
- (c) An offence under section thirty-two of the *Traffic Act 1925* (including an offence under that section that is a crime by virtue of subsection (4) thereof).

Presumptions  
with respect  
to analyses.

**23**—(1) In any proceedings to which this Division applies the concentration of alcohol in a sample of blood taken from a person in accordance with this Act is *prima facie* evidence of the actual concentration of alcohol in his blood at the time at which the sample was taken from him.

(2) In any proceedings to which this Division applies, the concentration of alcohol in the blood of a person as determined by a breath analysis that was properly carried out is *prima facie* evidence of the actual concentration of alcohol in the blood of that person at the time at which he submitted to the analysis.

(3) Where, in any proceedings to which this Division applies, there is a conflict between the evidence referred to in subsection (1) of this section and that referred to in subsection (2) thereof the former evidence shall prevail.

(4) Where in any proceedings for an offence under subsection (1) of section six it is shown that the concentration of alcohol in the blood of a person who became liable to submit to a breath analysis was, at any time within four hours after the time of the relevant occurrence, equal to or not less than a particular concentration (being a concentration not less than the prescribed concentration), that particular concentration shall be deemed to have been the concentration of alcohol in his blood at the time of the relevant occurrence unless it is shown that the concentration of alcohol in his blood at that time was not greater than the prescribed concentration.

(5) Where in any proceedings for an offence under subsection (2) of section six it is shown that a person who became liable to submit to a breath analysis had alcohol in his blood at any time within four

hours after the time of the relevant occurrence it shall be presumed, unless the contrary is proved, that he had alcohol in his blood at the time of the relevant occurrence.

(6) Where in any proceedings to which this Division applies (other than proceedings for an offence under section six), it is shown that the concentration of alcohol in the blood of a person who became liable to submit to a breath analysis was, at any time within four hours after the time of the relevant occurrence, equal to or not less than a particular concentration, it shall be presumed, unless the contrary is proved, that the concentration of alcohol in the blood of that person at the time of the relevant occurrence was not less than that particular concentration.

(7) For the purposes of this section a breath analysis is properly carried out if it is carried out by means of a breath analysing instrument in proper working order operated by an approved operator in the manner prescribed.

**24**—(1) Evidence of the concentration of alcohol in the blood of a person as determined by a breath analysing instrument is not admissible in evidence in any proceedings to which this Division applies, unless—

Restrictions on admission of evidence of breath analysis.

- (a) such a statement as is referred to in section eleven was read over to him and handed to him on the completion of the analysis; and
- (b) if he made such a request as is referred to in subsection (3) of that section—
  - (i) a sample of his blood was taken by a medical practitioner or a qualified nurse in accordance with this Act and the taking of that sample began within three hours of the time of the relevant occurrence; or
  - (ii) he refused to submit to the taking of a sample of his blood after appropriate arrangements had been made under that section in response to that request.

(2) Where the statement referred to in paragraph (a) of subsection (1) of this section indicates that the concentration of alcohol in the blood of the person submitting to the breath analysis, as determined by that analysis, exceeded the prescribed concentration, the statement shall be in such form as to draw his attention to his right to make the request referred to in subsection (3) of section eleven.

(3) Without prejudice to the foregoing provisions of this section, in proceedings against a person for an offence under subsection (2) of section six such evidence as is referred to in subsection (1) of this section is inadmissible unless either—

- (a) the statement referred to in paragraph (a) of subsection (1) of this section is in such a form as to draw the attention of that person to his right to make such a request as is referred to in subsection (3) of section eleven; or

- (b) that person, before the statement was read over to him, represented to the approved operator by whom the analysis was carried out that he was not a first-year driver or, did not, on inquiry made to him by the operator, inform the operator that he was a first-year driver.

Evidence as to carrying out of breath analysis.

**25**—(1) Where in any proceedings to which this Division applies evidence is given by any person—

- (a) that at a specified time and place he carried out a breath analysis of a person by means of a breath analysing instrument;
- (b) that he was at the time at which that breath analysis was carried out, an approved operator;
- (c) that he was, at that time, satisfied that the instrument was in proper working order; and
- (d) that in carrying out the analysis he operated that instrument in the prescribed manner,

that evidence is *prima facie* evidence of the particulars so stated and of the fact that, at the time the analysis was carried out, the instrument was in proper working order.

(2) In any proceedings to which this Division applies a certificate certifying—

- (a) that the person named therein submitted to a breath analysis carried out by the person by whom the certificate purports to have been signed;
- (b) that, at the time the breath analysis was carried out, the person by whom the certificate purports to have been signed was an approved operator;
- (c) that the apparatus used by him to carry out the breath analysis was a breath analysing instrument within the meaning of this Act that he was satisfied was in proper working order;
- (d) that, in carrying out the analysis, he operated the instrument in the prescribed manner;
- (e) that the analysis was made on the day and completed at the time stated in the certificate;
- (f) that the concentration of alcohol, expressed in grammes of alcohol in 100 millilitres of blood, as determined by the analysis to be present in the blood of the person who submitted thereto, is that specified in the certificate; and
- (g) that the statement required by section eleven to be read over to that person and handed to him, was so read over to and handed to him,

is *prima facie* evidence of those particulars.

Certificates and records of supervising analyst and approved operators.

**26** In any proceedings to which this Division applies—

- (a) a certificate purporting to be a certificate signed by the supervising analyst in accordance with regulations



under this Act containing any particulars relating to a breath analysing instrument required to be contained therein under those regulations; and

- (b) any record purporting to be a record kept by an approved operator in accordance with those regulations containing any particulars relating to the performance by that operator of his functions under this Act,

is *prima facie* evidence of those particulars.

**27** In any proceedings to which this Division applies a certificate—

Certificates in relation to taking of blood or urine samples.

- (a) stating that, on the day and at the time stated in the certificate, the person by whom the certificate purports to be signed took a sample of the blood or urine of the person named therein;
- (b) stating that when that sample was so taken the person by whom the certificate purports to be signed was a medical practitioner or a qualified nurse; and
- (c) containing particulars of the manner in which the sample was taken or of any action taken by that person consequent upon, or in relation to, the taking of that sample,

is *prima facie* evidence of the particulars contained in the certificate.

**28**—(1) In any proceedings to which this Division applies a certificate purporting to be a certificate signed by an approved analyst of the result of an analysis of a sample of blood or urine carried out by him is sufficient evidence—

Certificates of analyses of blood or urine samples.

- (a) of the fact that the person by whom the certificate was signed was an approved analyst;
- (b) of the identity of the sample of the blood or urine that was analysed; and
- (c) of the result of the analysis.

(2) No evidence of the analysis of a sample of blood or urine is admissible in any proceedings to which this Division applies unless the court is satisfied that the requirements of section thirteen were complied with in relation to the taking of that sample of blood or urine.

**29**—(1) No certificate or record referred to in the foregoing provisions of this Division shall be tendered in evidence by, or on behalf of, any party to any proceedings unless, at least fourteen days, or such lesser period as the court may approve, before the hearing of the proceedings, a copy thereof was served on the other party to the proceedings.

Limitation on tendering of certificates, &c., in evidence.

(2) No such certificate or record as is referred to in subsection (1) of this section shall be tendered in evidence by, or on behalf of, any party to any proceedings to which this Division applies if notice has been given in writing to that party at least four days, or such lesser period as the court may approve, before the hearing that the other party to the proceedings requires the person by whom the certificate or record was signed or made to be called as a witness.

(3) In any proceedings to which this Division applies no evidence shall be given by or on behalf of any person of the result of the analysis of a sample of his blood that was taken otherwise than in pursuance of a request or direction made under this Act unless, at least four days, or such lesser period as the court may approve, before the hearing, notice has been given in writing to the prosecutor or his agent stating the intention to give that evidence.

*Division II—Restriction on use of certain evidence.*

Evidence as to analyses, &c., inadmissible in certain proceedings.

**30**—(1) Except as is otherwise expressly provided in this Act the fact that a person has been convicted of an offence under section six or section fourteen is not admissible as evidence in any legal proceedings that that person was, at any time, drunk, or under the influence of intoxicating liquor, or incapable of driving, or of exercising effective control over, a motor vehicle.

(2) Notwithstanding anything in this or any other Act where a person, on being notified under subsection (6) of section thirteen that a sample of his blood or urine has been taken for analysis, objects to the sample being analysed, no evidence as to the analysis is admissible in any legal proceedings to which he is a party.

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

(4) References in this section to legal proceedings shall be construed as references to all legal proceedings, whether civil, criminal, or arbitral.

PART IV.

SUPPLEMENTARY PROVISIONS.

Regulations.

**31** The Governor may make regulations under this Act and, in addition to any other purposes for which those regulations may be made, any such regulations may—

- (a) prescribe the functions of the supervising analyst in relation to the matters mentioned in subsection (4) of section three;
- (b) prescribe the manner in which breath analysing instruments are to be tested, maintained, or used and the operations to be undertaken, or the precautions to be observed, in relation thereto;
- (c) impose duties on approved operators in relation to the maintenance, testing, or use of breath analysing instruments and require them to comply with instructions given by the supervising analyst in relation to any matter prescribed in relation thereto;
- (d) require the making and keeping of records in relation to the maintenance, testing, or use of breath analysing instruments;

- (e) prescribe the qualifications to be possessed by, or the training to be undergone, by police officers who are authorized by the Commissioner of Police to operate breath analysing instruments;
- (f) prescribe the manner in which samples of blood are to be taken for the purposes of this Act, whether in relation to the nature or amount of the blood so taken or otherwise;
- (g) prescribing the fees to be paid to medical practitioners and qualified nurses in respect of the taking of samples of blood, or the carrying out of medical examinations, for the purposes of this Act; and
- (h) require the issue of certificates with respect to any test carried out on a breath analysing instrument and prescribe the particulars to be contained in any such certificate.

**32** The Acts specified in the second schedule are amended in manner specified therein. Consequential amendments.

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**THE FIRST SCHEDULE.**

(Section 11.)

**FORM 1.**

*Statement in a case where the concentration of alcohol in the blood of a person submitting to the breath analysis, as determined by that analysis, is not greater than the prescribed concentration, and a statement in form 3 of this schedule is not handed to that person on the completion of the analysis.*

**NOTICE OF RESULT OF BREATH ANALYSIS.**

The "breathalyser" analysis to which you.....(name) submitted on.....(date) and which was completed at.....(time) on that day has shown that your blood alcohol level is.....grammes of alcohol in 100 millilitres of blood, which does NOT exceed the prescribed limit.

.....  
(Signature of breathalyser operator.)

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**FORM 2.**

*Statement in a case where the concentration of alcohol in the blood of the person submitting to the breath analysis, as determined by that analysis, is greater than the prescribed concentration.*

**NOTICE OF RESULT OF BREATH ANALYSIS.**

The "breathalyser" analysis to which you.....(name) submitted on.....(date) and which was completed at.....(time) on that day has shown that your blood alcohol level **EXCEEDS THE LIMIT** permitted by law for drivers of motor vehicles. The reading was.....grammes of alcohol in 100 millilitres of blood.

**YOU MAY—**

- (1) Accept this reading
- OR
- (2) Submit to a blood test.

If you do not submit to a blood test you may not be permitted to question the breathalyser reading in any legal proceedings which follow, except as otherwise provided by law.

If you do submit to a blood test evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test you should make your request now.

This statement was read over to you at.....(time) on.....(date).

(Signature of breathalyser operator.)

FORM 3.

Statement in a case where it appears to the approved operator carrying out the breath analysis that the person submitting to the analysis is, or may be, a first-year driver and the result of the analysis indicates that alcohol is present in his body but not present in a concentration greater than the prescribed concentration.

NOTICE OF RESULT OF BREATH ANALYSIS.

The "breathalyser" analysis to which you.....(name) submitted on.....(date) and which was completed at.....(time) on that day has shown that your blood alcohol level was.....grammes of alcohol in 100 millilitres of blood.

If you are the holder of a PROVISIONAL LICENCE and a FIRST-YEAR DRIVER this indicates that you have committed an offence in driving a vehicle while alcohol is present in your body, YOU MAY either—

(1) Accept the result of the "breathalyser";

OR

(2) Submit to a blood test.

If you do not submit to a blood test you may not be permitted to question the breathalyser result in any legal proceedings which follow, except as otherwise provided by law.

If you do submit to a blood test evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for the blood test you should make your request now.

This statement was read over to you at.....(time) on.....(date).

(Signature of breathalyser operator.)

THE SECOND SCHEDULE.

(Section 32.)

CONSEQUENTIAL AMENDMENTS.

Evidence Act 1910.

(1 Geo. V No. 20.)

Division IIIA of Part III is repealed.

Traffic Act 1925.

(16 Geo. V No. 38.)

1. Section thirty-six is amended—

(a) by omitting from subsection (3) the words "except an offence against subsection (1) of section forty-one or against section forty-one B or against section forty-one C"; and

(b) by omitting from paragraph (a) of subsection (5) the words "section thirty-seven, or section forty-one B" and substituting therefor the words "or section thirty-seven".

2. Section thirty-six AA is amended by adding at the end of subsection (2) the words "or under the *Road Safety (Alcohol and Drugs) Act 1970.*".
3. Section thirty-six A is amended—
  - (a) by omitting from subsection (4) the words "under section thirty-six, section forty-one, section forty-one B, or section forty-one C"; and
  - (b) by omitting from subsection (5) the words "under section thirty-six, section forty-one, section forty-one B, or section forty-one C".
4. Sections forty-one, forty-one B, forty-one C, and forty-one D are repealed.

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## BEAUTY POINT LANDSLIP.

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No. 78 of 1970.

AN ACT to make provision for the acquisition and clearance of certain lands in the town of Beauty Point in which earth movements have occurred, and for purposes incidental thereto.

[11 January 1971.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1** This Act may be cited as the *Beauty Point Landslip Act 1970.* Short title.