

Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Road Traffic Act 1974* amended

3.	Act amended	3
4.	Section 62B amended	3
5.	Section 62C amended	3
6.	Section 63 amended	4
7.	Section 64 amended	10
8.	Section 64AA amended	12
9.	Section 64A amended	13
10.	Section 64AAA amended	14
11.	Section 64AB amended	14
12.	Section 64AC amended	15
13.	Sections 64B to 64D inserted	16
	64B. Driving with blood alcohol content of or above 0.05 with prescribed illicit drug in oral fluid or blood	16
	64C. Certain persons driving with any blood alcohol content with prescribed illicit drug in oral fluid or blood	19
	64D. Provisions for s. 64AC, 64B and 64C	22
14.	Section 65 amended	22
15.	Section 66 amended	23
16.	Section 66B replaced	27
	66B. Police powers to require blood sample for drug analysis	27

Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019

Contents

17.	Section 67 amended	28
18.	Section 67AA amended	32
19.	Section 67AB amended	34
20.	Sections 67AC to 67AE inserted	36
	67AC. Failure to comply with drug test requirement for certain persons with any blood alcohol content	36
	67AD. Failure to comply with drug test requirement for persons with blood alcohol content of or above 0.05	39
	67AE. Provisions for s. 67AC and 67AD	44
21.	Section 67A amended	44
22.	Section 68A amended	46
23.	Section 68 amended	47
24.	Section 69 amended	48
25.	Section 69A deleted	49
26.	Section 69B amended	49
27.	Section 70A amended	50
28.	Section 70B amended	51
29.	Section 70 amended	51
30.	Section 71 amended	55
31.	Section 71A amended	55
32.	Section 71B amended	55
33.	Section 71BA inserted	56
	71BA. Police officer may prohibit person from driving for 24 hours if prescribed illicit drug present in oral fluid	56
34.	Section 71C amended	58
35.	Section 71E amended	59
36.	Section 71H amended	60
37.	Section 72 amended	60
38.	Section 72A deleted	61
39.	Section 106 amended	61
40.	Section 110A inserted	62
	110A. Transitional provision for the <i>Road Traffic Amendment (Impaired Driving and Penalties) Act 2019</i>	62
41.	Section 111 amended	63

Part 3 — Amendments to other Acts

**Division 1 — *Criminal Investigation Act 2006*
amended**

42.	Act amended	64
43.	Section 28 amended	64
44.	Section 135 amended	64

**Division 2 — *Cross-border Justice Act 2008*
amended**

45.	Act amended	64
46.	Section 43 amended	64

**Division 3 — *Road Traffic (Authorisation to
Drive) Act 2008* amended**

47.	Act amended	65
48.	Section 5A amended	65
49.	Section 19 amended	65
50.	Section 28 amended	66

**Division 4 — *Young Offenders Act 1994*
amended**

51.	Act amended	67
52.	Schedule 1 amended	67

Western Australia

LEGISLATIVE ASSEMBLY

**Road Traffic Amendment (Impaired Driving
and Penalties) Bill 2019**

A Bill for

**An Act to amend the *Road Traffic Act 1974* and to make
consequential and other amendments to various Acts.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Road Traffic Amendment (Impaired Driving and Penalties) Act 2019*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

10

1 **Part 2 — Road Traffic Act 1974 amended**

2 **3. Act amended**

3 This Part amends the *Road Traffic Act 1974*.

4 **4. Section 62B amended**

5 (1) In section 62B(1) in the Penalty delete “6 PU or more than
6 10 PU.” and insert:

7
8 15 PU or more than 25 PU.
9

10 (2) In section 62B(2)(b) and (c) delete “section 63 or 67, or for a
11 second or subsequent offence against section 64, committed
12 after the commencement of the *Road Traffic Amendment*
13 *Act 1997*; or” and insert:

14
15 section 63, 67 or 67AD(6), or for a second or subsequent
16 offence against section 64, 64B(3) or 67AD(4); or
17

18 (3) In section 62B(4) and (5) in the Penalty delete “6 PU or more
19 than 10 PU.” and insert:

20
21 15 PU or more than 25 PU.
22

23 **5. Section 62C amended**

24 In section 62C(1) in the Penalty delete “6 PU or more than
25 10 PU.” and insert:

26
27 15 PU or more than 25 PU.
28

s. 6

6. Section 63 amended

(1) In section 63(1):

(a) in paragraph (b) delete “vehicle; or” and insert:

vehicle,

(b) delete paragraph (c);

(c) delete “offence, and the offender may be arrested without warrant.” and insert:

offence.

(2) At the end of section 63(1) insert:

Penalty for this subsection:

(a) for a first offence, if the person has committed the offence under paragraph (a) and has been previously convicted of an offence against section 64 —

(i) a fine of not less than 48 PU and not more than 75 PU; and

(ii) the court convicting the person must, in any event, order that the person be disqualified from holding or obtaining a driver’s licence for a period not less than the minimum period of disqualification that would apply if the offence were against section 64 instead of this section and the person’s blood alcohol content were above 0.14 g of alcohol per 100 ml of blood;

- 1 (b) for a first offence, if the person has
2 committed the offence under paragraph (a)
3 and has been previously convicted of an
4 offence against section 64B(3), or offences
5 against sections 64 and 64B(3) —
- 6 (i) a fine of not less than 54 PU and not
7 more than 75 PU; and
- 8 (ii) the court convicting the person must, in
9 any event, order that the person be
10 disqualified from holding or obtaining a
11 driver's licence for a period not less
12 than the minimum period of
13 disqualification that would apply if the
14 offence were against section 64B(3)
15 instead of this section and the person's
16 blood alcohol content were above 0.14 g
17 of alcohol per 100 ml of blood;
- 18 (c) for a first offence, in any other case —
- 19 (i) a fine of not less than 34 PU or more
20 than 75 PU; and
- 21 (ii) the court convicting the person must, in
22 any event, order that the person be
23 disqualified from holding or obtaining a
24 driver's licence for a period of not less
25 than 10 months;
- 26 (d) for a second offence —
- 27 (i) a fine of not less than 63 PU or more
28 than 105 PU or imprisonment for
29 9 months; and
- 30 (ii) the court convicting the person must, in
31 any event, order that the person be
32 disqualified from holding or obtaining a

s. 6

- 1 driver's licence for a period of not less
2 than 30 months;
- 3 (e) for a subsequent offence —
- 4 (i) a fine of not less than 63 PU or more
5 than 150 PU or imprisonment for
6 18 months; and
- 7 (ii) the court convicting the person must, in
8 any event, order that the person be
9 permanently disqualified from holding
10 or obtaining a driver's licence.
11
- 12 (3) Delete section 63(2) and (3) and insert:
13
- 14 (1A) For the purposes of subsection (1), a previous
15 conviction for an offence against subsection (2) or
16 section 64AB, 67, 67AA or 67AD(6) is taken to be a
17 previous offence against subsection (1).
- 18 (2) A person who drives or attempts to drive a motor
19 vehicle while under the influence of alcohol and a drug
20 to such an extent as to be incapable of having proper
21 control of the vehicle commits an offence.
- 22 Penalty for this subsection:
- 23 (a) for a first offence, if the person has been
24 previously convicted of an offence against
25 section 64 —
- 26 (i) a fine of not less than 48 PU and not
27 more than 113 PU; and
- 28 (ii) the court convicting the person must, in
29 any event, order that the person be
30 disqualified from holding or obtaining a
31 driver's licence for a period of not less
32 than the minimum period of

- 1 disqualification that would apply if the
2 offence were against section 64 instead
3 of this section and the person's blood
4 alcohol content were above 0.14 g of
5 alcohol per 100 ml of blood;
- 6 (b) for a first offence, if the person has been
7 previously convicted of an offence against
8 section 64B(3), or offences against
9 sections 64 and 64B(3) —
- 10 (i) a fine of not less than 72 PU and not
11 more than 113 PU; and
- 12 (ii) the court convicting the person must, in
13 any event, order that the person be
14 disqualified from holding or obtaining a
15 driver's licence for a period of not less
16 than the minimum period of
17 disqualification that would apply if the
18 offence were against section 64B(3)
19 instead of this section and the person's
20 blood alcohol content were above 0.14 g
21 of alcohol per 100 ml of blood;
- 22 (c) for a first offence, in any other case —
- 23 (i) a fine of not less than 41 PU or more
24 than 113 PU; and
- 25 (ii) the court convicting the person must, in
26 any event, order that the person be
27 disqualified from holding or obtaining a
28 driver's licence for a period of not less
29 than 15 months;
- 30 (d) for a second offence —
- 31 (i) a fine of not less than 95 PU or more
32 than 158 PU or imprisonment for
33 9 months; and

s. 6

- 1 (ii) the court convicting the person must, in
2 any event, order that the person be
3 disqualified from holding or obtaining a
4 driver's licence for a period of not less
5 than 42 months;
- 6 (e) for a subsequent offence —
- 7 (i) a fine of not less than 95 PU or more
8 than 225 PU or imprisonment for
9 18 months; and
- 10 (ii) the court convicting the person must, in
11 any event, order that the person be
12 permanently disqualified from holding
13 or obtaining a driver's licence.
- 14 (3) For the purposes of subsection (2), a previous
15 conviction for an offence against section 64AB, 67,
16 67AA or 67AD(6) is taken to be a previous offence
17 against subsection (2).
- 18 (3A) A person who commits an offence against
19 subsection (1) or (2) may be arrested without warrant.
20
- 21 (4) In section 63(4):
- 22 (a) delete "shall" (first and second occurrence) and insert:
23
24 must
25
- 26 (b) delete "he" (each occurrence) and insert:
27
28 the person charged
29

1 (c) delete “him,” (each occurrence) and insert:

2

3 them,

4

5 (d) delete “shall be afforded him.” and insert:

6

7 must be afforded them.

8

9 (5) In section 63(5) delete “shall” and insert:

10

11 must

12

13 (6) In section 63(6) delete “this section” and insert:

14

15 subsection (1)

16

17 (7) After section 63(6) insert:

18

19 (6A) A person charged with an offence against
20 subsection (2) may, instead of being convicted of that
21 offence, be convicted of —

22 (a) an offence against subsection (1) or section 64,
23 64AA, 64AB, 64AC or 64B; or

24 (b) an offence against section 64A(1), 64AAA(1)
25 or 64C if, at the time of the alleged offence, the
26 person was a person to whom section 64A(1)
27 applied; or

28 (c) an offence against section 64A(4), 64AAA(2)
29 or 64C if, at the time of the alleged offence, the
30 motor vehicle concerned was a motor vehicle to
31 which section 64A(4) applied.

32

s. 7

- 1 (8) In section 63(7):
- 2 (a) in paragraph (a) delete “him” (each occurrence) and
- 3 insert:
- 4
- 5 the accused
- 6
- 7 (b) in paragraph (b) delete “he” and insert:
- 8
- 9 the accused
- 10
- 11 (c) in paragraph (b) delete “him” and insert:
- 12
- 13 them
- 14
- 15 Note: The heading to amended section 63 is to read:
- 16 **Driving under the influence of alcohol, drugs or alcohol and drugs**
- 17 **7. Section 64 amended**
- 18 (1) In section 64(2):
- 19 (a) in paragraph (a) delete “the relevant penalty” and insert:
- 20
- 21 a fine of not less than the minimum fine or more than
- 22 the maximum fine
- 23
- 24 (b) in paragraph (b) delete “shall” and insert:
- 25
- 26 convicting the person must, in any event,
- 27

(c) delete the Table and insert:

Table

Blood alcohol content (g/100 ml)		First offence	Second offence	Subsequent offence
≥ 0.08 but < 0.09	Min: Max: Disq:	15 PU 45 PU 6 months	32 PU 45 PU 8 months	32 PU 45 PU 10 months
≥ 0.09 but < 0.11	Min: Max: Disq:	17 PU 45 PU 7 months	34 PU 45 PU 10 months	34 PU 45 PU 13 months
≥ 0.11 but < 0.13	Min: Max: Disq:	20 PU 45 PU 8 months	36 PU 60 PU 14 months	36 PU 60 PU 17 months
≥ 0.13	Min: Max: Disq:	23 PU 45 PU 9 months	48 PU 75 PU 18 months	48 PU 90 PU 30 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(2) In section 64(3) delete “him against section 63 or 67 shall” and insert:

the person against section 63, 64B(3), 67 or 67AD(4) or (6)
must

s. 8

8. Section 64AA amended

(1) In section 64AA(2) delete “10 PU.” and insert:

25 PU.

(2) In section 64AA(2a):

(a) in paragraph (a) delete “the relevant penalty” and insert:

a fine of not less than the minimum fine or more than
the maximum fine

(b) in paragraph (b) delete “shall” and insert:

convicting the person must, in any event,

(c) delete the Table and insert:

Table

Blood alcohol content (g/100 ml)		Second offence	Subsequent offence
≥ 0.05 but < 0.07	Min: Max: Disq:	25 PU 40 PU 6 months	25 PU 40 PU 8 months
≥ 0.07	Min: Max: Disq:	30 PU 40 PU 8 months	30 PU 40 PU 10 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

1 (3) In section 64AA(2c) delete “64A or 67 shall” and insert:

2

3 64B, 67 or 67AD must

4

5 **9. Section 64A amended**

6 (1) In section 64A(1) delete the Penalty and insert:

7

8 Penalty for this subsection:

9 (a) a fine of not less than 8 PU or more than
10 15 PU; and

11 (b) the court convicting the person must, in any
12 event, order that the person be disqualified
13 from holding or obtaining a driver’s licence
14 for not less than 3 months.

15

16 (2) In section 64A(2)(c) delete “section 63 or 67, or for a second or
17 subsequent offence against section 64, committed after the
18 commencement of the *Road Traffic Amendment Act 1997*; or”
19 and insert:

20

21 section 63, 67 or 67AD(6), or for a second or subsequent
22 offence against section 64, 64B(3) or 67AD(4); or

23

24 (3) In section 64A(3) delete “section 63 or 67, or for a second or
25 subsequent offence against section 64, committed after the
26 commencement of the *Road Traffic Amendment Act 1997*.” and
27 insert:

28

29 section 63, 67 or 67AD(6), or for a second or subsequent
30 offence against section 64, 64B(3) or 67AD(4).

31

s. 10

1 (4) In section 64A(4) delete the Penalty and insert:

2

3 Penalty for this subsection:

4 (a) a fine of not less than 8 PU or more than
5 15 PU; and

6 (b) the court convicting the person must, in any
7 event, order that the person be disqualified
8 from holding or obtaining a driver's licence
9 for not less than 3 months.

10

11 **10. Section 64AAA amended**

12 In section 64AAA(1) and (2) delete the Penalty and insert:

13

14 Penalty for this subsection: a fine of not less than 8 PU
15 or more than 15 PU.

16

17 **11. Section 64AB amended**

18 (1) In section 64AB(2):

19 (a) in paragraph (a) delete "18 PU or more than 50 PU; and,
20 in any event, the court convicting the person shall" and
21 insert:

22

23 34 PU or more than 75 PU; and the court convicting the
24 person must, in any event,

25

1 (b) in paragraph (b) delete “42 PU or more than 70 PU or to
2 imprisonment for 9 months; and, in any event, the court
3 convicting the person shall” and insert:

4
5 63 PU or more than 105 PU or to imprisonment for
6 9 months; and the court convicting the person must, in
7 any event,

8
9 (c) in paragraph (c) delete “42 PU or more than 100 PU or
10 to imprisonment for 18 months; and, in any event, the
11 court convicting the person shall” and insert:

12
13 63 PU or more than 150 PU or to imprisonment for
14 18 months; and the court convicting the person must, in
15 any event,

16
17 (2) In section 64AB(3) delete “section 63 or 67AA or section 67 as
18 in force after the coming into operation of section 16 of the
19 *Road Traffic Amendment Act (No. 2) 1982* shall” and insert:

20
21 section 63, 67, 67AA or 67AD(6) must
22

23 **12. Section 64AC amended**

24 (1) In section 64AC(2):

25 (a) in paragraph (a) delete “10 PU; and” and insert:

26
27 25 PU; and
28

s. 13

1 (b) in paragraph (b) delete “10 PU or more than 20 PU; and,
2 in any event, the court convicting the person shall” and
3 insert:

4
5 25 PU or more than 40 PU; and the court convicting the
6 person must, in any event,
7

8 (2) In section 64AC(3) delete “67AB shall” and insert:

9
10 64AB, 64B, 64C, 67AB or 67AD must
11

12 (3) Delete section 64AC(4) and (5).

13 **13. Sections 64B to 64D inserted**

14 After section 64AC insert:
15

16 **64B. Driving with blood alcohol content of or above 0.05**
17 **with prescribed illicit drug in oral fluid or blood**

18 (1) A person commits an offence if the person drives or
19 attempts to drive a motor vehicle while —

20 (a) a prescribed illicit drug is present in the
21 person’s oral fluid or blood; and

22 (b) the person has a blood alcohol content of or
23 above 0.05 g of alcohol per 100 ml of blood.

24 Penalty for this subsection:

25 (a) a fine of not less than the minimum fine or
26 more than the maximum fine in the Table;
27 and

28 (b) the court convicting the person must, in any
29 event, order that the person be disqualified
30 from holding or obtaining a driver’s licence

for not less than the minimum period of
disqualification in the Table.

Table

Blood alcohol content (g/100 ml)		First offence	Second offence	Subsequent offence
≥ 0.05 but < 0.07	Min: Max: Disq:	None 38 PU 3 months	38 PU 60 PU 9 months	38 PU 60 PU 12 months
≥ 0.07	Min: Max: Disq:	None 38 PU 3 months	45 PU 60 PU 12 months	45 PU 60 PU 15 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (2) For the purposes of subsection (1), a previous conviction for an offence against subsection (3) or section 63, 64, 64AA, 64AB, 64AC, 67, 67AA or 67AD is taken to be a previous offence against subsection (1).
- (3) A person commits an offence if the person drives or attempts to drive a motor vehicle while —
- (a) a prescribed illicit drug is present in the person's oral fluid or blood; and
 - (b) the person has a blood alcohol content of or above 0.08 g of alcohol per 100 ml of blood.

Penalty for this subsection:

- (a) a fine of not less than the minimum fine or more than the maximum fine in the Table; and
- (b) the court convicting the person must, in any event, order that the person be disqualified

s. 13

1 from holding or obtaining a driver's licence
2 for not less than the minimum period of
3 disqualification in the Table.

4 **Table**

Blood alcohol content (g/100 ml)		First offence	Second offence	Subsequent offence
≥ 0.08 but < 0.09	Min: Max: Disq:	23 PU 68 PU 9 months	48 PU 68 PU 12 months	48 PU 68 PU 15 months
≥ 0.09 but < 0.11	Min: Max: Disq:	26 PU 68 PU 11 months	51 PU 68 PU 15 months	51 PU 68 PU 20 months
≥ 0.11 but < 0.13	Min: Max: Disq:	30 PU 68 PU 12 months	54 PU 90 PU 21 months	54 PU 90 PU 26 months
≥ 0.13	Min: Max: Disq:	35 PU 68 PU 14 months	72 PU 113 PU 27 months	72 PU 135 PU 42 months

5 Note: ≥ signifies of or above
6 < signifies less than
7 **Disq** signifies the minimum period of disqualification
8 **Max** signifies the maximum fine
9 **Min** signifies the minimum fine

- 10 (4) For the purposes of subsection (3), a previous
11 conviction for an offence against section 63, 64, 64AB,
12 67, 67AA or 67AD(4) or (6) is taken to be a previous
13 offence against subsection (3).
- 14 (5) For the purposes of subsections (1) and (3), an offence
15 is a second or subsequent offence against this section
16 irrespective of the blood alcohol content on the
17 occasion of the conviction of any previous offence
18 against this section.

-
- 1 (6) A person who commits an offence against
2 subsection (1) or (3) may be arrested without warrant.
- 3 (7) A person charged with an offence against
4 subsection (1) or (3) may, instead of being convicted of
5 that offence, be convicted of an offence against —
- 6 (a) section 64, 64AA or 64AC; or
- 7 (b) section 64A(1), 64AAA(1) or 64C if, at the
8 time of the alleged offence, the person was a
9 person to whom section 64A(1) applied; or
- 10 (c) section 64A(4), 64AAA(2) or 64C if, at the
11 time of the alleged offence, the motor vehicle
12 concerned was a motor vehicle to which
13 section 64A(4) applied.
- 14 (8) A person charged with an offence against
15 subsection (3) may, instead of being convicted of that
16 offence, be convicted of an offence against
17 subsection (1).
- 18 **64C. Certain persons driving with any blood alcohol**
19 **content with prescribed illicit drug in oral fluid or**
20 **blood**
- 21 (1) A person commits an offence if —
- 22 (a) the person drives or attempts to drive a motor
23 vehicle while —
- 24 (i) a prescribed illicit drug is present in the
25 person's oral fluid or blood; and
- 26 (ii) the person has any blood alcohol
27 content;
- 28 and
- 29 (b) either —
- 30 (i) section 64A(1) applies to the person; or
- 31 (ii) section 64A(4) applies to the vehicle.

s. 13

- 1 Penalty for this subsection:
- 2 (a) for a first offence —
- 3 (i) a fine of not less than 12 PU or more
- 4 than 38 PU; and
- 5 (ii) the court convicting the person must, in
- 6 any event, order that the person be
- 7 disqualified from holding or obtaining a
- 8 driver's licence for a period of not less
- 9 than 3 months;
- 10 (b) for a second or subsequent offence —
- 11 (i) a fine of not less than 38 PU or more
- 12 than 60 PU; and
- 13 (ii) the court convicting the person must, in
- 14 any event, order that the person be
- 15 disqualified from holding or obtaining a
- 16 driver's licence for a period of not less
- 17 than 9 months.
- 18 (2) It is a defence to a charge of an offence against
- 19 subsection (1) for the accused to prove that the
- 20 accused's blood alcohol content was not to any extent
- 21 caused by any of the following —
- 22 (a) the consumption of an alcoholic beverage
- 23 (otherwise than for the purposes of religious
- 24 observance);
- 25 (b) the consumption or use of any other substance
- 26 (for example, food or medicine) for the purpose
- 27 of consuming alcohol.
- 28 (3) For the purposes of subsection (1), a previous
- 29 conviction for an offence against subsection (4) or
- 30 section 63, 64, 64AA, 64A, 64AAA, 64AB, 64AC,
- 31 64B, 67, 67AA, 67AB, 67AC or 67AD is taken to be a
- 32 previous offence against subsection (1).

- 1 (4) A person commits an offence if —
- 2 (a) the person drives or attempts to drive a motor
- 3 vehicle while —
- 4 (i) a prescribed illicit drug is present in the
- 5 person's oral fluid or blood; and
- 6 (ii) the person has a blood alcohol content
- 7 of or above 0.02 g of alcohol per 100 ml
- 8 of blood;
- 9 and
- 10 (b) either —
- 11 (i) section 64A(1) applies to the person; or
- 12 (ii) section 64A(4) applies to the vehicle.
- 13 Penalty for this subsection:
- 14 (a) for a first offence —
- 15 (i) a fine of not less than 12 PU or more
- 16 than 38 PU; and
- 17 (ii) the court convicting the person must, in
- 18 any event, order that the person be
- 19 disqualified from holding or obtaining a
- 20 driver's licence for a period of not less
- 21 than 6 months;
- 22 (b) for a second or subsequent offence —
- 23 (i) a fine of not less than 38 PU or more
- 24 than 60 PU; and
- 25 (ii) the court convicting the person must, in
- 26 any event, order that the person be
- 27 disqualified from holding or obtaining a
- 28 driver's licence for a period of not less
- 29 than 10 months.
- 30 (5) For the purposes of subsection (4), a previous
- 31 conviction for an offence against section 63, 64, 64AA,

s. 14

- 1 64A, 64AAA, 64AB, 64AC, 64B, 67, 67AA, 67AB,
2 67AC or 67AD is taken to be a previous offence
3 against subsection (4).
- 4 (6) A person charged with an offence against
5 subsection (1) or (4) may, instead of being convicted of
6 that offence, be convicted of an offence against
7 section 64A(1), 64AAA(1) or 64AC.

8 **64D. Provisions for s. 64AC, 64B and 64C**

- 9 (1) If in any proceeding for an offence against
10 section 64AC, 64B or 64C it is proved that a certain
11 drug was present in the accused's body at any time
12 within 4 hours, or 12 hours if the sample was taken
13 under section 66(8B), after the time of the driving or
14 attempted driving of a motor vehicle that gave rise to
15 the alleged offence, the presence of that drug in the
16 accused's body at the time of that driving or attempted
17 driving is taken to be proved in the absence of proof to
18 the contrary.
- 19 (2) If a person takes a prescribed illicit drug mistakenly
20 believing it to be another drug, that mistake is not a
21 defence in any proceeding for an offence against
22 section 64AC, 64B or 64C if that other drug is also a
23 drug within the meaning of paragraph (a) or (b) of the
24 definition of *drug* in section 65.
25

26 **14. Section 65 amended**

- 27 (1) In section 65 delete the definition of *self-testing breath*
28 *analysing equipment*.

- 1 (2) In section 65 in the definition of *registered nurse* delete
2 “nurse;” and insert:

3

4 nurse.

5

6 **15. Section 66 amended**

- 7 (1) In section 66(1) delete “he has reasonable grounds to believe
8 was the driver or person in charge of a motor vehicle, to provide
9 a sample of his” and insert:

10

11 the police officer has reasonable grounds to believe was the
12 driver or person in charge of a motor vehicle, to provide a
13 sample of the person’s

14

- 15 (2) In section 66(1a) delete “he has reasonable grounds to believe
16 may have been the driver or person in charge of the motor
17 vehicle at that time to provide a sample of his” and insert:

18

19 the police officer has reasonable grounds to believe may have
20 been the driver or person in charge of the motor vehicle at that
21 time to provide a sample of the person’s

22

- 23 (3) In section 66(2):

- 24 (a) delete “his” (1st, 2nd, 3rd, 4th and 5th occurrence) and
25 insert:

26

27 the person’s

28

- 29 (b) in paragraph (d) delete “he was, he has” and insert:

30

31 the person was, they have

32

s. 15

- 1 (c) delete “and to provide a sample of his urine for analysis,
2 pursuant to the provisions of subsections (4), (5) and
3 (6a),” and insert:
4
5 pursuant to the provisions of subsections (4) and (5),
6
7 (4) In section 66(3) delete “his breath for a preliminary test or for
8 analysis shall comply with that requirement by providing the
9 sample of his” and insert:
10
11 the person’s breath for a preliminary test or for analysis must
12 comply with that requirement by providing the sample of their
13
14 (5) In section 66(4):
15 (a) delete “shall not be required under subsection (2) to
16 provide a sample of his” and insert:
17
18 must not be required under subsection (2) to provide a
19 sample of the person’s
20
21 (b) in paragraph (c) delete “his physical condition he is” and
22 insert:
23
24 the person’s physical condition they are
25
26 (6) In section 66(5):
27 (a) delete “his” (each occurrence) and insert:
28
29 the person’s
30

1 (b) in paragraph (b) delete “him” and insert:

2

3 the person

4

5 (7) In section 66(6) delete “shall not be required to allow a
6 prescribed sample taker to take a sample of his blood, and a
7 prescribed sample taker shall” and insert:

8

9 must not be required to allow a prescribed sample taker to take a
10 sample of the person’s blood, and a prescribed sample taker
11 must

12

13 (8) Delete section 66(6a).

14 (9) In section 66(7):

15 (a) in paragraph (a) delete “a person; and” and insert:

16

17 a casualty; and

18

19 (b) in paragraph (b) delete “(the *person*)”.

20 (10) In section 66(8A) in the definition of *serious bodily harm*:

21 (a) delete “a person,” and insert:

22

23 a casualty,

24

25 (b) delete “the person” and insert:

26

27 the casualty

28

s. 15

- 1 (11) Delete section 66(8B)(a) and insert:
2
- 3 (a) require the person to allow a prescribed sample
4 taker to take a sample of the person's blood for
5 analysis; or
6
- 7 (12) In section 66(10) delete "shall" and insert:
8
- 9 must
10
- 11 (13) Delete section 66(11) and (12) and insert:
12
- 13 (11) A police officer may require a person to allow a
14 prescribed sample taker nominated by the police officer
15 to take a sample of the person's blood for analysis, and
16 require the person to accompany a police officer to a
17 place and wait at that place for the purposes of taking
18 the sample, if —
- 19 (a) the person provides a sample of their breath for
20 analysis pursuant to a requirement made under
21 subsection (2)(c), (ca), (cb), (d) or (e); and
- 22 (b) the analysis result obtained pursuant to
23 section 68 indicates —
- 24 (i) that there is no alcohol present in the
25 blood of the person; or
- 26 (ii) that the person's blood alcohol content
27 is such that it does not reasonably
28 explain the conduct, condition or
29 appearance of the person by reason of
30 which the requirement was made.
- 31 (12) If it appears to a police officer that a blood sample
32 cannot be taken from a person under subsection (11)
33 within 4 hours after the time at which driving,

1 attempted driving, use or management of a vehicle in
2 circumstances giving rise to the requirement under
3 subsection (11) is believed to have taken place —

- 4 (a) the person must not be required to allow a
5 prescribed sample taker to take a sample of the
6 person's blood under that subsection; and
7 (b) a prescribed sample taker must not be caused to
8 take a sample of the blood of a person under
9 that subsection.
10

11 Note: The heading to amended section 66 is to read:

12 **Police powers to require breath or blood sample**

13 **16. Section 66B replaced**

14 Delete section 66B and insert:
15

16 **66B. Police powers to require blood sample for drug**
17 **analysis**

- 18 (1) A police officer may require a person to allow a
19 prescribed sample taker nominated by the police officer
20 to take a sample of the person's blood for analysis, and
21 require the person to accompany a police officer to a
22 place and wait at that place for the purposes of taking
23 the sample, if —
24 (a) the person underwent a driver assessment and it
25 appears to a police officer that the assessment
26 indicates that the person is drug impaired; or
27 (b) the person refuses or fails to undergo a driver
28 assessment having been required to do so; or
29 (c) a police officer might require a person to
30 undergo a driver assessment but is precluded
31 from doing so by section 66A(6)(b).

s. 17

- 1 (2) If a person is incapable of complying with a
2 requirement under subsection (1), a police officer may
3 cause a prescribed sample taker to take a sample of the
4 person's blood for analysis.
- 5 (3) If a person is apparently unconscious or seriously
6 injured a police officer must facilitate the provision of
7 medical assistance for the person.
- 8 (4) If it appears to a police officer that a blood sample
9 cannot be taken from a person under subsection (1)
10 within 4 hours after the time at which driving,
11 attempted driving, use or management of a vehicle in
12 circumstances giving rise to the requirement under
13 subsection (1) is believed to have taken place —
- 14 (a) the person must not be required to allow a
15 prescribed sample taker to take a sample of the
16 person's blood under that subsection; and
- 17 (b) a prescribed sample taker must not be caused to
18 take a sample of the blood of a person under
19 that subsection.
20

21 **17. Section 67 amended**

- 22 (1) Delete section 67(1) to (4) and insert:
23
- 24 (1) In this section —
- 25 **requirement** means a requirement made by a police
26 officer to a person under section 66 to do one or more
27 of the following —
- 28 (a) provide a sample of the person's breath for
29 analysis;
- 30 (b) allow a prescribed sample taker to take a
31 sample of the person's blood for analysis;

- 1 (c) accompany a police officer to a police station
2 or some other place, and to wait at that place.
- 3 (2) A person, other than a person to whom section 68A(3)
4 applies, commits an offence if the person fails to
5 comply with a requirement.
- 6 Penalty for this subsection:
- 7 (a) for a first offence, if the person has been
8 previously convicted of an offence against
9 section 64 —
- 10 (i) a fine of not less than 48 PU and not
11 more than 113 PU; and
- 12 (ii) the court convicting the person must, in
13 any event, order that the person be
14 disqualified from holding or obtaining a
15 driver's licence for a period not less
16 than the minimum period of
17 disqualification that would apply if the
18 offence were against section 64 instead
19 of this section and the person's blood
20 alcohol content were above 0.14 g of
21 alcohol per 100 ml of blood;
- 22 (b) for a first offence, if the person has been
23 previously convicted of an offence against
24 section 64B(3), or offences against
25 sections 64 and 64B(3) —
- 26 (i) a fine of not less than 72 PU and not
27 more than 113 PU; and
- 28 (ii) the court convicting the person must, in
29 any event, order that the person be
30 disqualified from holding or obtaining a
31 driver's licence for a period not less
32 than the minimum period of
33 disqualification that would apply if the

s. 17

- 1 offence were against section 64B(3)
2 instead of this section and the person's
3 blood alcohol content were above 0.14 g
4 of alcohol per 100 ml of blood;
- 5 (c) for a first offence, in any other case —
- 6 (i) a fine of not less than 41 PU or more
7 than 113 PU; and
- 8 (ii) the court convicting the person must, in
9 any event, order that the person be
10 disqualified from holding or obtaining a
11 driver's licence for a period of not less
12 than 15 months;
- 13 (d) for a second offence —
- 14 (i) a fine of not less than 95 PU or more
15 than 158 PU or imprisonment for
16 9 months; and
- 17 (ii) the court convicting the person must, in
18 any event, order that the person be
19 disqualified from holding or obtaining a
20 driver's licence for a period of not less
21 than 42 months;
- 22 (e) for a subsequent offence —
- 23 (i) a fine of not less than 95 PU or more
24 than 225 PU or imprisonment for
25 18 months; and
- 26 (ii) the court convicting the person must, in
27 any event, order that the person be
28 permanently disqualified from holding
29 or obtaining a driver's licence.
- 30 (2A) For the purposes of subsection (2), a previous
31 conviction for an offence against subsection (3) or

1 section 63 or 67AD(6) is taken to be a previous offence
2 against subsection (2).

3 (3) A person, other than a person to whom section 68A(3)
4 applies, commits a crime if —

5 (a) a police officer makes a requirement of the
6 person; and

7 (b) when the police officer makes the requirement
8 of the person, the police officer —

9 (i) advises the person concerned that the
10 police officer believes that the motor
11 vehicle of which the person was, or is
12 believed to have been, the driver has
13 been involved in an incident
14 occasioning the death of, or grievous
15 bodily harm or bodily harm to, another
16 person; and

17 (ii) explains to the person the consequences
18 under this subsection of failing to
19 comply with the requirement;

20 and

21 (c) the person fails to comply with the requirement.

22 Penalty for this subsection:

23 (a) imprisonment for 14 years; and

24 (b) the court convicting the person must, in any
25 event, order that the person be disqualified
26 from holding or obtaining a driver's licence
27 for a period of not less than 2 years.

28 Summary conviction penalty for this subsection in a
29 case in which the incident does not occasion the
30 death of another person:

31 (a) imprisonment for 18 months or a fine of
32 160 PU; and

s. 18

- 1 (b) the court convicting the person must, in any
2 event, order that the person be disqualified
3 from holding or obtaining a driver's licence
4 for a period of not less than 18 months.
- 5 (3A) A person who commits an offence against
6 subsection (2) or (3) may be arrested without warrant.
- 7 (3B) A person charged with an offence against
8 subsection (3) may, instead of being convicted of that
9 offence, be convicted of an offence against
10 subsection (2).
11
- 12 (2) In section 67(5):
13 (a) delete "shall be" and insert:
14
15 is
16
17 (b) delete "his" and insert:
18
19 the accused's
20
- 21 (3) Delete section 67(6).
- 22 **18. Section 67AA amended**
- 23 (1) Delete section 67AA(1) to (3) and insert:
24
25 (1) A person commits an offence if the person fails to
26 comply with a requirement —
27 (a) to undergo a driver assessment; or
28 (b) to allow a prescribed sample taker to take a
29 sample of the person's blood for analysis under
30 section 66B(1); or

- 1 (c) to accompany a police officer to a place and to
2 wait at that place under section 66B(1).

3 Penalty for this subsection:

- 4 (a) for a first offence —

5 (i) a fine of not less than 34 PU or more
6 than 75 PU; and

7 (ii) the court convicting the person must, in
8 any event, order that the person be
9 disqualified from holding or obtaining a
10 driver's licence for a period of not less
11 than 10 months;

- 12 (b) for a second offence —

13 (i) a fine of not less than 63 PU or more
14 than 105 PU or imprisonment for
15 9 months; and

16 (ii) the court convicting the person must, in
17 any event, order that the person be
18 disqualified from holding or obtaining a
19 driver's licence for a period of not less
20 than 30 months;

- 21 (c) for a subsequent offence —

22 (i) a fine of not less than 63 PU or more
23 than 150 PU or imprisonment for
24 18 months; and

25 (ii) the court convicting the person must, in
26 any event, order that the person be
27 permanently disqualified from holding
28 or obtaining a driver's licence.

- 29 (2) A person who commits an offence against
30 subsection (1) may be arrested without warrant.
31

s. 19

1 (2) In section 67AA(4):

2 (a) delete “subsection (3),” and insert:

3

4 subsection (1),

5

6 (b) delete “section 63 or 64AB or section 67 as in force
7 after the coming into operation of section 16 of the *Road
8 Traffic Amendment Act (No. 2) 1982* shall” and insert:

9

10 section 63, 64AB, 67 or 67AD(6) must

11

12 Note: The heading to amended section 67AA is to read:

13 **Failure to comply with s. 66A or 66B requirement to do driver
14 assessment, provide blood sample or accompany police officer**

15 **19. Section 67AB amended**

16 (1) Delete section 67AB(1) to (3) and insert:

17

18 (1) A person, other than a person to whom section 68A(3)
19 applies, commits an offence if the person fails to
20 comply with a requirement made by a police officer —

21 (a) to provide a sample of oral fluid under
22 section 66D; or

23 (b) to allow a sample of blood to be taken under
24 section 66E; or

25 (c) to accompany a police officer to a place and to
26 wait at that place under section 66D or 66E.

27 Penalty for this subsection:

28 (a) for a first offence, a fine of not more than
29 25 PU;

30 (b) for a second or subsequent offence —

31 (i) a fine of not less than 25 PU or more
32 than 40 PU; and

1 (ii) the court convicting the person must, in
2 any event, order that the person be
3 disqualified from holding or obtaining a
4 driver's licence for a period of not less
5 than 6 months.

6 (2) A person who commits an offence against
7 subsection (1) may be arrested without warrant.
8

9 (2) In section 67AB(4):

10 (a) delete "subsection (3)," and insert:
11

12 subsection (1),
13

14 (b) delete "section 64AC or 67AA or section 67 as in force
15 after the coming into operation of section 16 of the *Road*
16 *Traffic Amendment Act (No. 2) 1982* shall" and insert:
17

18 section 63, 64AB, 64AC, 64B, 64C, 67, 67AA, 67AC or
19 67AD must
20

21 Note: The heading to amended section 67AB is to read:

22 **Failure to comply with s. 66D or 66E requirement to provide oral**
23 **fluid, blood sample or accompany police officer**

s. 20

20. Sections 67AC to 67AE inserted

After section 67AB insert:

67AC. Failure to comply with drug test requirement for certain persons with any blood alcohol content

(1) In this section —

requirement means a requirement made by a police officer to a person to do one or more of the following —

- (a) allow a sample of blood to be taken under section 66B or 66E;
- (b) provide a sample of oral fluid under section 66D;
- (c) accompany the police officer to a place and to wait at that place under section 66B, 66D or 66E.

(2) A person commits an offence if —

- (a) the person has provided a sample of their breath for analysis under section 66(2) and it appears to a police officer based on the analysis of the samples that the person has any blood alcohol content; and
 - (b) either —
 - (i) section 64A(1) applies to the person; or
 - (ii) the person is driving or attempting to drive a vehicle to which section 64A(4) applies;
- and
- (c) the police officer makes a requirement of the person; and
 - (d) the person fails to comply with the requirement.

- 1 Penalty for this subsection:
- 2 (a) for a first offence —
- 3 (i) a fine of not less than 12 PU or more
- 4 than 38 PU; and
- 5 (ii) the court convicting the person must, in
- 6 any event, order that the person be
- 7 disqualified from holding or obtaining a
- 8 driver's licence for a period of not less
- 9 than 3 months;
- 10 (b) for a second or subsequent offence —
- 11 (i) a fine of not less than 38 PU or more
- 12 than 60 PU; and
- 13 (ii) the court convicting the person must, in
- 14 any event, order that the person be
- 15 disqualified from holding or obtaining a
- 16 driver's licence for a period of not less
- 17 than 9 months.
- 18 (3) For the purposes of subsection (2), a previous
- 19 conviction for an offence against subsection (4) or
- 20 section 63, 64, 64AA, 64AB, 64B, 67, 67AA, 67AB or
- 21 67AD is taken to be a previous offence against
- 22 subsection (2).
- 23 (4) A person commits an offence if —
- 24 (a) the person has provided a sample of their breath
- 25 for analysis under section 66(2) and it appears
- 26 to a police officer that the person has a blood
- 27 alcohol content of or above 0.02 g of alcohol
- 28 per 100 ml of blood; and
- 29 (b) either —
- 30 (i) section 64A(1) applies to the person; or

s. 20

- 1 (ii) the person is driving or attempting to
2 drive a vehicle to which section 64A(4)
3 applies;
4 and
5 (c) the police officer makes a requirement of the
6 person; and
7 (d) the person fails to comply with the requirement.
8 Penalty for this subsection:
9 (a) for a first offence —
10 (i) a fine of not less than 12 PU or more
11 than 38 PU; and
12 (ii) the court convicting the person must, in
13 any event, order that the person be
14 disqualified from holding or obtaining a
15 driver's licence for a period of not less
16 than 6 months;
17 (b) for a second or subsequent offence —
18 (i) a fine of not less than 38 PU or more
19 than 60 PU; and
20 (ii) the court convicting the person must, in
21 any event, order that the person be
22 disqualified from holding or obtaining a
23 driver's licence for a period of not less
24 than 10 months.
25 (5) For the purposes of subsection (4), a previous
26 conviction for an offence against section 63, 64, 64AA,
27 64AB, 64B, 67, 67AA, 67AB or 67AD is taken to be a
28 previous offence against subsection (4).

1 **67AD. Failure to comply with drug test requirement for**
2 **persons with blood alcohol content of or above 0.05**

3 (1) In this section —

4 ***requirement*** means a requirement made by a police
5 officer to a person to do one or more of the
6 following —

- 7 (a) allow a sample of blood to be taken under
8 section 66B or 66E;
- 9 (b) provide a sample of oral fluid under
10 section 66D;
- 11 (c) accompany the police officer to a place and to
12 wait at that place under section 66B, 66D or
13 66E.

14 (2) A person commits an offence if —

- 15 (a) the person has provided a sample of their breath
16 for analysis under section 66(2) and it appears
17 to a police officer based on the analysis of the
18 samples that the person has a blood alcohol
19 content that is of or above 0.05 g of alcohol per
20 100 mL of blood; and
- 21 (b) the police officer makes a requirement of the
22 person; and
- 23 (c) the person fails to comply with the requirement.

24 Penalty for this subsection:

- 25 (a) a fine of not less than the minimum fine or
26 more than the maximum fine in the Table;
27 and
- 28 (b) the court convicting the person must, in any
29 event, order that the person be disqualified
30 from holding or obtaining a driver's licence
31 for not less than the minimum period of
32 disqualification in the Table.

s. 20

Table

Blood alcohol content (g/100 ml)		First offence	Second offence	Subsequent offence
≥ 0.05 but < 0.07	Min: Max: Disq:	None 38 PU 3 months	38 PU 60 PU 9 months	38 PU 60 PU 12 months
≥ 0.07	Min: Max: Disq:	None 38 PU 3 months	38 PU 60 PU 12 months	38 PU 60 PU 15 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) For the purposes of subsection (2), a previous conviction for an offence against subsection (4) or (6) or section 63, 64AB, 64B, 67 or 67AA is taken to be a previous offence against subsection (2).
- (4) A person commits an offence if —
- (a) the person has provided a sample of their breath for analysis under section 66(2) and it appears to a police officer that the person has a blood alcohol content that is of or above 0.08 g of alcohol per 100 mL of blood; and
 - (b) the police officer makes a requirement of the person; and
 - (c) the person fails to comply with the requirement.

Penalty for this subsection:

- (a) a fine of not less than the minimum fine or more than the maximum fine in the Table; and
- (b) the court convicting the person must, in any event, order that the person be disqualified

from holding or obtaining a driver's licence
for not less than the minimum period of
disqualification in the Table.

Table

Blood alcohol content (g/100 ml)		First offence	Second offence	Subsequent offence
≥ 0.08 but < 0.09	Min: Max: Disq:	23 PU 68 PU 9 months	48 PU 68 PU 12 months	48 PU 68 PU 15 months
≥ 0.09 but < 0.11	Min: Max: Disq:	26 PU 68 PU 11 months	51 PU 68 PU 15 months	51 PU 68 PU 20 months
≥ 0.11 but < 0.13	Min: Max: Disq:	30 PU 68 PU 12 months	54 PU 90 PU 21 months	54 PU 90 PU 26 months
≥ 0.13	Min: Max: Disq:	35 PU 68 PU 14 months	72 PU 113 PU 27 months	72 PU 135 PU 42 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(5) For the purposes of subsection (4), a previous conviction for an offence against subsection (6) or section 63, 64AB, 64B(3), 67 or 67AA is taken to be a previous offence against subsection (4).

(6) A person commits an offence if —

- (a) the person has provided a sample of their breath for analysis under section 66(2) and it appears to a police officer that the person has a blood alcohol content of or above 0.15 g of alcohol per 100 ml of blood; and

s. 20

- 1 (b) the police officer makes a requirement of the
2 person; and
- 3 (c) the person fails to comply with the requirement.
- 4 Penalty for this subsection:
- 5 (a) for a first offence, if the person has been
6 previously convicted of an offence against
7 section 64 —
- 8 (i) a fine of not less than 48 PU and not
9 more than 113 PU; and
- 10 (ii) the court convicting the person must, in
11 any event, order that the person be
12 disqualified from holding or obtaining a
13 driver's licence for a period of not less
14 than the minimum period of
15 disqualification that would apply if the
16 offence were against section 64 instead
17 of this section;
- 18 (b) for a first offence, if the person has been
19 previously convicted of an offence against
20 section 64B(3), or offences against
21 sections 64 and 64B(3) —
- 22 (i) a fine of not less than 72 PU and not
23 more than 113 PU; and
- 24 (ii) the court convicting the person must, in
25 any event, order that the person be
26 disqualified from holding or obtaining a
27 driver's licence for a period of not less
28 than the minimum period of
29 disqualification that would apply if the
30 offence were against section 64B(3)
31 instead of this section;

- 1 (c) for a first offence, in any other case —
- 2 (i) a fine of not less than 41 PU or more
- 3 than 113 PU; and
- 4 (ii) the court convicting the person must, in
- 5 any event, order that the person be
- 6 disqualified from holding or obtaining a
- 7 driver's licence for a period of not less
- 8 than 15 months;
- 9 (d) for a second offence —
- 10 (i) a fine of not less than 95 PU or more
- 11 than 158 PU or imprisonment for
- 12 9 months; and
- 13 (ii) the court convicting the person must, in
- 14 any event, order that the person be
- 15 disqualified from holding or obtaining a
- 16 driver's licence for a period of not less
- 17 than 42 months;
- 18 (e) for a subsequent offence —
- 19 (i) a fine of not less than 95 PU or more
- 20 than 225 PU or imprisonment for
- 21 18 months; and
- 22 (ii) the court convicting the person must, in
- 23 any event, order that the person be
- 24 permanently disqualified from holding
- 25 or obtaining a driver's licence.
- 26 (7) For the purposes of subsection (6), a previous
- 27 conviction for an offence against section 63, 64AB, 67
- 28 or 67AA is taken to be a previous offence against
- 29 subsection (6).

s. 21

- 1 **67AE. Provisions for s. 67AC and 67AD**
- 2 (1) A person who commits an offence against
- 3 section 67AC or 67AD may be arrested without
- 4 warrant.
- 5 (2) A person charged with an offence against
- 6 section 67AC or 67AD may, instead of being convicted
- 7 of that offence, be convicted of —
- 8 (a) an offence against section 67, 67AA or 67AB;
- 9 or
- 10 (b) another offence against section 67AC or 67AD.
- 11 (3) It is a defence to a prosecution for an offence against
- 12 section 67AC or 67AD if the accused satisfies the court
- 13 that there was some substantial reason for the
- 14 accused’s failure to comply other than a desire to avoid
- 15 providing information that might be used as evidence.
- 16 (4) For the purposes of sections 67AC and 67AD, an
- 17 offence is a second or subsequent offence against those
- 18 sections irrespective of the blood alcohol content on
- 19 the occasion of the commission of any previous
- 20 offence against those sections.
- 21

22 **21. Section 67A amended**

- 23 (1) In section 67A(1) delete “67(2), 67AA(2) or 67AB(2),” and
- 24 insert:
- 25

26 67(1), 67AA(1), 67AB(1), 67AC or 67AD,

27

- 1 (2) In section 67A(2):
- 2 (a) delete “his” and insert:
- 3
- 4 their
- 5
- 6 (b) delete “analysis or in the collection of a sample of a
- 7 person’s urine for analysis.” and insert:
- 8
- 9 analysis.
- 10
- 11 (3) In section 67A(3):
- 12 (a) in paragraph (a) delete “6 PU or more than 16 PU; and,
- 13 in any event, the court convicting that person shall order
- 14 that he” and insert:
- 15
- 16 9 PU or more than 24 PU; and the court convicting that
- 17 person must, in any event, order that the person
- 18
- 19 (b) in paragraph (b) delete “12 PU or more than 28 PU; and,
- 20 in any event, the court convicting that person shall order
- 21 that he” and insert:
- 22
- 23 18 PU or more than 42 PU; and the court convicting that
- 24 person must, in any event, order that the person
- 25
- 26 (4) In section 67A(4) delete “him against section 63, 64, 64AB, 67,
- 27 67AA or 67AB shall” and insert:
- 28
- 29 the person against section 63, 64, 64AB, 64AC, 64B(3), 67,
- 30 67AA, 67AB or 67AD(4) or (6) must
- 31

s. 22

1 (5) In section 67A(5) delete “shall be a defence to a prosecution for
2 an offence against this section if the accused satisfies the court
3 that there was some substantial reason for his” and insert:
4

5 is a defence to a prosecution for an offence against this section
6 if the accused satisfies the court that there was some substantial
7 reason for the accused’s
8

9 (6) In section 67A(6):

10 (a) delete “his breath for a preliminary test it shall be a
11 defence to the prosecution if the accused satisfies the
12 court that he complied, in accordance with section 66,
13 with a requirement mentioned in section 67(2)(a) or
14 67(2)(b)” and insert:
15

16 their breath for a preliminary test it is a defence to the
17 prosecution if the accused satisfies the court that they
18 complied, in accordance with section 66, with a
19 requirement mentioned in paragraph (a) or (b) of the
20 definition of *requirement* in section 67(1)
21

22 (b) in paragraph (a) delete “his” and insert:
23

24 the accused’s
25

26 **22. Section 68A amended**

27 (1) In section 68A(4) delete “20 PU.” and insert:
28

29 50 PU.
30

31 (2) Delete section 68A(6).

1 **23. Section 68 amended**

2 (1) In section 68(1) delete “his breath for analysis the analysis
3 shall” and insert:

4
5 the person’s breath for analysis the analysis must
6

7 (2) Delete section 68(1a) to (5).

8 (3) In section 68(6):

9 (a) delete “shall be operated by an authorised person and
10 shall” and insert:

11
12 must be operated by an authorised person and must
13

14 (b) delete “self-testing”.

15 (4) In section 68(7) delete “his” (each occurrence) and insert:

16
17 the person’s
18

19 (5) In section 68(8):

20 (a) delete “shall be the analysis” and insert:

21
22 is the analysis
23

24 (b) delete “shall be deemed” and insert:

25
26 is deemed
27

s. 24

1 (6) In section 68(9) delete “shall” and insert:

2

3 must

4

5 (7) In section 68(11):

6 (a) delete “his” (each occurrence) and insert:

7

8 the person’s

9

10 (b) delete “shall” and insert:

11

12 must

13

14 (8) Delete section 68(12) and insert:

15

16 (12) For the purposes of subsection (11), an analysis of a
17 sample of breath will be regarded as having failed only
18 if the analysis is made by breath analysing equipment
19 and the breath analysing equipment does not indicate a
20 result in the prescribed manner.

21

22 Note: The heading to amended section 68 is to read:

23 **Analysis of breath sample**

24 **24. Section 69 amended**

25 (1) In section 69(1):

26 (a) delete “shall” (1st and 2nd occurrence) and insert:

27

28 must

29

1 (b) delete “shall be deemed” and insert:

2

3 is deemed

4

5 (2) In section 69(1a) delete “regulations —” and insert:

6

7 regulations or otherwise in a proper manner —

8

9 (3) In section 69(2):

10 (a) delete “shall be the analysis” and insert:

11

12 is the analysis

13

14 (b) delete “shall be deemed” and insert:

15

16 is deemed

17

18 Note: The heading to amended section 69 is to read:

19 **Taking and analysis of blood sample**

20 **25. Section 69A deleted**

21 Delete section 69A.

22 **26. Section 69B amended**

23 (1) In section 69B(1) delete “shall” (each occurrence) and insert:

24

25 must

26

s. 27

- 1 (2) After section 69B(3) insert:
- 2
- 3 (4) Subject to subsection (5), if the approved device does
- 4 not indicate a result in the prescribed manner at the
- 5 conclusion of the analysis, a police officer may again
- 6 require the person to provide a sample of oral fluid for
- 7 drug testing under section 66D(1).
- 8 (5) If the person has provided 2 samples of oral fluid for
- 9 analysis under section 66D(1) and the analysis of each
- 10 sample has failed, the person must not be required to
- 11 provide another sample of oral fluid for analysis under
- 12 section 66D(1).
- 13 (6) For the purposes of subsection (5) an analysis of a
- 14 sample of oral fluid will be regarded as having failed
- 15 only if the analysis is made by an approved device
- 16 and —
- 17 (a) the device is determined not to be in proper
- 18 working order; or
- 19 (b) the device does not indicate a positive or
- 20 negative result.
- 21

22 Note: The heading to amended section 69B is to read:

23 **Taking of oral fluid sample**

24 **27. Section 70A amended**

25 In section 70A(1) delete “blood, urine or oral fluid delivered to

26 the Chemistry Centre (WA) on behalf of a person under

27 section 69(2B), 69A(3)” and insert:

28

29 blood or oral fluid delivered to the Chemistry Centre (WA) on

30 behalf of a person under section 69(2B)

31

1 Note: The heading to amended section 70A is to read:

2 **Delivery of person's blood or oral fluid sample to Chemistry**
3 **Centre (WA)**

4 **28. Section 70B amended**

5 In section 70B(1) delete "64AB or 64AC," and insert:

6

7 64AB, 64AC, 64B or 64C,

8

9 Note: The heading to amended section 70B is to read:

10 **Evidence of delivery of blood or oral fluid samples**

11 **29. Section 70 amended**

12 (1) In section 70(1):

13 (a) delete "64A or 64AAA," and insert:

14

15 64A, 64AAA, 64B or 64C,

16

17 (b) delete "he" and insert:

18

19 the person

20

21 (c) delete paragraph (c);

22 (d) in paragraph (ca) delete "self-testing".

23 (2) In section 70(2):

24 (a) delete paragraph (ba);

25 (b) in paragraph (bb)(ii) delete "him and that apparatus was
26 self-testing" and insert:

27

28 the authorised person and that apparatus was

29

s. 29

- 1 (c) in paragraph (bb)(iii) delete “him in the prescribed
2 manner and that the regulations relating to analysis by
3 self-testing” and insert:
4
5 the authorised person in the prescribed manner and that
6 the regulations relating to analysis by
7
8 (d) in paragraph (bb)(vi) and (vii) delete “he” (each
9 occurrence) and insert:
10
11 the authorised person
12
13 (e) in paragraph (c) delete “him” and insert:
14
15 the technologist
16
17 (3) Delete section 70(2a) and (3) and insert:
18
19 (3) In any proceeding for an offence against a provision
20 mentioned in subsection (1), evidence by an authorised
21 person of any of the following is prima facie evidence
22 of that fact —
23 (a) the apparatus operated by the authorised person
24 pursuant to section 68 was breath analysing
25 equipment;
26 (b) breath analysing equipment was operated by
27 the authorised person in the prescribed manner
28 and the regulations relating to analysis by
29 breath analysing equipment of the relevant type
30 were complied with;
31 (c) breath analysing equipment indicated a result in
32 the prescribed manner on the occasion of its
33 operation.
34

- 1 (4) In section 70(3a):
2 (a) delete “section 62C or 64AC,” and insert:
3
4 section 62C, 64AC, 64B or 64C,
5
6 (b) delete “he” and insert:
7
8 the person
9
10 (c) delete paragraph (b);
11 (d) in paragraph (c) delete “or urine”.
12 (5) In section 70(3b):
13 (a) in paragraph (b) delete “him” and insert:
14
15 the technologist
16
17 (b) delete paragraphs (c) and (e);
18 (c) in paragraph (f)(i) delete “blood, urine” and insert:
19
20 blood
21
22 (6) In section 70(3c) delete “section 67(2)(a)” and insert:
23
24 section 67 in relation to a requirement to provide a sample of
25 the person’s breath for analysis under section 66, 67AC, 67AD
26
27 (7) In section 70(3d) delete “section 67A(1)” and insert:
28
29 section 67AC, 67AD, 67A(1)
30

s. 29

- 1 (8) In section 70(4) delete “shall” and insert:
2
3 is to
4
- 5 (9) In section 70(5) and (5a) delete “shall” (each occurrence) and
6 insert:
7
8 must
9
- 10 (10) In section 70(5c) to (5e) delete “shall not be adduced, and if
11 adduced shall not be admitted, in any proceedings other than
12 proceedings for an offence against section 67AB, 67A or 68A.”
13 and insert:
14
15 must not be adduced, and if adduced must not be admitted, in
16 any proceedings other than proceedings for an offence against
17 section 67AB, 67AC, 67AD, 67A, 68A or 71BA.
18
- 19 (11) In section 70(6):
20 (a) delete “his” and insert:
21
22 the person’s
23
24 (b) delete “shall” (each occurrence) and insert:
25
26 must
27
28 (c) after “67AA,” insert:
29
30 67AC, 67AD,
31

1 **30. Section 71 amended**

2 In section 71(2) delete “64A or 64AAA” and insert:

3

4 64A, 64AAA, 64B, 64C, 67AC or 67AD

5

6 Note: The heading to amended section 71 is to read:

7 **Evidence of blood alcohol content for particular offences**

8 **31. Section 71A amended**

9 (1) Delete section 71A(1) and insert:

10

11 (1) In this section —

12 *sample* means a sample of blood or oral fluid taken
13 from or provided by a person (the *subject*) and given to
14 a police officer under section 69 or 69B.

15

16 (2) In section 71A(2) delete the Penalty and insert:

17

18 Penalty for this subsection: imprisonment for 12 months.

19

20 **32. Section 71B amended**

21 (1) In section 71B(1) delete “64AAA or 64AB,” and insert:

22

23 64AAA, 64AB, 64AC, 64B or 64C,

24

25 (2) In section 71B(8) delete the Penalty and insert:

26

27 Penalty for this subsection: a fine of 12 PU.

28

s. 33

1 Note: The heading to amended section 71B is to read:
2 **Police powers for preventing use of vehicle by alleged offender**

3 **33. Section 71BA inserted**

4 After section 71B insert:
5

6 **71BA. Police officer may prohibit person from driving for**
7 **24 hours if prescribed illicit drug present in oral**
8 **fluid**

9 (1) A police officer may personally give a person a notice
10 (a *prohibition notice*) prohibiting the person from
11 driving a motor vehicle for 24 hours if, when the notice
12 is given —

13 (a) the person has provided a sample of oral fluid
14 that has been tested under section 66D(4)(b)
15 and it appears to the authorised drug tester
16 conducting the test that the test indicates that a
17 prescribed illicit drug is present in the person's
18 oral fluid; or

19 (b) each of the following apply —

- 20 (i) the person has undergone a preliminary
21 oral fluid test and it appears to a police
22 officer that the test indicates that the
23 person's oral fluid contains a prescribed
24 illicit drug;
- 25 (ii) the police officer is precluded from
26 requiring the person to provide a sample
27 of oral fluid by section 66D(3)(b);
- 28 (iii) the police officer requires the person to
29 allow a prescribed sample taker to take
30 the person's blood for analysis under
31 section 66E;

32 or

- 1 (c) each of the following apply —
- 2 (i) the person has undergone a preliminary
- 3 oral fluid test and it appears to a police
- 4 officer that the test indicates that the
- 5 person's oral fluid contains a prescribed
- 6 illicit drug;
- 7 (ii) the person is not required to provide
- 8 another sample of oral fluid for analysis
- 9 under section 69B(5);
- 10 or
- 11 (d) the person refuses or fails to undergo a test
- 12 having been required to do so under
- 13 section 66C, 66D or 66E.
- 14 (2) The prohibition notice must —
- 15 (a) specify the grounds on which the notice is
- 16 given, including when and where subsection (1)
- 17 applies to the person; and
- 18 (b) contain a statement to the effect that because
- 19 the person has been given the notice, the person
- 20 must not drive a motor vehicle for a period
- 21 commencing on receipt of the notice and
- 22 ending 24 hours after receipt of the notice; and
- 23 (c) specify when the person receives the
- 24 prohibition notice and when the 24-hour period
- 25 ends.
- 26 (3) A person who has been given a prohibition notice
- 27 under this section must not contravene the notice.
- 28 Penalty for this subsection:
- 29 (a) for a first offence, a fine of 25 PU;
- 30 (b) for a second or subsequent offence, a fine of
- 31 40 PU.
- 32

s. 34

34. Section 71C amended

(1) In section 71C(1):

(a) in paragraph (a) delete “committed an offence under section 63 or 64 (the *alleged offence*); or” and insert:

done either of the following (the *alleged conduct*) —

(i) committed an offence against section 63;

(ii) driven or attempted to drive a motor vehicle while having a blood alcohol content of or above 0.08 g of alcohol per 100 ml of blood;

or

(b) in paragraph (b) delete “section 67” and insert:

section 67 or 67AD(4) or (6)

(2) In section 71C(4):

(a) in paragraphs (c) and (d) delete “committed; and” and insert:

committed or alleged conduct occurred; and

(b) in paragraph (e) after “offence” insert:

or alleged conduct

- 1 (c) delete paragraph (f) and insert:
2
3 (f) identify the offence, or offences, that the
4 alleged offender is suspected of committing.
5
6 (3) In section 71C(6):
7 (a) delete paragraph (a) and insert:
8
9 (a) if the alleged offender engaged in alleged
10 conduct, more than 10 days after the later of —
11 (i) the day of the alleged conduct; or
12 (ii) if a sample of the alleged offender's
13 blood was taken under section 66 in
14 connection with the alleged conduct, the
15 day on which a police officer receives
16 an analysis result of the sample;
17 or
18
19 (b) in paragraph (b) delete “section 67,” and insert:
20
21 section 67 or 67AD(4) or (6),
22

23 **35. Section 71E amended**

- 24 In section 71E(1):
25 (a) in paragraph (a) delete “the offence” and insert:
26
27 an offence
28

s. 36

- 1 (b) in paragraph (b) delete “the offence to which the notice
2 relates has not been laid within 10 days” and insert:
3
4 an offence to which the notice relates has not been laid
5 within 1 month
6
7 (c) in paragraph (c) delete “the offence” and insert:
8
9 an offence
10
- 11 **36. Section 71H amended**
12 In section 71H(1) delete “the offence” and insert:
13
14 an offence
15
- 16 **37. Section 72 amended**
17 (1) In section 72(1):
18 (a) in paragraph (a) delete “blood, urine” and insert:
19
20 blood
21
22 (b) in paragraph (aa) delete “urine and”;
23 (c) in paragraph (ac) delete “blood, urine” and insert:
24
25 blood
26
27 (d) in paragraph (b) delete “equipment, other than
28 self-testing breath analysing equipment,” and insert:
29
30 equipment
31

1 (e) in paragraph (d) delete “his blood or collecting a sample
2 of his urine and those payable in respect of the analysis
3 of a sample of blood by an analyst, or a sample of blood,
4 urine” and insert:

5
6 their blood and those payable in respect of the analysis
7 of a sample of blood by an analyst, or a sample of blood
8

9 (2) Delete section 72(2a).

10 (3) In section 72(3A) delete “subsections (2) and (2a) —” and
11 insert:

12
13 subsection (2) —
14

15 **38. Section 72A deleted**

16 Delete section 72A.

17 **39. Section 106 amended**

18 (1) In section 106(3):

19 (a) in paragraph (a) delete “section 63 or 67; or” and insert:

20
21 section 63, 67 or 67AD(6); or
22

23 (b) in paragraph (b) delete “section 64” and insert:

24
25 section 64, 64B(3), 67AD(4)
26

s. 40

1 (2) In section 106(4)(b) and (5)(b) delete “section 63 or 67,” and
2 insert:

3

4 section 63, 67 or 67AD(6),
5

6

6 **40. Section 110A inserted**

7 At the end of Part VIII insert:
8

9

9 **110A. Transitional provision for the Road Traffic**
10 **Amendment (Impaired Driving and Penalties)**
11 **Act 2019**

12 (1) In this section —

13 *commencement day* means the day the *Road Traffic*
14 *Amendment (Impaired Driving and Penalties) Act 2019*
15 section 17 comes into operation.

16 (2) This section applies if —

17 (a) before the commencement day —

18 (i) a person (the *first person*), other than a
19 person to whom section 68A(3) applies,
20 has been involved in an incident
21 occasioning the grievous bodily harm or
22 bodily harm to another person (the
23 *second person*); and

24 (ii) a requirement is made of the first person
25 under section 67(3a) as in force before
26 the commencement day; and

27 (iii) the person failed to comply with the
28 requirement;

29 and

30 (b) on or after the commencement day, the second
31 person dies.

- 1 (3) The first person may be charged, convicted or
2 sentenced under section 67(3) as in force on or after the
3 commencement day.
4

5 **41. Section 111 amended**

- 6 (1) Delete section 111(1) and insert:
7

- 8 (1) The Governor may make regulations —
9 (a) for any purpose for which regulations are
10 contemplated or required by this Act and may
11 make all such other regulations as may, in the
12 Governor’s opinion, be necessary or convenient
13 for giving full effect to the provisions of, and
14 for the due administration of, this Act, for the
15 equipment and use of vehicles and for the
16 regulation of traffic, generally; and
17 (b) to regulate or prohibit, or anything that is
18 necessary or convenient to be prescribed to
19 regulate or prohibit —
20 (i) using a vehicle with a device attached
21 to, or removed from, the vehicle; and
22 (ii) using or possessing a device while a
23 person is within or on a vehicle.
24

- 25 (2) In section 111(2) delete “subsection (1),” and insert:
26

27 subsection (1)(a),
28

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Part 3 — Amendments to other Acts

Division 1 — *Criminal Investigation Act 2006* amended

42. Act amended

This Division amends the *Criminal Investigation Act 2006*.

43. Section 28 amended

In section 28(2) delete “section 66.” and insert:

section 66, 66B, 66D or 66E.

44. Section 135 amended

In section 135(2)(b) delete “section 66,” and insert:

section 66, 66B, 66D or 66E,

Division 2 — *Cross-border Justice Act 2008* amended

45. Act amended

This Division amends the *Cross-border Justice Act 2008*.

46. Section 43 amended

In section 43(3)(c) delete “section 68(4)(a)” and insert:

section 68(8)

Division 3 — *Road Traffic (Authorisation to Drive) Act 2008* amended

3 **47. Act amended**

4 This Division amends the *Road Traffic (Authorisation to Drive)*
5 *Act 2008*.

6 **48. Section 5A amended**

7 In section 5A(1) in the definition of *alcohol offence*
8 paragraph (c) delete “blood, breath or urine” and insert:

10 blood or breath

12 **49. Section 19 amended**

13 (1) In section 19 delete the definitions of:

14 *prescribed offence*

15 ***RTA s. 64***

(2) In section 19 in the definition of *driver's licence held: a person* paragraph (b) delete “suspended;” and insert:

19 suspended.

21 Note: The heading to amended section 19 is to read:

22 **Term used: driver's licence held: a person**

50. Section 28 amended

In section 28(2):

(a) delete paragraphs (a) to (c) and insert:

- (a) within 4 months after the applicant has been disqualified —
 - (i) on conviction of an offence that is a second or subsequent offence against the *Road Traffic Act 1974* section 63; or
 - (ii) under the *Road Traffic Act 1974* section 64AB(2)(b) or (c); or
 - (iii) on conviction of an offence that is a second or subsequent offence against the *Road Traffic Act 1974* section 67, 67AA(1) or 67AD(6);

or

- (b) if the applicant has previously been convicted of an offence under the *Road Traffic Act 1974* section 64, 64B(3), 67AD(4) or 67A — within 3 months after the applicant has been disqualified —
 - (i) on conviction of an offence that is a first offence against the *Road Traffic Act 1974* section 63; or
 - (ii) under the *Road Traffic Act 1974* section 64AB(2)(a); or
 - (iii) on conviction of an offence that is a first offence against the *Road Traffic Act 1974* section 67, 67AA(1) or 67AD(6);

or

- (c) within 3 months after the applicant has been disqualified under the *Road Traffic Act 1974*

1 section 64(2)(b), 64B(3) or 67AD(4) after a
2 third or subsequent conviction of that offence;
3 or
4

5 (b) delete paragraphs (e) and (f) and insert:
6

7 (e) within 2 months after the applicant has been
8 disqualified under the *Road Traffic Act 1974*
9 section 64(2)(b), 64B(3) or 67AD(4) after a
10 second conviction of that offence; or

11 (f) if the applicant has previously been convicted
12 of an offence under the *Road Traffic Act 1974*
13 section 67A or 67AD(4) — within 2 months
14 after the applicant has been disqualified under
15 the *Road Traffic Act 1974* section 64(2)(b) or
16 64B(3); or
17

18 **Division 4 — *Young Offenders Act 1994* amended**

19 **51. Act amended**

20 This Division amends the *Young Offenders Act 1994*.

21 **52. Schedule 1 amended**

22 In Schedule 1 item 3 relating to the *Road Traffic Act 1974*:

23 (a) after the row relating to s. 64A insert:
24

s. 64B	Driving with blood alcohol content of or above 0.05g/100ml with prescribed illicit drug in oral fluid or blood
--------	---

s. 64C	Certain persons driving with any blood alcohol content with prescribed illicit drug in oral fluid or blood
--------	--

Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019

Part 3 Amendments to other Acts

Division 4 Young Offenders Act 1994 amended

s. 52

1 (b) after the row relating to s. 67AB insert:

2

s. 67AC	Failure to comply with drug test requirement for certain persons with any blood alcohol content
---------	---

s. 67AD	Failure to comply with drug test requirement for persons with blood alcohol content of or above 0.05g/100ml
---------	--

3

4
