

New South Wales

# Road Transport Legislation (Breath Testing and Analysis) Bill 2007

## Explanatory note

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

This Bill is cognate with the *Road Transport (General) Amendment (Heavy Vehicle User Charges) Bill 2007*.

## Overview of Bill

Currently in New South Wales, the concentration of alcohol revealed by a breath test or breath analysis is required to be measured by reference to the amount of alcohol in grammes in 100 millilitres of blood.

The National Measurement Institute has developed a new standard for evidential breath analysers. See NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*. This Standard provides for the concentration of alcohol revealed by new breath measuring devices to be measured by reference to the amount of alcohol in grammes in 210 litres of exhaled breath.

An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood. For example, a concentration of alcohol of 0.05 grammes can be expressed either by reference to alcohol in 210 litres of breath or 100 millilitres of blood.

The objects of this Bill are:

- (a) to amend the *Road Transport (Safety and Traffic Management) Act 1999* and other legislation permitting breath testing or breath analysis to enable the concentration of alcohol revealed by a breath sample to be expressed in terms of the amount of alcohol in grammes in 210 litres of breath (as well as by reference to alcohol in 100 millilitres of blood for older breath measuring devices), and
- (b) to make consequential amendments to certain other legislation.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, subject to certain exceptions. Schedule 1 [14] and [15] commence on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Road Transport (Safety and Traffic Management) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to certain other legislation set out in Schedules 2 and 3.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Road Transport (Safety and Traffic Management) Act 1999**

**Schedule 1** amends the *Road Transport (Safety and Traffic Management) Act 1999*:

- (a) to enable the concentration of alcohol revealed by a breath test or breath analysis to be measured by reference to alcohol in the breath as well as in the blood, and
- (b) to enable the approval of breath analysing instruments and other breath testing devices that provide readings of alcohol concentration by reference to exhaled breath rather than blood, and
- (c) to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of other legislation dealing with breath testing or analysis**

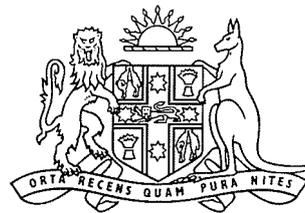
**Schedule 2** makes comparable amendments to those made by Schedule 1 to other Acts and Regulations that provide for the determination of concentrations of alcohol by breath testing or breath analysis. The following Acts and Regulations are amended:

- (a) the *Children (Detention Centres) Act 1987* and *Children (Detention Centres) Regulation 2005*,
- (b) the *Crimes (Administration of Sentences) Act 1999* and *Crimes (Administration of Sentences) Regulation 2001*,
- (c) the *Marine Safety Act 1998*,
- (d) the *Passenger Transport Act 1990* and *Passenger Transport (Drug and Alcohol Testing) Regulation 2004*,
- (e) the *Police Act 1990* and *Police Regulation 2000*,
- (f) the *Rail Safety Act 2002* and *Rail Safety (Drug and Alcohol Testing) Regulation 2003*.

## **Schedule 3      Consequential amendment of legislation**

**Schedule 3** makes amendments to various Acts and Regulations that are consequential on the amendments made by Schedules 1 and 2.





New South Wales

# Road Transport Legislation (Breath Testing and Analysis) Bill 2007

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New South Wales

# Road Transport Legislation (Breath Testing and Analysis) Bill 2007

No. , 2007

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## **A Bill for**

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* and certain other legislation with respect to the measurement of concentrations of alcohol in breath samples.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Road Transport Legislation (Breath Testing and Analysis) Act 2007</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on a day or days to be appointed by proclamation, subject to subsections (2) and (3).	6 7
(2) Schedule 1 [14] and [15] commence on the date of assent to this Act.	8
(3) If a single day is appointed for the commencement of Schedule 1 to this Act and that day is earlier than the day on which Schedule 1 [6] to the <i>Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007</i> commences, Schedule 1 [1] to this Act is taken to commence on the day on which Schedule 1 [6] to the other Act commences.	9 10 11 12 13 14
<b>3 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20</b>	15 16
The <i>Road Transport (Safety and Traffic Management) Act 1999</i> is amended as set out in Schedule 1.	17 18
<b>4 Amendment of other legislation</b>	19
The Acts and Regulations specified in Schedules 2 and 3 are amended as set out in those Schedules.	20 21
<b>5 Repeal of Act</b>	22
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	23 24
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	25 26

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<b>Schedule 1</b>	<b>Amendment of Road Transport (Safety and Traffic Management) Act 1999</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 8A Prescribed concentrations of alcohol (as inserted by the Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007 No 61)</b>	4
		5
		6
	Insert “210 litres of breath or” before “100 millilitres of blood” wherever occurring.	7
		8
<b>[2]</b>	<b>Section 8B</b>	9
	Insert after section 8A (if that section has been inserted) or after section 8 (if section 8A has not yet been inserted):	10
		11
	<b>8B Measurement of alcohol concentrations</b>	12
	(1) For the purposes of this Part, the concentration of alcohol present in a person’s breath or blood may be expressed as follows:	13
		14
	(a) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the breath—the amount of alcohol in grammes in 210 litres of breath,	15
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	(b) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the blood—the amount of alcohol in grammes in 100 millilitres of blood,	20
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		24
	(c) in the case of a sample of blood—the amount of alcohol in grammes in 100 millilitres of blood.	25
		26
	(2) An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood.	27
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	(3) Accordingly, any offence under this Part relating to the presence of a specified concentration of alcohol in a person’s breath or blood at the time of the occurrence of a particular event is a single offence regardless of whether the concentration of alcohol concerned is measured by reference to the amount of alcohol present in breath or in blood (or both).	31
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<b>[3]</b>	<b>Section 9 Presence of prescribed concentration of alcohol in person's breath or blood</b>	1 2
	Insert "breath or" before "blood" wherever occurring.	3
<b>[4]</b>	<b>Section 10 Alternative verdicts for lesser offences</b>	4
	Insert "breath or" before "blood" wherever occurring.	5
<b>[5]</b>	<b>Section 11 Presence of higher concentration of alcohol not defence</b>	6
	Omit "present in the defendant's blood" and "100 millilitres of the defendant's blood" wherever occurring.	7 8
	Insert instead "present in the defendant's breath or blood" and "210 litres of breath or 100 millilitres of blood", respectively.	9 10
<b>[6]</b>	<b>Section 11A Defence for offence relating to novice range prescribed concentration of alcohol</b>	11 12
	Insert "breath or" before "blood".	13
<b>[7]</b>	<b>Section 14 Arrest following failed breath test</b>	14
	Omit "person's blood" and "100 millilitres of the blood" wherever occurring.	15
	Insert instead "person's breath or blood" and "210 litres of breath or 100 millilitres of blood", respectively.	16 17
<b>[8]</b>	<b>Section 15 Breath analysis following arrest</b>	18
	Omit "person's blood" and "100 millilitres of blood" from section 15 (3) (a).	19
	Insert instead "person's breath or blood" and "210 litres of breath or 100 millilitres of blood", respectively.	20 21
<b>[9]</b>	<b>Section 16 Offence—wilfully altering alcohol concentration following request for breath test or breath analysis</b>	22 23
	Insert "breath or" before "blood".	24
<b>[10]</b>	<b>Section 32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9</b>	25 26
	Insert "breath or" before "blood" where firstly occurring in section 32 (1).	27
<b>[11]</b>	<b>Section 32 (2)</b>	28
	Omit "person's blood" and "blood at the time concerned" wherever occurring.	29
	Insert instead "person's breath or blood" and "breath or blood at the time concerned", respectively.	30 31

<b>[12] Section 32 (2)</b>	1
Omit “100 millilitres of the defendant’s blood” wherever occurring.	2
Insert instead “210 litres of breath or 100 millilitres of blood”.	3
<b>[13] Section 33 Certificate evidence about breath or blood analysis in proceedings for offences under section 9</b>	4
Omit section 33 (1) (e). Insert instead:	5
(e) a concentration of alcohol determined by that breath analysing instrument and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood was present in the breath or blood of that person on the day and at the time stated in the certificate, and	6
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<b>[14] Schedule 2 Savings, transitional and other provisions</b>	12
Insert at the end of clause 1 (1):	13
<i>Road Transport Legislation (Breath Testing and Analysis) Act 2007</i>	14
	15
<b>[15] Schedule 2, Part 8</b>	16
Insert at the end of the Schedule:	17
<b>Part 8 Provisions consequent on enactment of Road Transport Legislation (Breath Testing and Analysis) Act 2007</b>	18
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<b>13 Definitions</b>	21
In this Part:	22
<i>amended legislation</i> means any Act or Regulation that is amended by the amending Act.	23
	24
<i>amending Act</i> means the <i>Road Transport Legislation (Breath Testing and Analysis) Act 2007</i> .	25
	26
<b>14 Certificate evidence preserved</b>	27
Any certificate issued under any amended legislation before that legislation was amended by the amending Act that states the concentration of alcohol in a person’s blood continues to be as effectual as it was before the legislation’s amendment (including for the purposes of evidence in any proceedings).	28
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<b>15</b>	<b>Approval of certain breath measuring devices</b>	1
(1)	Any instrument or other device that was a duly approved breath analysing instrument or breath testing device for the purposes of any amended legislation immediately before the legislation was amended by the amending Act continues to be a duly approved instrument or device for the purposes of the legislation as amended.	2 3 4 5 6 7
(2)	An instrument that measures the concentration of alcohol present in a person's breath by reference to grammes of alcohol in a volume of breath (instead of grammes of alcohol in a volume of blood) may be approved for the purposes of the definition of <i>breath analysing instrument</i> in clause 1 of the Dictionary during the pre-commencement period as if Schedule 1 [16] to the amending Act had commenced.	8 9 10 11 12 13 14
(3)	A device that measures the concentration of alcohol present in a person's breath by reference to grammes of alcohol in a volume of breath (instead of grammes of alcohol in a volume of blood) may be approved for the purposes of the definition of <i>breath test</i> in clause 1 of the Dictionary during the pre-commencement period as if Schedule 1 [16] to the amending Act had commenced.	15 16 17 18 19 20 21
(4)	Any approval given as provided by subclause (2) or (3) during the pre-commencement period is taken to have effect for the purposes of this Act on and from the commencement of Schedule 1 [16] to the amending Act as if it had been approved on that commencement.	22 23 24 25 26
(5)	In this clause: <i>pre-commencement period</i> means the period commencing on the the date of assent to the amending Act and ending at the end of the day immediately before the day on which Schedule 1 [16] to that Act commences.	27 28 29 30 31
<b>[16]</b>	<b>Dictionary</b>	32
	Insert "breath or" before "blood" wherever occurring in the definitions of <i>breath analysing instrument</i> , <i>breath analysis</i> and <i>breath test</i> in clause 1.	33 34
<b>[17]</b>	<b>Dictionary, clause 1</b>	35
	Insert "210 litres of breath or" before "100 millilitres of blood" wherever occurring in the definitions of <i>high range prescribed concentration of alcohol</i> , <i>low range prescribed concentration of alcohol</i> , <i>middle range prescribed concentration of alcohol</i> , <i>novice range prescribed concentration of alcohol</i> and <i>special range prescribed concentration of alcohol</i> .	36 37 38 39 40

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<b>Schedule 2</b>	<b>Amendment of other legislation dealing with breath testing or analysis</b>	1
		2
	(Section 4)	3
<b>2.1</b>	<b>Children (Detention Centres) Act 1987 No 57</b>	4
<b>[1]</b>	<b>Section 37I Definitions</b>	5
	Insert “breath or” before “blood” wherever occurring in the definitions of <i>breath analysing instrument</i> , <i>breath analysis</i> and <i>breath test</i> .	6 7
<b>[2]</b>	<b>Section 37I (2)</b>	8
	Insert at the end of section 37I:	9
	(2) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of this Division and the regulations in the same way as it applies for the purposes of Part 2 of that Act.	10 11 12 13 14 15
<b>2.2</b>	<b>Children (Detention Centres) Regulation 2005</b>	16
<b>[1]</b>	<b>Clause 51B Evidence as to presence of alcohol or intoxicating substance</b>	17 18
	Insert “breath or” before “blood” in clause 51B (1) (c).	19
<b>[2]</b>	<b>Clause 84A Interpretation</b>	20
	Insert “210 litres of breath or” before “100 millilitres of blood” in the definition of <i>prescribed concentration of alcohol</i> in clause 84A (1).	21 22
<b>[3]</b>	<b>Clause 84A (3)</b>	23
	Insert “breath or” before “blood”.	24
<b>[4]</b>	<b>Clause 84C Juvenile justice officers must not have prescribed concentration of alcohol in breath or blood</b>	25 26
	Insert “breath or” before “blood”.	27
<b>[5]</b>	<b>Clause 84G Breath testing and breath analysis of juvenile justice officers</b>	28
	Omit “officer’s blood” and “100 millilitres of blood” wherever occurring in clause 84G (1)–(3).	29 30
	Insert instead “officer’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	31 32

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<b>[6] Clause 84L Certificate evidence of concentration of alcohol in breath or blood determined by breath test or breath analysis</b>	1 2
Omit “in the blood”, “officer’s blood” and “100 millilitres of blood” wherever occurring.	3 4
Insert instead “in the breath or blood”, “officer’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	5 6
<b>[7] Clause 84T Interfering with results of test</b>	7
Insert “breath or” before “blood”.	8
<b>2.3 Crimes (Administration of Sentences) Act 1999 No 93</b>	9
<b>[1] Section 236E Definitions</b>	10
Insert “breath or” before “blood” wherever occurring in the definitions of <i>breath analysing instrument</i> , <i>breath analysis</i> and <i>breath test</i> .	11 12
<b>[2] Section 236E (2)</b>	13
Insert at the end of section 236E:	14
(2) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of this Division and the regulations in the same way as it applies for the purposes of Part 2 of that Act.	15 16 17 18 19 20
<b>2.4 Crimes (Administration of Sentences) Regulation 2001</b>	21
<b>[1] Clause 147 Evidence as to presence of alcohol or intoxicating substance</b>	22
Insert “breath or” before “blood” in clause 147 (1) (c).	23
<b>[2] Clause 178 Detainees to be sober</b>	24
Omit “detainee’s blood” and “100 millilitres” from clause 178 (2).	25
Insert instead “detainee’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	26 27
<b>[3] Clause 249A Interpretation</b>	28
Insert “210 litres of breath or” before “100 millilitres of blood” in the definition of <i>prescribed concentration of alcohol</i> in clause 249A (1).	29 30
<b>[4] Clause 249A (3)</b>	31
Insert “breath or” before “blood”.	32

<b>[5] Clause 249D Correctional staff must not have prescribed concentration of alcohol in breath or blood</b>	1 2
Insert “breath or” before “blood”.	3
<b>[6] Clause 249H Breath testing and breath analysis of members of correctional staff</b>	4 5
Omit “staff member’s blood” and “100 millilitres of blood” wherever occurring in clause 249H (1)–(3).	6 7
Insert instead “staff member’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	8 9
<b>[7] Clause 249M Certificate evidence of concentration of alcohol in breath or blood determined by breath test or breath analysis</b>	10 11
Omit “in the blood”, “staff member’s blood” and “100 millilitres of blood” wherever occurring.	12 13
Insert instead “in the breath or blood”, “staff member’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	14 15
<b>[8] Clause 249U, heading</b>	16
Insert “breath or” before “blood”.	17
<b>[9] Clause 249AA Interfering with results of test</b>	18
Insert “breath,” before “blood”.	19
<b>[10] Dictionary</b>	20
Insert “breath or” before “blood” in the definition of <i>breath test</i> .	21
<b>2.5 Marine Safety Act 1998 No 121</b>	22
<b>[1] Section 22 Prescribed concentrations of alcohol</b>	23
Insert “210 litres of breath or” before “100 millilitres of blood” wherever occurring.	24 25
<b>[2] Section 22 (2)</b>	26
Insert at the end of section 22:	27
(2) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of this Part and Schedule 1 in the same way as it applies for the purposes of Part 2 of that Act.	28 29 30 31 32 33

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<b>[3] Section 24 Operating vessel with prescribed concentration of alcohol in breath or blood</b>	1 2
Insert “breath or” before “blood” wherever occurring in section 24 (1A), (1) and (3)–(5).	3 4
<b>[4] Section 24 (2)</b>	5
Omit “100 millilitres of blood is present in the person’s blood”.	6
Insert instead “210 litres of breath or 100 millilitres of blood is present in the person’s breath or blood”.	7 8
<b>[5] Section 24A Defence for offence relating to youth range prescribed concentration of alcohol</b>	9 10
Insert “breath or” before “blood”.	11
<b>[6] Schedule 1 Alcohol and drugs—breath analysis and related matters</b>	12
Insert “breath or” before “blood” in clause 3 (1) (a).	13
<b>[7] Schedule 1, clause 4 (1)</b>	14
Omit “100 millilitres of blood may be present in the person’s blood” wherever occurring.	15 16
Insert instead “210 litres of breath or 100 millilitres of blood may be present in the person’s breath or blood”.	17 18
<b>[8] Schedule 1, clause 4 (4) (a)</b>	19
Omit “person’s blood” and “100 millilitres of blood”.	20
Insert instead “person’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	21 22
<b>[9] Schedule 1, clause 13</b>	23
Insert “breath,” before “blood” where firstly occurring.	24
<b>[10] Schedule 1, clause 15 Certificate evidence of concentration of alcohol in breath or blood determined by breath analysis</b>	25 26
Omit “in the blood”, “defendant’s blood” and “100 millilitres of blood” wherever occurring in clause 15 (1)–(3).	27 28
Insert instead “in the breath or blood”, “defendant’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	29 30

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<b>2.6 Passenger Transport Act 1990 No 39</b>	1
<b>[1] Schedule 5 Transport safety employees—alcohol or other drugs</b>	2
Insert “breath or” before “blood” in clause 3 (1) (i).	3
<b>[2] Schedule 5, clause 3 (2)</b>	4
Insert “breath,” before “blood”.	5
<b>[3] Schedule 5, clause 3 (3)</b>	6
Insert after clause 3 (2):	7
(3) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of the regulations in the same way as it applies for the purposes of Part 2 of that Act.	8 9 10 11 12 13
<b>2.7 Passenger Transport (Drug and Alcohol Testing) Regulation 2004</b>	14 15
<b>[1] Clause 3 Definitions</b>	16
Insert “210 litres of breath or” before “100 millilitres of blood” in the definition of <i>prescribed concentration of alcohol</i> in clause 3 (1).	17 18
<b>[2] Clause 5 Offence—carrying out transport safety work with prescribed concentration of alcohol in breath or blood</b>	19 20
Insert “breath or” before “blood”.	21
<b>[3] Clause 11 Breath analysis of transport safety employees following breath testing etc</b>	22 23
Omit “employee’s blood” and “100 millilitres of blood” wherever occurring in clause 11 (1) (a) and (4).	24 25
Insert instead “employee’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	26 27
<b>[4] Clause 21 Interfering with results of test</b>	28
Insert “breath,” after “employee’s” wherever occurring.	29

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<b>[5] Clause 24 Certificate evidence of concentration of alcohol in breath or blood determined by breath analysis</b>	1
	2
Omit “in the blood”, “defendant’s blood” and “100 millilitres of blood” wherever occurring in clause 24 (1)–(3).	3
	4
Insert instead “in the breath or blood”, “defendant’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	5
	6
<b>[6] Clause 28 Effect of positive test</b>	7
Omit “100 millilitres of the employee’s blood” from clause 28 (1) (a).	8
Insert instead “210 litres of breath or 100 millilitres of blood”.	9
<b>2.8 Police Act 1990 No 47</b>	10
<b>[1] Section 211A Testing of police officers for alcohol and prohibited drugs</b>	11
Insert after section 211A (5):	12
(5A) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of this section and the regulations in the same way as it applies for the purposes of Part 2 of that Act.	13
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	18
<b>[2] Section 211A (6) (b) and definition of “breath test” in section 211A (7)</b>	19
Insert “breath or” before “blood” wherever occurring.	20
<b>2.9 Police Regulation 2000</b>	21
<b>[1] Clause 47 Definitions</b>	22
Insert “breath or” before “blood” wherever occurring in the definitions of <i>breath analysing instrument</i> , <i>breath analysis</i> and <i>breath test</i> .	23
	24
<b>[2] Clause 47, definition of “prescribed concentration of alcohol”</b>	25
Insert “210 litres of breath or” before “100 millilitres of blood”.	26
<b>[3] Clauses 49 (2), 51 (1), 52 (1) (a), 53 (1) (a), 56 (2), 58 (3) (a) and 59</b>	27
Insert “breath or” before “blood” wherever occurring.	28

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<b>[4] Clause 61 Breath analysis of police officers following positive breath testing</b>	1 2
Omit “officer’s blood” and “100 millilitres of blood” wherever occurring in clause 61 (1) and (4) (a).	3 4
Insert instead “officer’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	5 6
<b>[5] Clause 65 Interfering with results of test</b>	7
Insert “, breath” after “hair” wherever occurring.	8
<b>2.10 Rail Safety Act 2002 No 96</b>	9
<b>[1] Schedule 1 Railway employees—alcohol or other drugs</b>	10
Insert “breath or” before “blood” in clause 2 (1) (i).	11
<b>[2] Schedule 1, clause 2 (2)</b>	12
Insert “breath,” before “blood”.	13
<b>[3] Schedule 1, clause 2 (3)</b>	14
Insert after clause 2 (2):	15
(3) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> applies in relation to the measurement of the concentration of alcohol in a person’s breath or blood for the purposes of the regulations in the same way as it applies for the purposes of Part 2 of that Act.	16 17 18 19 20 21
<b>2.11 Rail Safety (Drug and Alcohol Testing) Regulation 2003</b>	22
<b>[1] Clause 3 Definitions</b>	23
Insert “breath or” before “blood” in the definition of <i>breath test</i> in clause 3 (1).	24
<b>[2] Clause 3 (1), definition of “prescribed concentration of alcohol”</b>	25
Insert “210 litres of breath or” before “100 millilitres of blood”.	26
<b>[3] Clause 5 Offence—carrying out railway safety work with prescribed concentration of alcohol in breath or blood</b>	27 28
Insert “breath or” before “blood”.	29
<b>[4] Clause 7 Double jeopardy</b>	30
Insert “breath or” before “blood” in clause 7 (1) (a).	31

Road Transport Legislation (Breath Testing and Analysis) Bill 2007

Schedule 2 Amendment of other legislation dealing with breath testing or analysis

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<b>[5] Clause 11 Breath analysis of railway employees following breath testing</b>	1
Insert “breath or” before “blood” in clause 11 (1) (a).	2
<b>[6] Clause 11 (4) (a)</b>	3
Omit “employee’s blood” and “100 millilitres of blood”.	4
Insert instead “employee’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	5 6
<b>[7] Clause 20A Failure to conduct test</b>	7
Insert “breath or” before “blood” in clause 20A (a).	8
<b>[8] Clause 21 Interfering with results of test</b>	9
Insert “breath,” before “blood” where firstly occurring in clause 21 (1).	10
<b>[9] Clause 21 (2)</b>	11
Insert “breath,” before “blood” where firstly occurring.	12
<b>[10] Clause 24 Certificate evidence of concentration of alcohol in breath or blood determined by breath analysis</b>	13 14
Omit “in the blood”, “defendant’s blood” and “100 millilitres of blood” wherever occurring in clause 24 (1)–(3).	15 16
Insert instead “in the breath or blood”, “defendant’s breath or blood” and “210 litres of breath or 100 millilitres of blood”, respectively.	17 18
<b>[11] Clause 28 Effect of positive test</b>	19
Omit “100 millilitres of the employee’s blood” from clause 28 (1) (a).	20
Insert instead “210 litres of breath or 100 millilitres of blood”.	21
<b>[12] Clause 29 Notification of drug and alcohol testing</b>	22
Insert “breath or” before “blood” wherever occurring in clause 29 (1) (d) and (e).	23 24
<b>[13] Clause 29 (1) (h)</b>	25
Insert “breath,” before “blood” where firstly occurring.	26

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<b>Schedule 3</b>	<b>Consequential amendment of legislation</b>	1
	(Section 4)	2
<b>3.1</b>	<b>Ambulance Services Regulation 2005</b>	3
	<b>Clause 15 Definitions</b>	4
	Insert “breath or” before “blood” in paragraph (c) (i) of the definition of <i>traffic offence</i> in clause 15 (1).	5 6
<b>3.2</b>	<b>Casino Control Regulation 2001</b>	7
	<b>Schedule 6 Applied provisions of Liquor Act 1982 as modified</b>	8
	Insert “breath or” before “blood” wherever occurring in section 97 (1) and (3) of the <i>Liquor Act 1982</i> (as set out in that Schedule).	9 10
<b>3.3</b>	<b>Children’s Services Regulation 2004</b>	11
	<b>Clause 5 Meaning of “notifiable offence”</b>	12
	Insert “breath or” before “blood” in clause 5 (2) (a).	13
<b>3.4</b>	<b>Chiropractors Regulation 2007</b>	14
	<b>Clause 8 Excluded offences</b>	15
	Insert “breath or” before “blood” in clause 8 (3) (g).	16
<b>3.5</b>	<b>Crimes Act 1900 No 40</b>	17
<b>[1]</b>	<b>Section 52A Dangerous driving: substantive matters</b>	18
	Insert “breath or” before “blood” in section 52A (7) (a).	19
<b>[2]</b>	<b>Section 52A (9), definition of “prescribed concentration of alcohol”</b>	20
	Insert “210 litres of breath or” before “100 millilitres of blood”.	21
<b>[3]</b>	<b>Section 52AA Dangerous driving: procedural matters</b>	22
	Insert “breath or” before “blood” in section 52AA (1).	23
<b>[4]</b>	<b>Section 52AA (7), definition of “prescribed concentration of alcohol”</b>	24
	Insert “210 litres of breath or” before “100 millilitres of blood”.	25
<b>[5]</b>	<b>Section 52B Dangerous navigation: substantive matters</b>	26
	Insert “breath or” before “blood” in section 52B (7) (a).	27

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<b>[6] Section 52B (9), definition of “prescribed concentration of alcohol”</b>	1
Insert “210 litres of breath or” before “100 millilitres of blood”.	2
<b>[7] Section 52BA Dangerous navigation: procedural matters</b>	3
Insert “breath or” before “blood” in section 52BA (1).	4
<b>[8] Section 52BA (7), definition of “prescribed concentration of alcohol”</b>	5
Insert “210 litres of breath or” before “100 millilitres of blood”.	6
<b>3.6 Dental Practice Regulation 2004</b>	7
<b>Clause 24 Excluded offences</b>	8
Insert “breath or” before “blood” in clause 24 (3) (g).	9
<b>3.7 Legal Profession Regulation 2005</b>	10
<b>Clause 4 Meaning of “excluded offence”</b>	11
Insert “breath or” before “blood” in paragraph (a) (vii) of the definition of <i>excluded offence</i> in clause 4 (1).	12 13
<b>3.8 Liquor Act 1982 No 147</b>	14
<b>Section 97 Breath analysis equipment</b>	15
Insert “breath or” before “blood” wherever occurring in section 97 (1) and (3).	16
<b>3.9 Medical Practice Regulation 2003</b>	17
<b>Clause 12 Excluded offences (offences for which notice of conviction or criminal finding not required)</b>	18 19
Insert “breath or” before “blood” in clause 12 (1) (a).	20
<b>3.10 Motor Accidents Compensation Act 1999 No 41</b>	21
<b>Section 138 Contributory negligence—generally</b>	22
Insert “breath or” before “blood” wherever occurring in section 138 (7) (a) and (d) (ii).	23 24
<b>3.11 Nurses and Midwives Regulation 2003</b>	25
<b>Clause 38A Excluded offences (offences for which notice of conviction or criminal finding not required)</b>	26 27
Insert “breath or” before “blood” in clause 38A (a).	28

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<b>3.12 Optometrists Regulation 2004</b>	1
<b>Clause 6 Excluded offences</b>	2
Insert “breath or” before “blood” in clause 6 (3) (g).	3
<b>3.13 Osteopaths Regulation 2007</b>	4
<b>Clause 8 Excluded offences</b>	5
Insert “breath or” before “blood” in clause 8 (3) (g).	6
<b>3.14 Physiotherapists Regulation 2002</b>	7
<b>Clause 21 Excluded offences</b>	8
Insert “breath or” before “blood” in clause 21 (3) (g).	9
<b>3.15 Podiatrists Regulation 2005</b>	10
<b>Clause 9 Excluded offences</b>	11
Insert “breath or” before “blood” in clause 9 (3) (g).	12
<b>3.16 Psychologists Regulation 2002</b>	13
<b>Clause 7 Excluded offences</b>	14
Insert “breath or” before “blood” in clause 7 (3) (g).	15
<b>3.17 Registered Clubs Act 1976 No 31</b>	16
<b>Section 68 Breath analysis equipment</b>	17
Insert “breath or” before “blood” wherever occurring in section 68 (1) and (3).	18
<b>3.18 Road Transport (Driver Licensing) Act 1998 No 99</b>	19
<b>Section 21C Regulations may provide for installation, maintenance and use of interlock devices</b>	20
Insert “breath or” before “blood” in section 21C (2) (c) (i).	21
	22

<b>3.19 Road Transport (Driver Licensing) Regulation 1999</b>	1
<b>[1] Clause 19A Interlock driver licences</b>	2
Omit “blood alcohol” and “100 mls of blood” from clause 19A (2) (a).	3
Insert instead “breath or blood alcohol” and “210 litres of breath or 100 millilitres of blood”, respectively.	4 5
<b>[2] Clause 28 Conditional licences</b>	6
Omit “100 mls blood” from Column 2 of the matter relating to Licence code “Z” in the Table to clause 28 (5).	7 8
Insert instead “210 litres of breath or 100 millilitres of blood”.	9
<b>3.20 Road Transport (General) Act 2005 No 11</b>	10
<b>Section 131 Meaning of qualified, fit or authorised to drive or run engine</b>	11
Insert “breath or” before “blood” in section 131 (2) (c).	12