Motor Traffic Law:

Case law update

Defences to motor traffic charges

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PROFILE

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MOTOR TRAFFIC LAW

INTRODUCTION

There are many papers about on PCA and motor traffic law, particularly plea making, so my intention in this paper is to focus firstly, on recent case law generally, and secondly, on recent case law dealing with some of the common, and not so common, defences in motor traffic matters.

PART A – CASE LAW UPDATE

1. ROAD TRANSPORT (GENERAL) ACT 2005

1.1 Section 171 - Entering private property to request details

Police (SA) v Dafov **[2007] SASC 451; (2008) 49 MVR 225. Affirmed by** ***Police (SA) v Dafov*** **[2008] SASC 247; (2008) 51 MVR 80.**

This South Australian case looked at the question of police entering private property to request details. Police officers detected the driver travelling in excess of the speed limit. They activated their siren and lights and followed the driver. She turned into her driveway. The police approached her in the driveway and she requested that they leave.

The police requested her details pursuant to s42(2) *Road Traffic Act 1961 (SA)* (an analogous provision to s 171) and she again asked them to leave. The police then attempted to arrest her and a struggle ensued. She was charged with speeding, failing to answer questions pursuant to s42(2), and resisting arrest. The latter two charges were dismissed on the basis that after she asked the police to leave, they were trespassing. It was held that section 42 did not authorise police to go onto a person's property to ask questions, that such an interpretation of the section did not render it inoperative, and that there were alternatives available – such as police using the registration of the vehicle to obtain details of the owner: *Police (SA) v Dafov* [2007] SASC 451; (2008) 49 MVR 225. Affirmed by *Police (SA) v Dafov* [2008] SASC 247; (2008) 51 MVR 80.

This case reaffirms that in the absence of express or implied consent by the owner or person in charge of a property, police entering, or remaining on, private property will be trespassing, unless their presence is authorised by common law or statute. Statutory authority to enter a person's property without consent must be clearly expressed in unmistakable and unambiguous language: *Coco v R* (1994) 179 CLR 427; 120 ALR 415. Inconvenience is insufficient to rebut the presumption that the legislature did not intend to authorise otherwise tortious conduct: *Plenty v Dillon* (1991) 171 CLR 635; 98 ALR 353.

1.2 Section 179 – Liability of responsible person for vehicle for designated offences

***Appeal of Hallacq* (2008) 7 DCLR (NSW) 15**

"Person in charge"

The registered owner of a vehicle appealed against convictions for camera recorded speeding offences on the basis that he had not driven the vehicle and had nominated a company as being in charge of it. The court held that the meaning of "the person who was in charge of the vehicle at the time the offence occurred" in s 179(4) does not include a company: *Appeal of Hallacq* (2008) 7 DCLR(NSW) 15.

The phrase has a dual meaning. It can mean the actual driver, or it can mean someone who was not the actual driver but was in charge of the vehicle in some way at the time the offence occurred. Section 179(4) does not simply require the nomination of the driver because in some instances, the responsible person will not know who the driver is. The scheme of the section is that more than one penalty notice may be issued to the end of ensuring that eventually the actual driver will be nominated and made to pay the applicable fine: *Appeal of Hallacq* (2008) 7 DCLR(NSW) 15.

Deemed liability

A person served with a penalty notice or court attendance notice for a camera recorded offence, who was not the driver of the vehicle at the relevant time, who does not nominate the person in charge of the vehicle at the time of the offence, or who does not

satisfy the authorised officer or the court that he could not with reasonable diligence have ascertained the name and address of the person who was in charge of the vehicle at the time the offence occurred, is deemed under s 179 to be guilty as the actual offender: *Appeal of Hallacq* (2008) 7 DCLR(NSW) 15.

***Einfield v R* [2008] NSWCCA; (2008) 51 MVR 200.**

Statutory declaration

Part 4 of the *Oaths Act 1900* (NSW) makes provision for statutory declarations. *Quaere* whether a statutory declaration made under the Commonwealth *Statutory Declaration Act 1959* is valid for purposes under the NSW road transport legislation: see s 6 *Statutory Declaration Act 1959* (Cth) and *Einfield v R* [2008] NSWCCA 215 at [36].

Section does not derogate from any other law

It cannot be said that road transport legislation has primacy over other laws in relation to offences that are expressly provided for within each of the road transport Acts. Thus the Crown is not precluded from prosecuting someone who is alleged to have provided a false statutory declaration for the purposes of s 179(4) for an offence under s 319 of the *Crimes Act 1900* (perverting the course of justice) or under s 25 of the *Oaths Act 1900* (making a false declaration). It is not confined merely to the specific offence available under s179(7). The choice of whether to charge an offence of greater or lesser severity involves an exercise of prosecutorial discretion. However the court held that the "course of justice" for the purpose of the offence under s 319 does not encompass police

investigations or investigations of other public officials charged with applying and enforcing the laws of the State. Thus five counts under s 319, founded upon allegations of false statutory declarations being provided to the Infringement Processing Bureau, were quashed. Applying the principle of statutory interpretation of an assumption against extending the scope of a penal statute, perverting the course of justice was held to the narrow interpretation of applying only to the administration of the civil and criminal law by courts and tribunals: *Einfield v R* [2008] NSWCCA 215.

1.3 Section 198 – Habitual traffic offenders – relevant offences

Director of Public Prosecutions (NSW) v Dewes **[2008] NSWSC 1141**

"Relevant offence"

This case was an appeal from the dismissal of a drive while disqualified charge in the Local Court. At the time of the offence the driver's licence was disqualified pursuant to s 199 (the habitual offender declaration). The three offences that lead to the habitual offender declaration included two PCAs and the offence of drive while unlicensed, never having held a licence, on a second occasion within the period of five years from an earlier offence (an offence under s25(3) of the *Road Transport (Driver Licensing) Act 1998*). A question arose as to whether the latter offence was a "relevant offence". The Magistrate found that since s 25(3) did not create any offence, its inclusion as a "relevant offence" in s 198 was an error.

The Supreme Court held that fact that s25(3) of the *Road Transport (Driver Licensing) Act 1998* does not create any offence does not mean that it is not a "relevant offence" for the purposes of s 198. It is an extreme step to interpret a statute as containing a meaningless provision. Section 198(1)(a)(iii) is a reference to a second or subsequent offence of the kind described in s 25(2) of the *Road Transport (Driver Licensing) Act 1998*. The word "under" in subpara 198(1)(a)(iii) is an ordinary word of wide and general attribution.

1.4 Section 202 – Habitual Offenders – Quashing of declaration

Damaris v Falzon **[2009] NSWSC 18**

"Court that convicts" - jurisdiction

The driver was convicted of drive while disqualified in the Local Court. The Court made no specific order pursuant to the habitual traffic offender provisions. The driver had the relevant offences to make s 199 applicable to him. He lodged a severity appeal in the District Court and, amongst other orders, the Court reduced the period of disqualification as a statutory habitual offender to two years.

Four years later the driver made an application in the Local Court to quash the declaration as an habitual offender. The Magistrate determined that there was no jurisdiction in the Local Court and referred the papers to the District Court. The matter then came before the District Court which determined that the earlier order it had made was without power and, because it considered the District Court had no jurisdiction, refused the application.

The Supreme Court held that, as it was the Local Court that convicted the driver, it was the Local Court that had the power and jurisdiction to vary the disqualification applicable under s 199 and to quash the declaration as an habitual traffic offender. The Court so found on the basis that the driver's appeal was confined to sentencing and that the District Court did not at any stage act in a capacity of a court that imposed a conviction on him. Without finally deciding the question, it left open the possibility that the District

Court would have jurisdiction where, in deciding an appeal, it made orders the effect of which was to convict the person of the relevant offence.

***P v Te Pairi* [2008] NSWLC 17**

"The court must state its reasons"

It is not enough to merely state that the disqualification for the discrete offences is more than enough and then to proceed to quash subsequent declarations as an habitual offender. To take that approach would ignore the existence of the legislation and to effectively contribute to undermining its intended application. It would also be tantamount to offering offenders a discount for multiple offending. There must be a rationale basis for intervening to quash the declaration.

Multiple offenders - competing considerations

Whilst an offender should not "gain" from multiple offending, it must be acknowledged that the flexibility in relation to imposition of periods of disqualification in terms of applying maximum and minimum periods and in quashing entirely or reducing declarations as an habitual traffic offender must have been established by the legislature with a view to assisting Courts in bringing a flexible approach to sentencing. A relevant consideration for a sentencing court is whether an outcome where no discretion to reduce or quash is employed would crush any prospect of rehabilitation so far as the obtaining of a licence is concerned: *P v Te Pairi* [2008] NSWLC 17 (*Note:* a reference to "automatic",

rather than “maximum”, periods would have been more accurate, notwithstanding statutory automatic periods are not often increased).

1.5 Section 205 – Immediate suspension of licence

***Assan v Meredith* [2007] NTSC 12**

"Give" the person a suspension notice

The following situation arose in the Northern Territory, which has analogous legislation allowing for the police to issue immediate suspension notices disqualifying (in NSW suspending) that person from driving until the matter is dealt with at court. A person who had been arrested and placed into custody for a drink driving offence was given an immediate suspension notice. It was not given to him personally but its contents were explained to him while he was in the cell and it was placed with his property which was in the police's custody. He was subsequently released and handed back his property. At a later date he was observed driving and charged with driving while disqualified. The question that arose was whether he was "given" the notice by police. The court held that neither the oral reading nor explanation of the nature of the notice nor the placing of it in the defendant's property was sufficient to meet the requirements of the section. The notice had to be physically given to the person: *Assan v Meredith* [2007] NTSC 12.

2. ROAD TRANSPORT (SAFETY & TRAFFIC MANANGEMENT) ACT 1999

2.1 Sections 12 (DUI), 13 (Fail to undergo Breath Test), and 15 (Fail to Undergo Breath Analysis)

***Chambers v Police* (SA) [2008] SASC 160; (2008) 50 MVR 253**

DUI and refuse breath test - double jeopardy

A driver in SA was charged under analogous legislation of driving under the influence of alcohol and refusing to submit to a breath analysis. He was convicted of both offences and appealed on the ground that no conviction should have been recorded for the latter count.

The South Australian Supreme Court held that there is no double jeopardy in proceeding against a defendant for both the offence of driving under the influence and refusing to submit to a breath analysis. Although there is some common ground between the facts relied on for both offences, they nonetheless concern two distinct forms of behaviour and the two offences are quite separate. Upon a plea of guilty to one of the charges there is no obligation on the prosecution to withdraw the other: *Chambers v Police* (SA) [2008] SASC 160; (2008) 50 MVR 253.

2.2 Section 17 – When breath test/analysis not permitted

***Police v O'Brien* [2008] NSWLC 12**

"Home" – Can you have more than one?

The defendant was charged with a PCA offence. There was an objection to the admissibility of the breath analysis certificate on the basis that the breath test and arrest of the defendant occurred at his home at Bega. The defendant was 23 years old. He had lived his whole life in the family home at Bega until 2006 when he moved to Canberra and then Sydney for work. He lived in a flat in Sydney. He visited Bega from time to time and his bedroom was available to him. He had a key to the Bega house, unfettered access to it and kept some of his possessions there.

The Magistrate found that a person can have more than one "home" for the purposes of this legislation. In this case, he held that the Bega address was the defendant's "home" from the time he arrived there until the time he left: *Police v O'Brien* [2008] NSWLC 12.

Discretion to admit evidence obtained contrary to s 17

Is evidence obtained contrary to s 17 inadmissible, or does the court have a discretion to admit the evidence? The Magistrate considered that despite the divergent views amongst Supreme Court judges on the point[1], the principle appeared to have been established in *Merchant v The Queen* (1971) 121 CLR 414 where Barwick CJ said in (in the context of

[1] *DPP v Skewes* [2002] NSWSC 1008 which was for the position that no question of discretion arose. The certificate had to be rejected if it was obtained contrary to s 17. *Haberhauer v Simek* (1991) 9 Petty Sessions Review 423 was for the position that a question of discretion did arise. *DPP v Linnett* [2006] NSWSC 1086 did not reach a concluded view because the court had already concluded the breath test had not been administered at the defendant's home ("place of abode").

a challenge to the breath-testing device): “But of course if the test had been unlawfully administered, the tribunal before whom it was sought to prove its results…would be bound to consider whether or not in point of discretion in all the circumstances the evidence should be received”. The Magistrate held that the court may, subject to s 138 of the *Evidence Act 1995*, admit the evidence in the exercise of its discretion. In this case the Magistrate admitted the certificate into evidence. The Police’s inquiries led them believe the defendant’s home was in Sydney. This was not a case where they deliberately defied the law. They acted in the honest belief that the defendant was not at his home when they required him to undergo the breath test: *Police v O’Brien* [2008] NSWLC 12.

2.3 Section 25 – Police officer may require sobriety assessment

***Baulman v The Queen* (2007) 6 DCLR (NSW)**

Conscious process of assessment required

A driver was pulled over for a random breath test. A breath test was administered with a negative result. The officer smelt a strong odour of cannabis in the vehicle. He saw an extinguished cigarette butt on the floor (later analysed and found to contain cannabis). He also made a number of observations about the driver, such as blood shot eyes and slow speech. Based on these observations the driver was taken to a hospital for blood and urine samples.

The court held that there was no evidence that a formal assessment of the driver's sobriety was made. The section requires a conscious process of assessment. Simply making observations which may lead to the formation of a reasonable belief as to the state of a person's ability, as a pre-condition for requiring a person to submit to a sobriety assessment, is not itself a sobriety assessment: *Baulman v The Queen* (2007) 6 DCLR (NSW).

2.4 Section 26 – Arrest following failure to submit to (or pass) sobriety assessment

Arrest

A statement from a police officer to a driver along the lines of "We're going to have to go to Mona Vale Hospital for blood and urine samples" may not be a lawful arrest: *Baulman v The Queen* (2007) 6 DCLR (NSW).

2.5 Section 27 – Procedure for taking samples following arrest

Exclusion of test results improperly obtained

Blood and urine samples improperly or unlawfully obtained might not be admitted into evidence pursuant to s 138 of the *Evidence Act 1995* (NSW): *Baulman v The Queen* (2007) 6 DCLR (NSW).

2.6 Section 42(1) – Negligent driving

Director of Public Prosecutions (NSW) v Yeo and Anor **[2008] NSWSC 953; (2008) 51 MVR 157**

Negligence

The statutory offence of negligent driving is the successor to the negligent driving offence enacted in s 4 of the *Motor Traffic Act 1909*. The history of the offence was considered in *R v Buttsworth* (1983) 1 NSWLR 658 at 664ff.

Negligent driving is established where it is proved beyond reasonable doubt that the defendant drove a motor vehicle in a manner departing from the standard of care for other users of the road to be expected of the ordinary prudent driver in the circumstances. The distinction which may be drawn between driving negligently, driving in a manner dangerous to the public and driving of a kind which justifies a conviction for manslaughter is essentially a distinction in the degree of negligence appropriate to the offence, being a distinction in the degree of departure from the standard of care for other users of the road to be expected of the ordinary prudent driver in the circumstances: *R v Buttsworth* (1983) 1 NSWLR 658 at 672.

The provision now in s 42(3) demonstrates that the offence may be committed although there is no other traffic on the road, if other traffic might reasonably be expected to be there: *R v Buttsworth* (1983) 1 NSWLR 658 at 667ff.

To prove the offence under s42(1), it is not necessary that there be any injury to a person or damage to property: *R v Buttsworth* (1983) 1 NSWLR 658 at 667ff.

The question is essentially that as stated in *Simpson v Peat* [1952] 2 QB 24, that is, whether the driver was exercising that degree of care which the ordinary prudent driver would exercise in all the circumstances, including the circumstances as set out in s 42(3): *Director of Public Prosecutions (NSW) v Yeo and Anor* [2008] NSWSC 953 at [29].

Negligence: circumstantial case

Like any other case, a negligent driving case may depend largely or entirely on circumstantial evidence. In the absence of an admission by the driver charged, the case may fall to be determined by application of principles relevant to a circumstantial case, including the drawing of inferences from proved facts.

To establish a prima face case in a prosecution based upon circumstantial evidence, it is necessary for the prosecution to show, at the close of its case, that an inference consistent with guilt reasonably arose on the evidence. It does not have to prove that this was the only inference that arose or that there was no inference arising from the evidence inconsistent with guilt: *Director of Public Prosecutions (NSW) v Yeo and Anor* [2008] NSWSC 953 at [35]-[36].

2.7 Section 71(10) – Certificate evidence regarding speed limits

Director of Public Prosecutions (Vic) v Juchnowski **[2008] VSC 181; (2008) 50 MVR 210**

Certificate evidence regarding speed limits

The driver was charged with exceeding the speed limit and elected to take the matter to court. The prosecution tendered photographs of the driver's vehicle at the time and place of the offence that stated the applicable speed limit. The Magistrate dismissed the charge on the basis that there was no evidence of the speed limit at the time and place of the alleged offence. The basis upon which the speed limit was determined was a fact that needed to be proved.

In analysing a similar provision in Victorian legislation, the Victorian Supreme Court saw it as a facilitative provision strongly suggestive of a legislative intention that it provide a complete means of proving an applicable speed limit, without the need to prove the basis upon which the speed limit was determined. Thus the speed limit shown in the document must be accepted as being sufficient proof of the speed limit in the absence of any evidence to the contrary: *Director of Public Prosecutions (Vic) v Juchnowski* [2008] VSC 181; (2008) 50 MVR 210.

3. ROAD TRANSPORT (DRIVER LICENSING) ACT 1998

3.1 Section 14 – Demerit points register

***Shakuntala v R* [2008] NSWDC 305**

"Is convicted, or found guilty, of an offence"

Once convicted or found guilty of an offence which attracts licence demerit points, the recording of the relevant demerit points by the RTA against the offender is a mandatory administrative procedure. There is no jurisdiction for the Court dealing with an offence to quash demerit points that attach to it.

Consistent with the wording of subs (2)(a), the RTA records demerit points even if an offender is given the benefit of an order under s 10 *Crimes (Sentencing Procedure) Act 1999*: *Shakuntala v R* [2008] NSWDC 305.

3.2 Section 25A – Driving while disqualified/suspended/cancelled

***P v Te Pairi* [2008] NSWLC 17**

Driving while cancelled – categorisation of the offence

The Chief Magistrate by way of *obiter dicta* in sentencing the offender for driving whilst cancelled stated that Courts in the jurisdiction of the Local Court have long taken the view that driving whilst cancelled is less serious than driving whilst disqualified and that the latter should be punished more severely. He doubted this is a correct view of the law. He quoted *R v Dang* [2005] NSWCCA 430 at [29] "the appropriate consideration is the relevant statutory regime and maximum penalty prescribed for the offence". Thus the objective seriousness is to be measured by the maximum penalty for the offence "not by some informal grading system predicated on the Court taking greater umbrage at their orders being defied compared to that to be applied when a legislative or administrative consequence operates to cancel an offender's license [sic]": *P v Te Pairi* [2008] NSWLC 17. *Cf* the *obiter* of the majority in the Court of Appeal in *Director of Public Prosecutions v Yigit* [2008] NSWCA 226; (2008) 51 MVR 105 in relation to the offence of driving while suspended.

Director of Public Prosecutions v Yigit & Anor **[2008] NSWCA 226; (2008) 51 MVR 105**

Driving while suspended – validity of notice of suspension

A charge against the defendant of driving while suspended was dismissed in the Local Court on the basis that the driver had not been validly suspended. The RTA purported to suspend him by written notice for six months following a speeding offence. The notice informed him that he was suspended for 6 months and also that he could drive again on a certain date which, once calculated, was actually 6 months and 2 days after the suspension took effect. The Magistrate held that the notice was invalid because it specified two periods of suspension. The DPP's appeal to the Supreme Court was dismissed. The DPP then appealed to the Court of Appeal.

The Court of Appeal held that a notice of suspension that is ambiguous is not invalid where the uncertainty as to the suspension period can be resolved by construction. The question was raised, but not decided, about whether the Local Court even had any power to determine the "validity" of the notice: *Director of Public Prosecutions v Yigit & Anor* [2008] NSWCA 226; (2008) 51 MVR 105, overturning the decision in *Director of Public Prosecutions v Yigit* (2008) 49 MVR 345; [2008] NSWSC 35.

Driving while suspended – categorisation of the offence

One of the reasons why uncertainty as to the day on which the suspension terminates is insufficient to invalidate the notice as a whole is that contravention of a suspension is not a serious criminal offence, more a regulatory offence. Although it carries significant

maximum penalties, including imprisonment, the licensing of drivers of motor vehicles is a regulatory process for the protection of other road users. The importance of that purpose warrants the potential liability involving significant penalties: it does not turn a regulatory offence into a serious criminal offence: *Director of Public Prosecutions v Yigit & Anor* [2008] NSWCA 226 at [31]. In his dissenting judgment, Handley AJA at [69] categorised it as a serious criminal offence of which the suspension period is an essential element.

***Johnson v R* [2008] NSWDC 47**

"Second or subsequent offence" and "the relevant disqualification period"

The following case looked at the interrelationship between subs 6, 7 and 10 of s 25A. The defendant was convicted of driving whilst suspended. Within the previous five years he had been convicted of a drink driving matter. At issue was what relevant disqualification period under subs 10 should be applied. Subsection 7 provides that the convicted person is to be disqualified for "the relevant disqualification period". The court held that even if the new conviction was a second or subsequent offence for the purposes of subs 6, it is not all second or subsequent offences which are to be looked at in determining the relevant disqualification period under subs 10. The latter section makes it clear that it is only some second or subsequent offences which give rise to the extended disqualification period. As the new conviction was not a second or subsequent offence *under subs 1, 2 or 3(a)* the relevant disqualification period was the lesser period under subs 10(a): *Johnson v R* [2008] NSWDC 47.

***Wheeler* [2008] NSWDC 165; (2008) 7 DCLR (NSW) 271**

A different District Court judge took the opposing view and disagreed with the interpretation applied in the *Johnson* decision: *Wheeler* [2008] NSWDC 165; (2008) DCLR (NSW) 271. The resolution of different interpretations of the relevant subsections will have to await a superior court decision (or clarification through legislative amendment).

4. ROAD TRANSPORT (DRIVER LICENSING) REGULATION 2008

4.1 Clause 57 – Procedures for variation, suspension or cancellation of driver licence

Director of Public Prosecutions v Yigit & Anor **[2008] NSWCA 226; (2008) 51 MVR 105**

Does cl 57 apply to demerit points suspensions under s 16(2)?

Handley AJA (dissenting) in *obiter* noted that cl 39 (the predecessor to cl 57 in the old regulation) applies where "the Authority decides…to suspend" a person's driver licence, but in a demerit points case s 16(2) requires the Authority to act. It might be said in such cases the Authority does not "decide" and cl 39 does not apply. It was not necessary to decide the question because the notice in the instant case only took effect under s 33: *Director of Public Prosecutions v Yigit & Anor* [2008] NSWCA 226, Handley AJA (dissenting) at [54].

5. ROAD TRANSPORT (VEHICLE REGISTRATION) REGULATION 2007

5.1 Sch 1 cl 15 – Pedal cycles

Matheson v Director of Public Prosecutions **(NSW) [2008] NSWSC 550**

"Auxiliary"

The defendant appealed from her conviction of using an unregistered registerable motor vehicle contrary to s 18(1) *Road Transport (Vehicle Registration) Act* 1997. She was observed by Police riding what looked like a motor scooter. It had foot pedals similar to those on an ordinary pushbike protruding from it but at the time it was traveling about 30 kms per hour under its own power. It was not registered. The defendant claimed it was a "push bike" and she had been led to believe there was no requirement to register it. It was possible to use either electric power or the pedals to put the cycle into motion. The question arose as to whether this type of cycle fell within the exception provided for in cl 15.

The Court held that it is necessary to construe the word "auxiliary" in the context of cl 15 and the Regulation generally. The use of the word "auxiliary" raises for consideration questions concerning the nature and purpose of propulsion motors attached to the relevant pedal cycle. If the legislature had intended to provide that registration provisions did not apply to a pedal cycle to which was attached propulsion motors as long as those motors had a combined maximum power not exceeding 200 watts, the provision could have stated that simply by removing the word "auxiliary". It is relevant to have regard to the

size, shape, weight, run distance, motor power, climbing angle, speed, structure and appearance of the cycle in question in forming a conclusion. If the vehicle is, in truth, a motor scooter intended to operate primarily under motor with a back-up pedaling facility, then it would not fall within the statutory formula of a pedal cycle: *Matheson v Director of Public Prosecutions* (NSW) [2008] NSWSC 550.

PART B – RECENT CASES RELEVANT TO DEFENCES TO MOTOR TRAFFIC CHARGES

1. EVIDENCE OF ALCOHOL CONSUMPTION – CHALLENGING THE STATUTORY PRESUMPTION

Section 32 – ***Road Transport (Safety & Traffic Management) Act 1999***

Riley v Seip **[2008] ACTSC 72; (2008) MVR 488**

A defendant's evidence as to the amount of alcohol he recalled consuming as a basis for challenging the accuracy of the breath analysis is not evidence which would displace the statutory presumption, particularly where that evidence is uncorroborated: see *Riley v Seip* [2008] ACTSC 72; (2008) MVR 488.

Director of Public Prosecutions (Vic) v Mitchell **[2008] VSC 130**

Displacement of statutory presumption – "unless the defendant proves"

A Victorian Supreme Court decision on a similar statutory presumption provision s 48(1)(a) of the *Road Safety Act* 1986 (Vic) held that it unambiguously reverses the onus of proof and casts upon the defendant the burden of establishing on the balance of probabilities that at the time the offence was committed the concentration of alcohol was less than that alleged. The driver was charged, inter alia, with drink driving. The blood alcohol reading was admitted into evidence. Also admitted as part of the prosecution case was a record of interview in which the driver gave evidence that he had consumed some alcohol before riding his motorbike but also that he departed the scene of the collision

and consumed alcohol at a friend's house before a blood sample was taken. The driver did not give sworn evidence at the hearing. The Magistrate dismissed the charge on the basis that she was not persuaded beyond reasonable doubt that the driver was in excess of .05 at the time he was driving.

The Supreme Court held that if admissible evidence is led to establish a person's blood alcohol concentration, a Magistrate is bound to accept that evidence in the absence of evidence to the contrary being proved. It also held that a record of interview was a self-serving statement and could not be sufficient to displace the presumption on the balance of probabilities: *Director of Public Prosecutions (Vic) v Mitchell* [2008] VSC 130.

2. HONEST AND REASONABLE MISTAKE OF FACT

Section 9 – *Road Transport (Safety & Traffic Management) Act 1999*

Section 25A – *Road Transport (Driver Licensing) Act 1998*

Section 18 – *Road Transport (Vehicle Registration) Act 1997*

***Appeal of Francesco Mendolicchiu* [2008] NSWDC 182**

Offences under s 9 are not absolute liability offences. The defence of honest and reasonable mistake of fact is available: *DPP v Bone* (2005) 64 NSWLR 735; 158 A Crim R 215 (a case involving drink "spiking" of which the defendant was unaware). The factual scenario in *Appeal of Francesco Mendolicchiu* [2008] NSWDC 182 involved the consumption by the defendant of alcoholic drinks and cough mixture which unbeknownst to him contained alcohol. On appeal the District Court held that, having raised evidence of an honest and reasonable mistake of fact, the prosecution did not discharge the legal burden of disproving the honest and reasonable mistake beyond reasonable doubt.

***Director of Public Prosecutions v Kailahi* [2008] NSWSC 752**

In this case the accused was charged with drive while disqualified. She was aware that she was not licensed and not permitted to drive. However, she was not aware that she was a disqualified driver, an order of disqualification apparently having been made in her absence and while she was overseas. The charge was dismissed in the Local Court.

The Supreme Court held that the defence of honest and reasonable mistake of fact applies only in circumstances where, were the facts believed by the accused to be true, the accused would have been guilty of no offence: *Bergin v Stack* (1953) 88 CLR 248. Thus,

where an accused is aware that she is unlicensed and not permitted to drive, it makes no difference that she was not aware of a court order disqualifying her from driving. Even if a mistake of fact exists in such circumstances, it is a mistake as to which offence was being committed. In those circumstances, it is unnecessary for the prosecution to negative or preclude the existence of such a mistake, however reasonable or honest it may be: *Director of Public Prosecutions v Kailahi* [2008] NSWSC 752.

***Coughlan v Curran* [2008] QDC 66**

Non-receipt of notice of suspension - mistake of fact or law?

Where the driver alleges that he or she was not aware of a licence suspension due to the non-receipt of the letter notifying him or her of the change in licence status, is that a mistake of fact or a mistake of law? On the face of it the mistake is simply one of fact but the following case saw the question as one not so easily answered. The driver was served with a suspension notice by post to his last known address. This engaged the deeming provisions relating to postal service in the *Acts Interpretation Act (1954) (Qld)* (in NSW see s 76 *Interpretation Act (1987)*. Where the relevant provisions were complied with service was taken to have occurred "unless the contrary is proved". The driver's evidence was that he did not receive the letter. The court held that this is not decisive evidence of rebuttal of service. What has to be contradicted is proof of delivery, that is, the acts of addressing, prepaying and posting the letter. There is a crucial distinction between contradicting delivery and contradicting receipt. The court asked – is a belief of non-delivery consistent with the notion of deemed delivery and is the mistake in the circumstances one of law or fact. The court's view was that it was not an easy question to

answer. It held that, because service was deemed to have occurred and was not rebutted, the mistake was one of law: *Coughlan v Curran* [2008] QDC 66. In effect it appears the court is saying that the driver is deemed to know all the relevant facts that constitute the offence. In Queensland the defence of mistake of fact is a statutory one found in s 24 of the *Criminal Code 1899* (Qld). Given that the section provides that it may be excluded by "express or implied provisions of the law relating to the subject" it is clearer to see how the deemed service provisions were seen by the court as inconsistent with the application of s 24. *Quaere* the position in NSW, in the absence of any clear and unambiguous provision in NSW that deemed service of a suspension notice acts to modify or remove the common law defence of honest and reasonable mistake of fact.

The High Court has confirmed the general principle that "when an offence created by parliament carries serious penal consequences, the courts look to Parliament to spell out in clear terms any intention to make a person criminally responsible for conduct which is based on an honest and reasonable mistake" and that "if Parliament intends to abrogate that principle, it will make its intention plain by express language or necessary implication": *CTM v The Queen* [2008] HCA 25.

***Matheson v Director of Public Prosecutions* (NSW) [2008] NSWSC 550**

The driver was charged with using an unregistered registrable vehicle. The driver said that conversations she had with RTA personnel led her to believe it was legal to use the vehicle (a cycle-type vehicle that had an electric motor and pedals) without a licence or registration because its electric engine did not exceed 200 watts. Held that this was a

mistake of law, not fact: *Matheson v Director of Public Prosecutions* (NSW) [2008] NSWSC 550, applying *Ostrowski v Palmer* (2004) 218 CLR 493.

3. AUTOMATISM

Conviction Appeal – Robert James Kingston **[2008] NSWDC 86**

"Sleep driving"

A driver was charged with mid-range PCA. He had been drinking alcohol with a friend in the evening. The friend left and the driver then took a Stilnox tablet (Zolpidem) and later went to bed. It was the first time he had taken a Stilnox tablet and he received no warning of any side effects. He then remembered nothing until he found himself at the friend's house the following morning. In the meantime he had made some strange phone calls to his friend around midnight about tenants outside his premises looking for a room to rent. Not long after the driver was involved in a collision 200 metres from his house (although travelling toward, not away from his home). Witnesses saw his vehicle travelling along the wrong side of the road for some distance before colliding head on with another vehicle. At the scene he was described as unsteady, with glazed eyes and slurred speech. A breath analysis was administered and showed a reading of 0.105. A blood test undertaken later by the driver showed evidence of Stilnox in his blood. At the scene the driver was dressed only in shorts and a T-shirt with no shoes or socks. The friend gave some other evidence about the driver's bizarre behaviour when he came to pick him up from the scene.

Expert evidence was given that Zolpidem can trigger sleep driving by inducing a sleep disorder known as parasomnia and that sleep-drivers can be amnesic of the event. It was unlikely that a reading just over 0.1 would have caused a state of intoxication that would generate the bizarre behaviour exhibited by the driver immediately before and after the accident. The effect of the intoxication between Stilnox and alcohol was not a quantitative difference, but a qualitative one. There was also evidence from a Therapeutic Goods Administration report (written after the date of the offence) stating that driving whilst apparently asleep had been identified as a side effect of Zolpidem.

The court held that there was sufficient evidence that raised a reasonable possibility the act of driving was involuntary and that the prosecution case did not remove that reasonable doubt: *Conviction Appeal – Robert James Kingston* [2008] NSWDC 86, distinguishing *Russell* (1993) 70 A Crim R 17.

4. NECESSITY

Bayley v Police (SA) [2007] SASC 411

The defendant was charged with driving without due care and driving in a manner dangerous to the public. He raised the defence of necessity. There was evidence that his manner of driving was in response to threats of personal violence from occupants of another vehicle. The defendant feared for his safety and that of his passengers. The defendant was attempting to escape pursuit from the other vehicle. In doing so he rammed the other vehicle (which was the basis of the driving without care charge) and

later crossed onto the wrong side of the road colliding head-on with an oncoming vehicle (the drive manner dangerous charge).

The Full Court of the Supreme Court of South Australia considered the authorities on the defence of necessity. The defence is available to statutory offences such as driving in a manner dangerous or driving without due care. Once the defendant adduces evidence sufficient to meet the evidentiary burden, the legal burden rests on the prosecution to exclude the defence of necessity beyond reasonable doubt. The judgment provides a summary of the principles (relevant factors rather than strict elements) to be applied:

(i) The issues raised by the defence of necessity are whether an accused believed on reasonable grounds that commission of the crime charged was necessary in all the circumstances in order to remove a threat of death or serious injury to himself or another. Accordingly, there are subjective and objective considerations.

(ii) A defence of necessity can only succeed if it is reasonably possible that an accused believed on reasonable grounds that there was a threat of death or serious injury to himself or another, and that the commission of the offence with which he was charged was necessary in order to remove the threat. Further, objectively viewed, there must have been no reasonable alternative course of action open to the accused.

(iii) Assuming there was an imminent peril, a defendant must have honestly believed on reasonable grounds that it was necessary for him to do the acts which are alleged to constitute the offence in order to avoid the threatened peril. That test will, as a matter of fact, not be met if it is proved that the

conduct was disproportionate to the threat. A response is not proportionate to the threat if there are reasonable grounds for believing there were alternative courses of action available.

(iv) Each aspect of the criminal conduct must be addressed. Even if certain criminal conduct was necessary, the remainder may not be. That is because such actions may not be either proportionate or reasonable.

(v) The response must be proportionate to the danger and cannot go further. If alternatives are reasonably available, the offending is not proportionate and therefore not reasonably necessary. The threat must be imminent and operative. An accused must be afforded no reasonable opportunity for an alternative course of action which did not involve a breach of the law, or involved some lesser breach of the law. Reasonableness and proportionality has to be assessed objectively. The existence of any possible alternative courses of action is of central factual importance.

(vi) The event justifying the conduct must be imminent and operational. If the threat abates there can be no emergency, nor can an action in response be said to be reasonable or proportionate. This is an obvious limiting factual consideration on the "reasonable necessity" element.

(vii) The defence may only be expected to arise on rare occasions.

Applying the principles to the facts in this case, the court held that the defence of necessity was not made out in respect of either charge: *Bayley v Police (SA)* [2007] SASC 411.

The evidence must raise the issue of necessity before the judge can direct the jury on the defence of necessity. There is no error in refusing to leave the defence of necessity to the jury where the evidence before the jury did not provide a basis for it to be considered: *R v B* (2007) 48 MVR 429; [2007] SASC 323. The same principle would apply in summary proceedings. That is, a magistrate need not consider the defence where it is not raised by the evidence.

PART C - A FINAL POINT OF INTEREST IN DEFENDED MATTERS

(THE AFTERMATH – A SILVER LINING IF FOUND GUILTY?)

Section 10 – ***Crimes (Sentencing Procedure) Act 1999***

Matheson v DPP **(NSW) [2008] NSWSC 550**

Practitioners who might find themselves confronted with the attitude from the bench on sentence that a court "can't" give a section 10 when a client is found guilty after a defended hearing will find some comfort in this decision of the Supreme Court.

In the Local Court the Appellant was found guilty after a defended hearing of using an unregistered registrable vehicle. Her lawyer asked for a section 10 and the prosecutor did not wish to be heard on the question. However the Magistrate said if he gave a s 10 he would "fall foul of the proposition that there is no discount".

Johnson J in the Supreme Court said this was a misapplication of the concept of the discount for a plea of guilty. He repeated the proposition from *Siganto v The Queen* (1998) 194 CLR 656 that an offender is punished for the crime and not the conduct of the case. The important point is that Johnson J made it clear that "There is no statutory or common law principle which excludes an order under s 10 in circumstances where a defended hearing has taken place".

This decision is particularly valuable in the context of defended motor traffic matters because they are often run, not on disputed facts, but on technical issues, such as the interpretation of legislative provisions. If you think you have good grounds to ask for a

section 10 even if your client is found guilty after a defended hearing, it will pay to have a copy of this case handy.

PART D – SOME LIGHT RELIEF

***Rainima v Magistrate Freund* [2008] NSWSC 944**

Does the statutory driver licensing scheme breach fundamental rights?

The appellant appealed against her conviction for the offence of drive while disqualified, challenging the statutory requirements for driver licensing on the basis that she possessed a licence "pursuant to common law" and also raising a constitutional issue that the statutory requirements infringed freedom of movement. The court held that no credible challenge had been mounted against the validity of the driver licensing legislation. As driver licensing is governed entirely by statute there is no such thing as a licence "pursuant to common law": see *Rainima v Magistrate Freund* [2008] NSWSC 94

POSTSCRIPT

I hope you found this paper useful. I am happy to answer any questions that arise and accept any constructive criticism. I can be contacted at angel@selbornechambers.com.au

Nic Angelov

18 March 2009

APPENDIX – LEGISLATION EXTRACTS

1. ROAD TRANSPORT (GENERAL) ACT 2005

171 Authorised officer may require production of driver licence and name and address from driver or rider

(1) An authorised officer may, in the execution of his or her functions under the road transport legislation, require the driver or rider of a vehicle or horse to do any or all of the following:
- (a) produce his or her driver licence (in the case of the driver of a motor vehicle),
- (b) state his or her name,
- (c) state his or her home address.

(2) A person must not:
- (a) refuse to comply with a requirement of an authorised officer under subsection (1), or
- (b) state a false name or home address.

Maximum penalty: 20 penalty units.

(3) In subsection (1), a reference to a driver of a vehicle (in the case of a motor vehicle) includes, where the driver is the holder of a learner licence and the motor vehicle is not a motor cycle, a reference to a holder of a driver licence occupying the seat in or on the motor vehicle next to the driver.

179 Liability of responsible person for vehicle for designated offences

(1) **Responsible person for vehicle taken to have committed designated offences** If a designated offence occurs in relation to any registrable vehicle, the person who at the time of the occurrence of the offence is the responsible person for the vehicle is taken to be guilty of an offence under the provision concerned in all respects as if the responsible person were the actual offender guilty of the designated offence unless:
- (a) in any case where the offence is dealt with under Part 5.3-the person satisfies the authorised officer under section 183 that:
  - (i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
  - (ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender, or

(b) in any other case-the person satisfies the court hearing the proceedings for the offence that:

(i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or

(ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender.

(2) **Liability of actual offender unaffected** Nothing in this section affects the liability of the actual offender. However, if a penalty has been imposed on or recovered from any person in relation to any designated offence, no further penalty may be imposed on or recovered from any other person in relation to the offence.

(3) **When responsible person not liable for parking offence** Despite subsection (1), the responsible person for a vehicle is not guilty of a parking offence by the operation of that subsection if:

(a) in any case where such an offence is dealt with under Part 5.3-the responsible person:

(i) within 21 days after service on the responsible person of a penalty notice alleging that the responsible person has been guilty of such offence, supplies by statutory declaration to the authorised officer under section 183 the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or

(ii) satisfies the authorised officer that the responsible person did not know and could not with reasonable diligence have ascertained the name and address, or

(b) in any other case-the responsible person:

(i) within 21 days after service on the responsible person of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or

(ii) satisfies the court hearing the proceedings for the offence that the responsible person did not know and could not with reasonable diligence have ascertained the name and address.

(4) **Duty to inform if person not driver of vehicle committing camera recorded offence** A person who:

(a) is served with a penalty notice or a court attendance notice in respect of a camera recorded offence, and

(b) was not the driver of the vehicle to which the offence relates at the time the offence occurred,

must, within 21 days after service of the notice, supply by statutory declaration to the authorised officer under section 183 (in the case of a penalty notice) or the

prosecutor (in the case of a court attendance notice) the name and address of the person who was in charge of the vehicle at the time the offence occurred.

(5) For the purposes of subsections (3) and (4), it is presumed that a penalty notice served on a person by post is served on the person 21 days after it is posted, unless the person establishes that it was not received by the person, or was not received by the person within the 21-day period.

(6) **Offence-failure to comply with subsection (4)** A person must comply with subsection (4) unless the person satisfies:

(a) in the case of a penalty notice-the authorised officer, or

(b) in the case of a court attendance notice-the court dealing with the camera recorded offence, or

(c) in either case-the court dealing with the offence of failing to comply with subsection (4),

that he or she did not know and could not with reasonable diligence have ascertained that name and address.

Maximum penalty:

(a) if the offence relates to a vehicle registered otherwise than in the name of a natural person-20 penalty units, or

(b) in any other case-5 penalty units.

(7) **Offence-false nomination of person in charge of vehicle** A person must not, in a statutory declaration supplied under subsection (4), falsely nominate another person as the person who was in charge of the vehicle at the time the offence occurred.

Maximum penalty:

(a) if the offence relates to a vehicle registered otherwise than in the name of a natural person-10 penalty units, or

(b) in any other case-5 penalty units.

(7A) A court or authorised officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of subsection (3), (4) or (7), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person in charge of a vehicle.

(7B) If a statutory declaration is provided by a person under subsection (7A), it must include the matters (if any) prescribed by the regulations.

(8) **When responsible person for vehicle not liable for camera recorded offence** A person who is served with a penalty notice or a court attendance notice in respect of a camera recorded offence is not guilty of that offence by operation of this section if the person:

(a) complies with subsection (4) in relation to the offence, or

(b) satisfies the authorised officer (in the case of a penalty notice) or the court (in the case of a court attendance notice) that he or she did not know and could not with reasonable diligence have ascertained the name and address of the person who was in charge of the vehicle at the time the offence occurred.

(9) **Statutory declaration is admissible and is prima facie evidence** A statutory declaration under subsection (3), (4) or (7A), if produced in any proceedings against the person named in the declaration and in respect of the designated offence concerned, is admissible and is prima facie evidence:

(a) in the case of a statutory declaration relating to a parking offence-that the person was in charge of the vehicle at all relevant times relating to the parking offence, or

(b) in the case of a statutory declaration relating to a camera recorded offence-that the person was the driver of the vehicle at the time the offence occurred.

(10) **Statutory declaration to relate to one designated offence** A statutory declaration that relates to more than one designated offence does not constitute a statutory declaration under, or for the purposes of, subsection (3) or (4).

(11) **Section does not derogate from any other law** The provisions of this section are in addition to and not in derogation of any other provisions of this or any other Act.

(12) **Definitions** In this section:

"camera recorded offence" means:

(a) a public transport lane offence as defined in section 57B of the *Road Transport (Safety and Traffic Management) Act 1999* in respect of which the penalty notice or the summons indicates that the offence was detected by an approved traffic lane camera device (within the meaning of that Act), or

(b) a traffic light offence as defined in section 57 of the *Road Transport (Safety and Traffic Management) Act 1999* in respect of which the penalty notice or the summons indicates that the offence was detected by an approved camera detection device (within the meaning of that Act), or

(c) a speeding offence in respect of which the penalty notice or the summons indicates that the offence was detected by an approved speed measuring device and recorded by an approved camera recording device (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*), or

(d) a speeding offence in respect of which:

(i) the penalty notice or the court attendance notice indicates that the offence was detected by an approved speed measuring device within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999* , and

(ii) the number plate of the vehicle concerned was recorded by a police officer using photographic or video equipment approved by the Commissioner of Police for the purposes of this paragraph.

"designated offence" means:

(a) a camera recorded offence, or

(b) a parking offence.

"parking offence" means any offence of standing or parking a motor vehicle or trailer or of causing or permitting a motor vehicle or trailer to stand, wait or be parked in contravention of any regulation made under the *Road Transport (Safety and Traffic Management) Act 1999* .

198 Relevant offences

(1) In this Division, a "relevant offence" means:

(a) any of the following offences committed after the commencement of this Division of which a person has been convicted by a court in this State:

(i) a major offence,

(ii) a prescribed speeding offence,

(iii) an offence under section 25 (3) of the *Road Transport (Driver Licensing) Act 1998* ,

(iv) an offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* , or

(b) an offence committed after the commencement of this Division of which a person has been convicted by a court in another State or Territory that would be an offence of the kind referred to in paragraph (a) if it had been committed in this State, or

(c) a relevant offence within the meaning of section 10EA of the *Traffic Act 1909* as in force immediately before its repeal.

(2) A relevant offence includes an offence of the kind referred to in subsection (1) (a) in respect of which the charge is found proven, or a person is found guilty, (but without proceeding to a conviction) under section 10 of the *Crimes (Sentencing Procedure) Act 1999* , or section 556A of the *Crimes Act 1900* , if the offence would, if it were a relevant offence, give rise to the declaration of the person under this Division as an habitual traffic offender. In that case, a reference in this Division to the conviction of the person for a relevant offence includes a reference to the making of an order with respect to the person.

202 Quashing of declaration and bar against appeals

(1) The declaration of a person as an habitual traffic offender by section 199 may be quashed by a court that convicts the person of a relevant offence (at the time of the conviction or at a later time) if it determines that the disqualification imposed by the declaration is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case.

(2) If a court quashes a declaration under this section, the court must state its reasons for doing so.

(3) However, a declaration or disqualification under this Division cannot be appealed to any court whether under this or any other Act.

205 Immediate suspension of licence in certain circumstances

(1) If a person is charged by a police officer with:

(a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:

(i) the crime of murder or manslaughter, or

(ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900* , or

(b) an offence under section 9 (3) or (4), 15 (4), 16, 22 (2), 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* ,

the same or another police officer may, at any time within 48 hours after the person has been charged, give the person a suspension notice.

(1A) If it appears to a police officer that a person has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 179 of this Act) of:

(a) exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, or

(b) exceeding a speed limit prescribed under that Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven, the same or another police officer may, at any time within 48 hours of:

(c) the person being served with a penalty notice for the offence, or

(d) the person being charged with the offence,

give the person a suspension notice.

(1B) If it appears to a police officer that a person has committed an offence under the regulations under the *Road Transport (Driver Licensing) Act 1998* of being the holder of a learner licence driving unaccompanied by a supervising driver, the same or another police officer may, at any time within 48 hours of:

(a) the person being served with a penalty notice for the offence, or

(b) the person being charged with the offence,

give the person a suspension notice.

(2) For the purposes of this section, a "suspension notice" is a notice, in a form approved by the Authority:

(a) if the person is charged with an offence referred to in subsection (1) , (1A) or (1B)-informing the person that any driver licence held by the person is

suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and

(b) if the person is served with a penalty notice for an offence referred to in subsection (1A) or (1B)-informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:

(i) a period of 6 months (in the case of an offence referred to in subsection (1A) (a)) or 3 months (in the case of an offence referred to in subsection (1A) (b) or (1B)) elapses after the date on which the offence is alleged to have been committed,

(ii) if the person elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996* -the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,

(iii) a decision is made not to enforce the penalty notice, and

(c) informing the person of the right of appeal under section 242, and

(d) requiring the person:

(i) to surrender any such licence, by a date specified in the notice, to a police officer, or

(ii) if the notice so specifies-to surrender any such licence in the person's possession immediately to the police officer who gave the person the notice.

(3) Any driver licence held by a person to whom a suspension notice is given is suspended in accordance with the terms of the notice.

(4) Particulars of each suspension notice given under this section are to be forwarded to the Authority immediately after the notice is given.

(5) A person who is given a suspension notice must surrender his or her driver licence in compliance with the notice.

Maximum penalty: 20 penalty units.

(6) If, on the determination of the charge by a court, the person is disqualified from holding or obtaining a licence for a specified time:

(a) the court must take into account the period of suspension under this section when deciding whether to make any order under section 188, and

(b) to the extent (if any) that the court so orders, a suspension under this section may be regarded as satisfying all or part of any mandatory minimum period of disqualification required by that section to be imposed when the charge is proved.

(7) For the purposes of this section:

(a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a police officer, and

(b) a charge is withdrawn when the person charged is notified in writing of that fact by a police officer or when it is withdrawn before the court, and

(c) a charge is determined by a court when the offence is proved or the court attendance notice is dismissed, and

(d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or when the proceedings are discharged by the court, and

(e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:

(i) a police officer, or

(ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996* , or

(iii) a member of staff of the State Debt Recovery Office.

2. ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) ACT 1999

12 Use or attempted use of a vehicle under the influence of alcohol or any other drug

(1) A person must not, while under the influence of alcohol or any other drug:
- (a) drive a vehicle, or
- (b) occupy the driving seat of a vehicle and attempt to put the vehicle in motion, or
- (c) being the holder of a driver licence (other than a provisional licence or a learner licence), occupy the seat in or on a motor vehicle next to a holder of a learner licence who is driving the motor vehicle.

Maximum penalty:
- (a) in the case of a first offence to which paragraph (a) or (b) relates-20 penalty units or imprisonment for 9 months, or both, or
- (b) in the case of a second or subsequent offence to which paragraph (a) or (b) relates-30 penalty units or imprisonment for 12 months, or both, or
- (c) in the case of an offence to which paragraph (c) relates-20 penalty units.

(2) If a person is charged with an offence under subsection (1):
- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
  - (i) a drug described in the information, or
  - (ii) a combination of drugs any one or more of which was or were described in the information.

Note: Division 3 of Part 3 of the *Road Transport (General) Act 1999* provides for the disqualification of persons from holding driver licences for certain offences (including offences under this section).

13 Power to conduct random breath testing

(1) A police officer may require a person to undergo a breath test in accordance with the officer's directions if the officer has reasonable cause to believe that the person:
- (a) is or was driving a motor vehicle on a road or road related area, or
- (b) is or was occupying the driving seat of a motor vehicle on a road or road related area and attempting to put the motor vehicle in motion, or

(c) being the holder of a driver licence, is or was occupying the seat in a motor vehicle next to a holder of a learner licence while the holder of the learner licence is or was driving the vehicle on a road or road related area.

(2) A person must not, when required by a police officer to undergo a breath test under subsection (1), refuse or fail to undergo the breath test in accordance with the directions of the officer.
Maximum penalty: 10 penalty units.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to undergo a breath test.

(3A) Before requiring a person to undergo a breath test under subsection (1), and for the purpose of determining whether to conduct such a test, a police officer may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.

(4) Without limiting any other power or authority, a police officer may, for the purposes of this section, request or signal the driver of a motor vehicle to stop the vehicle.

(5) A person must comply with any request or signal made or given to the person by a police officer under subsection (4).
Maximum penalty: 10 penalty units.

15 Breath analysis following arrest

(1) A police officer may require a person who has been arrested under section 14 to submit to a breath analysis in accordance with the directions of the officer.

(2) A breath analysis must be carried out by a police officer authorised to do so by the Commissioner of Police at or near a police station or such other place as that officer considers desirable.

(3) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysing instrument must deliver a written statement to that person signed by that officer specifying the following:

(a) the concentration of alcohol determined by the analysis to be present in that person's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood,

(b) the day on and time of the day at which the breath analysis was completed.

(4) A person who is required by a police officer under subsection (1) to submit to a breath analysis must not refuse or fail to submit to that analysis in accordance with the directions of the officer.
Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(5) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to submit to a breath analysis.

17 When breath test or breath analysis not permitted

A police officer cannot require a person to undergo a breath test or to submit to a breath analysis:

(a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his or her treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person, or
(b) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis, or
(c) at any time after the expiration of 2 hours from the occurrence of the event by reason of which the officer was entitled under section 13 (1) to require that person to undergo a breath test, or
(d) at that person's home.

25 Police officer may require sobriety assessment

(1) A police officer may require a person to submit to an assessment of his or her sobriety in accordance with the directions of the officer if:
(a) the person has undergone a breath test in accordance with Division 3, and
(b) the result of the test does not permit the person to be required to submit to a breath analysis.

(2) A person cannot be required to submit to a sobriety assessment unless:
(a) a police officer has a reasonable belief that, by the way in which the person:

(i) is or was driving a motor vehicle on a road or road related area, or
(ii) is or was occupying the driving seat of a motor vehicle on a road or road related area and attempting to put the vehicle in motion, the person may be under the influence of a drug, and

(b) the assessment is carried out by a police officer at or near the place where the person underwent the breath test.

26 Arrest following failure to submit to (or pass) sobriety assessment

If the person refuses to submit to a sobriety assessment under this Division or, after the assessment has been made, a police officer has a reasonable belief that the person is under the influence of a drug, the police officer may:

(a) arrest that person without warrant, and
(b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a place prescribed by the regulations and there detain the person (or cause the person to be detained) for the purposes of this Division.

27 Procedure for taking samples following arrest

(1) Except as provided by section 28, a police officer may require a person who has been arrested under section 26 to provide samples of the person's blood and urine (whether or not the person consents to them being taken) in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.

(2) The police officer must inform any such medical practitioner, registered nurse or prescribed sample taker that the samples are required to be taken for the purposes of this Division.

(2A) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of blood is taken in accordance with this Division must:
(a) place the sample into a container, and
(b) fasten and seal the container, and
(c) mark or label the container for future identification, and
(d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

(2B) The medical practitioner, registered nurse or prescribed sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains a drug.
Maximum penalty: 20 penalty units.

(2C) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

(3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of urine is taken in accordance with this Division must:

(a) divide the sample into 2 approximately equal portions, and
(b) place each portion into a container, and
(c) fasten and seal each container, and
(d) mark or label each container for future identification.

(4) Of the 2 sealed containers:

(a) one must be handed by the medical practitioner, registered nurse or prescribed sample taker to the person from whom it was taken or to some other person on behalf of that person, and
(b) the other must be handed by the practitioner, nurse or prescribed sample taker to the police officer present when the sample was taken and forwarded to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the urine contains a drug.

(5) An analyst at a laboratory prescribed by the regulations to whom any blood or urine is submitted for analysis under this section may carry out an analysis of the blood or urine to determine whether it contains a drug.

(6) Any duty of a medical practitioner, registered nurse or prescribed sample taker under this Division and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner, registered nurse or prescribed sample taker. A duty performed by any such person is taken to have been performed by the medical practitioner, registered nurse or prescribed sample taker.

(7) An analysis under this section may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.

32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9

(1) In proceedings for an offence under section 9, evidence may be given of the concentration of alcohol present in the breath or blood of the person charged as determined by:

(a) a breath analysing instrument operated by a police officer authorised to do so by the Commissioner of Police, or

(b) an analysis of the person's blood under this Part.

(2) In proceedings for an offence under section 9, the concentration of alcohol so determined is taken to be the concentration of alcohol in the person's breath or blood at the time of the occurrence of the relevant event referred to in section 13 (1) (a), (b) or (c) if the breath analysis was made, or blood sample taken, within 2 hours after the event unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time concerned was:

(a1) in the case of an offence under section 9 (1A)-zero grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(a) in the case of an offence under section 9 (1)-less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(b) in the case of an offence under section 9 (2)-less than 0.05 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(c) in the case of an offence under section 9 (3)-less than 0.08 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

(d) in the case of an offence under section 9 (4)-less than 0.15 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.

(3) Nothing in subsection (2) affects the operation of section 10.

42 Negligent, furious or reckless driving

(1) A person must not drive a motor vehicle negligently on a road or road related area.

Maximum penalty:

(a) if the driving occasions death-30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence), or

(b) if the driving occasions grievous bodily harm-20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence), or

(c) if the driving does not occasion death or grievous bodily harm-10 penalty units.

(2) A person must not drive a motor vehicle furiously, recklessly or at a speed or in a manner dangerous to the public, on a road or road related area.
Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

(3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
(a) the nature, condition and use of the road or road related area on which the offence is alleged to have been committed,
(b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, on the road or road related area.

(4) In this section:
"grievous bodily harm" includes any permanent or serious disfigurement.

71 Regulations

(1) General regulation-making power The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Examples of subject-matter for regulations In particular, the regulations may make provision for or with respect to the matters set out in Schedule 1.

(3) Application, adoption or incorporation of certain documents The regulations:
(a) may apply, adopt or incorporate, whether wholly or in part or with or without modifications, publications of the National Transport Commission that have been approved (whether before or after the commencement of this section) by the Australian Transport Council or any other publication (including any Act or regulation of the Commonwealth, a Territory or another State), either as published or as in force from time to time, and
(b) may apply to any provision of the regulations, whether wholly or in part or with or without modifications, the provisions of the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

(4) Ambit of power in subsection (3) Subsection (3) (a) extends to documents approved by the Australian Transport Council that have been published in this State by the Authority on behalf of the National Transport Commission.

(5) Definitions in regulations For the purposes of the regulations, the regulations may define an expression (or apply, adopt, or incorporate a definition of an expression in a publication referred to in subsection (3) (a)) that is defined by this Act:

(a) in the same (or in substantially the same) way as it is defined by this Act, or

(b) by reference to one or more classes of matter included in the expression as defined by this Act, or

(c) by reference to a combination of classes of matter included in the expression as defined by this Act and in any other expression defined by this Act (but not so as to exceed the power to make regulations in respect of those classes of matter), or

(d) for the purposes of applying, adopting or incorporating a publication of the National Transport Commission that has been approved by the Australian Transport Council-in the same way as it is defined in the publication despite anything contained in this Act or the other road transport legislation (within the meaning of the *Road Transport (General) Act 2005*).

(6) Evidence of publications of National Transport Commission If a regulation applies, adopts or incorporates by way of reference any publication (or provision of a publication) referred to in subsection (3) (a) of the National Transport Commission that has been approved by the Australian Transport Council, evidence of the publication or provision may be given in any proceedings:

(a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the National Transport Commission, or

(b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of the Commonwealth, a State or a Territory.

(7) Offences in regulations The regulations may create offences punishable by a penalty not exceeding 30 penalty units (including defences for such offences and who bears the onus of proof in respect of such defences).

(8) Penalty of driver licence disqualification In addition to a penalty referred to in subsection (7), the regulations may provide for a person who is convicted of an offence against this Act or the regulations:

(a) to be automatically disqualified by virtue of the conviction from holding a driver licence for a period not exceeding 6 months, or

(b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).

(9) Alternative verdicts The regulations may provide for a person who is prosecuted for an aggravated form of an offence under the regulations to be convicted by a

court of a lesser offence if the court is not satisfied that the elements of the aggravated offence have been proven, but is satisfied that the elements of the lesser offence have been proven.

(10) Certificate evidence regarding speed limits The regulations may provide for a document that is signed or purports to be signed by or on behalf of the Authority or other specified person in respect of a speed limit applying to a road or road related area that certifies any matter specified by the regulations concerning the speed limit (or the operation of any device by means of which the speed limit is imposed) to be admissible and prima facie evidence of that matter in proceedings before a court or tribunal.

(11) Fees The regulations may impose a fee in respect of services provided by the Authority under this Act or the regulations despite the fact that the fee may also comprise a tax.

3. ROAD TRANSPORT (DRIVER LICENSING) ACT 1998

14 Demerit points register

(1) The Authority must maintain a demerit points register in accordance with this Act and the regulations.

(2) The Authority must record, in the demerit points register, against a person the number of demerit points specified in the regulations if the person:

(a) is convicted, or found guilty, of an offence specified in the national schedule of demerit points or any other offence specified in the regulations, or recognised, under section 15, or

(b) pays the whole or any part of the penalty specified in a penalty notice issued to the person in respect of the offence, or

(c) has not paid the penalty specified in a penalty notice issued to the person in respect of the offence, the person has not elected to have the matter dealt with by a court and the time for the person to have the matter so dealt with has lapsed.

(3) Demerit points recorded against a person (whether or not a person holds an Australian driver licence) must be taken into account if the person subsequently obtains or applies for a driver licence within 3 years of the date of the offence for which the demerit points are incurred.

(4) For the purposes of subsection (3), if a person applies for a driver licence (including for the renewal of a licence) having incurred 12 or more demerit points

within a 3 year period ending on the day on which the applicant last committed an offence for which demerit points have been recorded against the applicant:

(a) the Authority may refuse the person's application and take action under section 16A, or

(b) the Authority may grant the licence and take action under section 16 or 16A.

(5) Without limiting any other provision of this section, the Authority may correct any mistake, error or omission in the demerit points register, subject to any requirements of the regulations.

Note: If the holder of a driver licence issued by another driver licensing authority commits an offence in this State that warrants demerit points, the Authority must transmit all relevant information about the offence to the other authority (see section 11 (3)).

25 Driver must be licensed

(1) A person must not, unless exempted by the regulations:

(a) drive a motor vehicle on any road or road related area without being licensed for that purpose, or

(b) employ or permit any person not so licensed to drive a motor vehicle on any road or road related area.

Maximum penalty: 20 penalty units.

(2) A person who has never been licensed must not, unless exempted by the regulations, drive a motor vehicle on any road or road related area without being licensed for that purpose.
Maximum penalty: 20 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for a period 18 months or both (in the case of a second or subsequent offence).

(3) If a person is convicted of an offence under subsection (2) (being a second or subsequent offence), the person is disqualified by the conviction (and without any specific order) for a period of 3 years from holding a driver licence. The disqualification is in addition to any penalty imposed for the offence.
Note: Section 26 of the *Road Transport (General) Act 1999* provides for the effect of a disqualification (whether or not by order of a court).

(4) For the purposes of subsection (2), a person has not been licensed in connection with an offence if the person has not held a driver licence (or equivalent) of any kind in Australia for the period of at least 5 years immediately before being convicted of the offence.

(5) An offence under this section is a second or subsequent offence for the purposes of this section if:

(a) it is the second or subsequent occasion on which the person is convicted of an offence against this section within the period of 5 years immediately before the person is convicted of the offence, or

(b) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of:

(i) an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or

(ii) an offence under section 25 (2).

(6) A person who has never been licensed cannot be convicted under both this section and section 25A in respect of driving on the same occasion. However, nothing in this section prevents the person from being convicted of an offence under section 25A in respect of driving that constitutes an offence under this section.

(7) A person cannot be convicted under both subsection (1) (a) and (2) in respect of driving on the same occasion. A person charged with an offence under subsection (2) can be convicted instead of an offence under subsection (1) (a), but a person charged with an offence under subsection (1) (a) cannot be convicted instead of an offence under subsection (2).

(8) Subsection (1) does not apply to or in respect of a light rail vehicle within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999* .

25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled

(1) A person who is disqualified by or under any Act from holding or obtaining a driver licence must not:

(a) drive a motor vehicle on a road or road related area during the period of disqualification, or

(b) make an application for a driver licence during the period of disqualification and in respect of the application state his or her name falsely or incorrectly or omit to mention the disqualification.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(2) A person whose driver licence is suspended must not:

(a) drive on a road or road related area a motor vehicle of the class to which the suspended driver licence relates, or

(b) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence

relates and in respect of such an application state his or her name falsely or incorrectly or omit to mention the suspension.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(3) A person whose application for a driver licence is refused or whose driver licence is cancelled must not:

(a) drive on a road or road related area a motor vehicle of the class to which the cancelled licence or the refused application related without having subsequently obtained a driver licence for a motor vehicle of that class, or

(b) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence or the refused application related and in respect of the application state his or her name falsely or incorrectly or omit to mention the cancellation or refusal.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(4) For the purposes of subsection (3) (b), a person who applies for a driver licence for a class of motor vehicle need not mention a previous cancellation of a driver licence (or refusal of an application for a driver licence) for that class of motor vehicle if the person has obtained a driver licence after any such cancellation or refusal by means of an application that stated his or her name correctly and mentioned the cancellation or refusal.

(5) Subsections (1) and (3) (a) do not apply to the driving of a motor vehicle in circumstances prescribed by the regulations.

(6) An offence under this section is a second or subsequent offence for the purposes of this section if:

(a) it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1), (2) or (3) (a) within the period of 5 years immediately before the person is convicted of the offence, or

(b) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of:

(i) a major offence within the meaning of the *Road Transport (General) Act 2005* , or

(ii) an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or

(iii) an offence under section 25 (2).

(7) If a person is convicted by a court of an offence under subsection (1), (2) or (3) (a), the person:

(a) is disqualified by the conviction (and without any specific order) for the relevant disqualification period from the date of expiration of the existing

disqualification or suspension or from the date of such conviction, whichever is the later, from holding a driver licence, and

(b) may also be disqualified, for such additional period as the court may order, from holding a driver licence.

Note: Section 26 of the *Road Transport (General) Act 1999* provides for the effect of a disqualification (whether or not by order of a court).

(8) The disqualification referred to in subsection (7) is in addition to any penalty imposed for the offence.

(9) Subsections (1)-(3) apply to a person who is disqualified from holding a licence, or whose licence is suspended or cancelled, by a court in Australia or under any law in this State or another State or Territory.

(10) In this section, the "relevant disqualification period" is:

(a) in the case of a first offence under subsection (1), (2) or (3) (a)-12 months, or

(b) in the case of a second or subsequent offence under subsection (1), (2) or (3) (a)-2 years.

4. ROAD TRANSPORT (DRIVER LICENSING) REGULATION 2008

57 Procedures for variation, suspension or cancellation of driver licence

(1) If the Authority decides to vary, suspend or cancel a person's driver licence, the Authority must give the person notice in writing of:

(a) the reasons for the proposed variation, suspension or cancellation, and

(b) any action that must be taken by the licence holder in order to avoid or reverse the variation, suspension or cancellation, and

(c) the date after service of the notice on which the variation, suspension or cancellation takes effect.

(2) The notice must also state:

(a) in the case of a notice to vary a person's driver licence, that if the licence is varied as set out in the notice, the person will no longer be authorised to drive a motor vehicle of a kind specified in the notice on a road or road related area, or

(b) in the case of a notice to suspend a person's driver licence, that if the licence is suspended, the person will not be authorised to drive a motor vehicle on a road or road related area for the period of suspension specified in the notice, or

(c) in the case of a notice to cancel a person's driver licence, that if the licence is cancelled, the person will no longer be authorised to drive a motor vehicle on a road or road related area.

(3) Despite subclause (1) (c), if the Authority decides to vary, suspend or cancel a person's driver licence on the ground that the person has failed or refused to submit to a test or medical examination required under or in accordance with the Act or this Regulation, or has failed such a test or examination, the Authority may determine that the variation, suspension or cancellation is to take effect on the service of the notice.

(4) A notice to vary, suspend or cancel a person's driver licence must also state whether the licence is required to be returned to the Authority and, if so, specify the date by which the licence must be returned and the place to which it is to be returned.

(5) A driver licence is varied, suspended or cancelled in accordance with the terms of a notice served under this clause unless the Authority, by further notice in writing, withdraws the notice.

(6) A notice to suspend a person's driver licence under clause 55 (2) may not be withdrawn except on the order of a Local Court in respect of an appeal under Division 3 of Part 3 of the *Road Transport (General) Regulation 2005* .

(7) If a person's driver licence is varied, suspended or cancelled by the Authority, the person must, if required to do so, return the licence to the Authority within the time required by the notice served under this clause.

(8) The Authority may decide to vary, suspend or cancel a driver licence under this Regulation without the holder of the licence having been provided with an opportunity to show cause why the licence should not be varied, suspended or cancelled.

5. ROAD TRANSPORT (VEHICLE REGISTRATION) ACT 1997

18 Prohibition on using unregistered registrable vehicles

(1) A person must not use an unregistered registrable vehicle on a road or on a road related area.
Maximum penalty: 20 penalty units.

(2) Subsection (1) does not apply to the use of a registrable vehicle on a road or road related area if:
(a) the vehicle belongs to a class of vehicle prescribed by a regulation referred to in section 16 as a vehicle to which this Act does not apply, or
(b) the use is otherwise permitted by this Act or under the regulations.

(3) Subsection (1) does not apply to a registrable vehicle that was left standing on a road or road related area:
(a) within the period of 15 days after the date on which that vehicle ceased to be registered or to be exempted from being registered, or
(b) with the consent of the responsible person for the road or area.

(4) In this section:
"registrable vehicle" includes:
(a) an incomplete or partially constructed vehicle, and
(b) the remains of a vehicle.
"responsible person", in relation to a road or road related area on which a vehicle was left standing, means:
(a) if the care, control and management of the road or area was then vested in a person other than the owner of the road or area-the person in whom the care, control and management of the road or area was vested, or
(b) in any other case-the owner of the road or area.

6. ROAD TRANSPORT (VEHICLE REGISTRATION) REGULATION 2007

SCHEDULE 1 – Application of Act and Regulation

15 Pedal cycles

The registration provisions do not apply to any registrable vehicle comprising a pedal cycle to which is attached one or more auxiliary propulsion motors having a combined maximum power output not exceeding 200 watts.