Ada Evans Chambers Conference

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Motor Traffic Law:

Case law update

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1. ROAD RULES 2008

RR 21 - Speed limit where speed limit sign applies

Speed limit sign – adequacy – whether an obscured sign is a sign

The driver was charged with speeding contrary to r 20. The defence was that the driver did not see or have knowledge of the speed limit sign and that the RTA had given insufficient or inadequate notice of the speed limit. In the Local Court the charge was dismissed on the basis of "inadequate notice". On appeal by the RTA to the Supreme Court, Rothman J held that the test used by the Magistrate was the "inappropriateness" or "insufficiency" or "inadequacy" of the notice. This was the wrong test to apply. The adequacy of the notice is not an issue that is relevant to the determination of guilt or innocence. The offence is one of strict liability. However, although adequacy or otherwise of the notice delineating the speed limit is irrelevant, if it is suggested that the "speed limit sign" was so inadequate as to be no sign at all, then that raises a question of fact. For example, if a speed limit sign was totally obscured, would it be a sign of the requisite kind? However because the Magistrate dismissed the matter on the basis that a sign existed but was inadequate, rather than on the basis that there was no sign, the Court was not faced with a need to answer this question: *Roads and Traffic Authority (NSW) v Bourke* [2010] NSWSC 559.

NB – based on the Court's reasoning it appears that a defence based upon an acceptance of the existence of a sign but an argument that it was inadequate will be dismissed as it raises a mistake of law, whereas a defence based upon an argument that a sign was so inadequate that it did not amount to a sign (as defined) at all is permissible as it raises a mistake of fact. The difference in the two propositions seems one of emphasis, rather than substance, yet the way the argument is framed by a defendant seems to be of critical importance.

RR 105 - Trucks must enter signs

Trucks Must Enter signs – compliant sign

The defendants were charged with failing to comply with a "trucks must enter sign" contrary to ARR 105. The charges were dismissed in the local court on the basis that the signs did not comply with the rule. The signs, which were alleged to have been contravened, read "Heavy Vehicle Checking Station 300m / Vehicles over 8t GVM MUST ENTER". It was not in issue that the defendants' vehicles exceeded the gross vehicle mass (gvm) of 8 tonnes. "Truck" is defined as meaning a motor vehicle with a gvm over 4.5 tonnes, except a bus, tram or tractor (see Dictionary). At first instance, the RTA advanced a number of grounds in support of the validity of the sign, including that it substantially complied with the requirements of ARR 105. On appeal by the RTA to the Supreme Court those grounds were abandoned and the RTA conceded that the sign itself was ultra vires ARR 105. It argued that, notwithstanding that fact, the defendants were obliged to comply with the sign because it amounted to an "instrument" and under s 32(1) of the *Interpretation Act 1987* an instrument is to be construed as operating to the full extent of but not in excess of the power conferred by the Act under which it is made. Held, the road sign is not an "instrument" within the meaning of the definition in the *Interpretation Act 1987*. Section 32 of that Act applies only to legislation, whether primary or subordinate. The process that s 32 envisages cannot possibly have been intended to apply to traffic signs. Further, ARR 105 creates a strict liability offence in the criminal field. For that reason, it should not be interpreted broadly but should be interpreted narrowly. A motorist should be in the position of being assumed to know the Road Rules. Such a motorist should not be in the position of having to decide whether a non-authorised sign is required to be complied with on the basis that the motorist falls within the class authorised to be directed by the Rule although not clearly identified by the sign: *Roads & Traffic Authority (NSW) v Birchfield* 2010] NSWSC 1253.

2. ROAD TRANSPORT (GENERAL) ACT 2005

s 187 - Court may impose penalty and disqualify driver on conviction

Discretionary disqualification under s 187(1) – procedural fairness

The offender was being sentenced in South Australia for driving without due care (equivalent to the offence of negligent driving in NSW). The offence did not carry an automatic disqualification upon conviction, although the court did have a discretion to impose a disqualification period. At the time of sentencing the Magistrate did not warn the defendant or the defendant's legal representative that a period of licence disqualification was in contemplation. Accordingly, no submissions were made on the topic of disqualification or the length of any disqualification. As part of the sentence the Magistrate imposed a period of two years disqualification. On appeal to the South Australian Supreme Court it found that the Magistrate's lack of averting to the possibility that a licence disqualification would be imposed amounted to a denial of procedural fairness: *Thomas v Police (SA)* (2010) 55 MVR 76; [2010] SASC 18.

s 189 - Effect of disqualification

Nature of judicial discretion – Subs (6) and s 68 Crimes (Appeal and Review) Act 2001 – taking into account voluntary surrender

The appellant in the local court was disqualified for driving for a period of six months commencing from the date he was sentenced, 4 May 2010. He appealed to the District Court against the severity of his sentence. He was granted a stay of execution of sentence pursuant to s 63 of the *Crimes (Appeal and Review) Act 2001*. The appeal was disposed of on 16 June 2010, with the District Court making orders, inter alia, reducing the period of disqualification from six months to three months to commence from 4 May 2010. Held, the length of a period of disqualification is not to be confused with the setting of a date upon which that period is to commence. When selecting a period of disqualification of three months there is nothing to suggest the court impermissibly took into account any period that the stay of execution was in force. The appeal court may take into account when making a sentence order periods after

committing the offence during which the defendant did not hold a drivers licence that would have permitted him to drive a motor vehicle. That would include a voluntary surrender of a licence to the Court.

Further, consideration must be given to s 68 of the *Crimes (Sentencing Procedure) Act 1999*. Subsection (1) makes clear that the sentencing order is to take effect from the day specified in the order and subs (2) makes clear the sentencing order has effect despite any stay of execution that has been in force in respect of the sentence appealed against: *Jason Fewel v DPP* [2010] NSWDC 195.

NB. After the District Court appeal the RTA initially made a unilateral decision that the District Court's orders were not in compliance with the law and refused to restore the appellant's licence to him. It was of the view that subs (6) meant that the three month period of disqualification ordered by the court was not inclusive of the time period 4 May 2010 to 16 June 2010. The Court found that it was of grave concern that any officer of the executive arm of government would, without lawful authority, arbitrarily override or countermand any lawfully made Court order. The orders made were entitled to be regarded as lawfully made orders binding upon the parties and others affected by them. This is a matter of significant constitutional import. The RTA then sought to bring the matter before the Court pursuant to s 43 of the *Crimes (Sentencing Procedure) Act 1999* (a provision allowing proceedings to be reopened to correct sentencing errors) but the Court found that the RTA had no locus standi in any such proceedings as the court may reopen proceedings only on its own initiative or on the application of a party to the proceedings. The RTA was neither a party to the appellant's severity appeal nor a party in the Local Court proceedings: *Jason Fewel v DPP* [2010] NSWDC 195.

Section 199 - declaration of persons as habitual traffic offenders

Disqualification resulting from automatic operation of statutory provision – unnecessary for magistrate to make order

Where a disqualification results from the automatic operation of a statutory provision, independently of any court order, it is unnecessary and liable to be confusing for a magistrate to purport to make a disqualification order. Of course, where the legislation permits a magistrate to impose a longer or shorter period of disqualification than the automatic statutory period and the magistrate considers that a longer or shorter period of disqualification would be appropriate in the particular case, then it is appropriate, and indeed necessary, for the magistrate to make an order: *RTA v Papadopoulos* [2010] NSWSC 33.

Section 202 - Quashing of declaration and bar against appeals

Total driving record and special circumstances of the case

The total driving record and the circumstances of the case are not limited to the driving record and the circumstances of the case as at the time of the conviction giving rise to the declaration but include the driving record and the circumstances of the case down to the time of the hearing of the application for a quashing order: *RTA v Papadopoulos* [2010] NSWSC 33.

Meaning of "quash"

Quash means annul for the future and not annul *ab initio*: *RTA v Papadopoulos* [2010] NSWSC 33. Note the insertion of subs (4) which is discussed in the case but had no direct application to it because it commenced on 14 December 2009.

3. ROAD TRANSPORT (SAFETY & TRAFFIC MANAGEMENT) ACT 1999

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

Under the influence

In the following case the insured was refused indemnity by its insurer on the basis the vehicle was damaged whilst a nominated driver was driving under the influence of alcohol. The driver's evidence (ultimately not accepted by the Court) was that she had consumed alcohol only a short time prior to her accident. In looking at the term "under the influence" and various authorities the Court held that there is no "norm" by which the affect on an individual of the ingestion of alcohol can be assessed. The determination is one of fact and degree based on the evidence, particularly, the observations of those who saw the person at or close to the critical time. In evaluating those observations, it will be important to bear in mind that the effect of intoxicating liquor on the behaviour of the person will vary depending on when he or she last drank alcohol and how much he or she consumed. If the alcohol was only consumed just before the accident, there may not have been sufficient time for it then to have had any disturbing effect on the person, even though its effect would be evident a short time later: *Sagacious Legal Pty Ltd v Wesfarmers General Insurance Ltd (No 4)* (2010) 16 ANZ Insurance Cases 61-842; [2010] FCA 482.

Circumstantial evidence

The driver challenged the sufficiency of the evidence relied upon by the Magistrate in finding the charge of driving under the influence proven. The court found that evidence of the arresting police officer's observations (such as odour of liquor on breath, disarranged clothes, talkative attitude, dilated, bloodshot and watery eyes, staggering gait and slurred speech) was ample evidence for the Magistrate to conclude the offence had been committed: *Praniess v Police* [2010] SASC 275.

s 13 - Power to conduct random breath testing

Reasonable cause where person not proven to be the driver

The following case looked at a cognate provision in the Northern Territory (s 29AAC *Traffic Act* (NT)). An off duty police officer came upon a driver of a scooter that had crashed. She believed the driver to be intoxicated. She was unable to detain him and he departed the scene. Shortly after, other police attended the address of the registered owner of the scooter and as they approached that address they saw a man fitting the description given by the off duty officer. He was called upon to submit to a random breath test and refused. He was charged with failing to submit to a breath analysis, escaping from lawful custody following arrest, and driving without due care. He was found not guilty by the Magistrate of the latter two charges (she was not satisfied as to the identification evidence) but he was convicted of the fail to submit charge. He appealed to the Northern Territory Supreme Court on the basis that the conviction was unsafe and unsatisfactory given his acquittal on the other charges, and that evidence upon which he was found not guilty on the latter charges was inextricably linked to the first charge. The Court held that this argument is a misunderstanding of the "reasonable cause" requirement. The requirement to submit is not based on the prosecution establishing the person was the driver, rather that the officer had reasonable cause to suspect the person was the driver. On the basis of the information the officers had at the time the request was made to the appellant, "reasonable cause" had been established: *Sekubumba v Sims* (2010) 54 MVR 534; [2009] NTSC 64.

Compliance with administrative instructions for breath analysis procedure

The driver argued that evidence of a breath analysis reading should be excluded on the basis that certain police guidelines relating to the procedures for operation of the breath analysis equipment were not followed. The South Australia Police Commissioner's General Order 8760 instructed that at least a 15 minute waiting period should be allowed from the last intake of alcohol to the time the breath sample for analysis is provided. The same waiting period was required after vomiting or belching. The driver argued he had belched and that the breath analysis took place immediately afterwards. Although the Court found the driver had not

belched, it held that even if he had this would not have warranted excluding the evidence of the result of the breath analysis. The Order was not made under the *Road Traffic Act* (SA) and was not part of the prescribed procedure for breath testing. It was simply an administrative instruction: *Praniess v Police* [2010] SASC 275, applying *Police v Henwood* (2005) 92 SASR 15; 43 MVR 301; [2005] SASC 209. In New South Wales questions of the discretionary exclusion of evidence would need to consider ss 137 and 138 of the *Evidence Act 1995*.

s 27 - Procedure for taking samples following arrest

Blood *and* urine – whether s 27(1) affected by different wording in s 29(2)(a)

The presence of the word "or" in s 29(2)(a) (the offence provision for failing to comply with s 27(1)) does not mean that the form of demand under s 27(1) should be couched in the alternative, that is, the demand should be for a sample of blood or a sample of urine. A police officer may lawfully require a person coming under the purview of s 27 to do two things. A person so required must do both those things whether or not he consents: *Director of Public Prosecutions v Clear* [2010] NSWSC 392.

s 29 - Offences relating to sobriety assessments and testing for drugs

Blood *or* urine – whether s 27(1) affected by different wording in s 29(2)(a)

A driver was requested by police to provide blood and urine samples pursuant to s 27(1). He claimed he was afraid of needles and refused to supply the samples. He was charged with "refuse/fail to submit to (drug) blood test" contrary to s 29(2)(a). In the Local Court the matter was dismissed on the basis that a lawful demand had not been made as the police had never put the alternative to the driver of providing a blood or urine sample that the Magistrate held was required pursuant to the wording of s 29(2)(a). On appeal by the DPP to the Supreme Court, Barr AJ held that a police officer may lawfully require a person coming under the purview of s 27 to do two things (ie provide a blood and urine sample). A person so required must do both those things whether or not he consents. It is an offence for such a person to refuse or fail to do either of those things. To fail to do either of two things is to fail to do them both. The Magistrate erred

in taking the disjunction in s 29(2)(a) ("blood or urine") and using it to read down the plain requirement of s 27(1) ("blood and urine"). There is neither ambiguity nor anomaly in the Act. The defendant was required to do two things. If he failed to do either or both he committed an offence. He was charged with failing to do one of them and the facts, if accepted, bore out that contention: *Director of Public Prosecutions (NSW) v Clear* [2010] NSWSC 392.

s 37 - Evidence of breath test, breath analysis, oral fluid test, oral fluid analysis or blood or urine analysis and related facts not admissible in insurance cases to prove intoxication or drug use

NRMA Insurance Ltd v McCarney (1992) 16 MVR 34; 7 ANZ Insurance Cases 77,753 (61-146)* is not a binding authority on the construction of s 37 because of its different wording to its predecessor provision (s 4E(13) *Traffic Act 1909*). Firstly s 37(2) refers to the results of any analysis of blood "under Div ... 5", whereas s 4E(13) referred to the results of breath analysis. Secondly, s 37(2) refers only to the results of an analysis, and does not extend, as s 4E(13) did, to the fact that the person had undergone a breath test or been convicted of an offence under s 4E: *Sagacious Legal Pty Ltd v Wesfarmers General Insurance Ltd (No 4)* (2010) 16 ANZ Insurance Cases 61-842; [2010] FCA 482.

Section 37 does not make the results of an analysis of blood inadmissible for all purposes. In particular, the ordinary and natural meaning of the section does not exclude the admission of the results as evidence of the concentration of alcohol in the person's blood at the time that the analysed sample was taken. Those results are not evidence that the person was under the influence of alcohol, or affected in any particular or general way by it or that he or she was incapable of driving or exercising effective control over the vehicle. Rather, the results are evidence that the person's blood contained a particular level of alcohol. But, the effect on the person of that level of alcohol in the person's blood as shown in the analysis result is not something that is self-evident, however high or low the reading is. Also, that result does not indicate anything, in itself, about the effect, or even presence, of any alcohol in the person's blood at an earlier time.

Importantly, s 37 does not contain the broader prohibition in its statutory predecessor, s 4E(13),

against the admissibility of the fact that a person had undergone an analysis of his or her breath or blood. That additional prohibition, coupled with the prohibitions against use of the results of the analysis (now in s 37(2)) and the fact of a conviction based on the analysis (now in s 37(5)(b)) may have given some support to the view of Cripps JA in *McCarney*. However, as s 37(3) shows, the use of the analysis that is excluded from evidence, is to establish any effect on the driving ability of the person. The section does not preclude establishing the effect of alcohol on the person by evidence other than the results of the analysis.

Here, the insured's policy excludes liability if the result of the analysis shows a blood alcohol concentration of a particular character provided that the blood sample was taken within two hours of the accident. The exclusion operates because of the objective fact that the result of such an analysis shows the person's blood sample has that character. The exclusion operates irrespective of whether the person was in any way affected by alcohol at the time of the accident; indeed, it can operate where the person had not had any alcohol in his or her blood at the time of the accident, but had consumed it afterwards and, as a result, either not been prosecuted or convicted for driving in excess of the prescribed concentration of alcohol in his or her blood. Thus, the wording of the exclusion does not attract the avoiding operation of s 37(5).

This construction of s 37 is reinforced by s 37(6) which entitles an insurer to exclude liability for other reasons. The ordinary and natural meaning of s 37, read as a whole, does not render void the exclusion in the insured's policy that operates in respect of the results of the driver's blood analysis.

The Court held that s 37 did not make the results of the analysis of the driver's blood inadmissible as evidence of her blood alcohol level at the time the sample was taken: *Sagacious Legal Pty Ltd v Wesfarmers General Insurance Ltd (No 4)* (2010) 16 ANZ Insurance Cases 61-842; [2010] FCA 482 at [124] ff.

* The plain meaning of s 4E(13) of the *Traffic Act 1909* (now repealed and now s 37 of the *Road Transport (Safety and Management) Act 1999*) is that where an issue is litigated under a contract of insurance as to whether a person is driving under the influence of intoxicating liquor, the court cannot receive evidence that the person has undergone a breath test or submitted to a breath analysis or receive evidence of the results of any such tests or analyses. The concluding words of the subsection merely operate to make it clear that an insurance company is not

precluded from establishing that a person is affected by intoxicating liquor by any other admissible evidence: *NRMA Insurance Ltd v McCarney* (1992) 16 MVR 34; 7 ANZ Ins Cas 77,753.

s 42 - Negligent driving, furious or reckless driving

Negligence: unsafe driving

A driver who deliberately or recklessly creates a dangerous situation on a road which gives rise to a distinct risk of an accident, cannot expect other road users' conduct to be assessed according to the most exacting of standards. Faced with such a situation, a person may well react in a way which, with the advantage of hindsight, may appear less than optimal. That would not, of itself, establish negligence. Negligence would only be found if such a person failed to act reasonably in the emergency created by the other's wrongdoing. In those circumstances misjudgment does not equate with negligence: *Vos v Hawkswell* (2010) 55 MVR 271; [2010] QCA 92.

Negligence: rear end collisions

There is no principle that a "following car" which collides into the rear of the "leading car" is inevitably negligent. Liability must be determined by reference to the particular facts of each case. Any statement of a "special relationship" between the "leading car" and the "following car" based on the latter normally being in a better position than the former to observe and avoid creating a hazardous situation (such as in *Rains v Frost Enterprises Pty Ltd* [1975] Qd R 287) does not stand for any general principle that the following car is always liable: *Vos v Hawkswell* (2010) 55 MVR 271; [2010] QCA 92.

Reckless driving: objective seriousness

When considering the moral culpability of an offender a finding of momentary inattention is plainly of significance. However it may not, and generally will not, be an adequate description of the circumstances relevant to the offence. Momentary inattention when driving at low speed or on an isolated country road may involve culpability of a significantly lower order than momentary inattention when driving on a freeway or in an urban environment where traffic is dense with intersections controlled by traffic signals: *Thai v The Queen* (2010) 55 MVR 187;

[2009] NSWCCA 314.

Drive manner dangerous: honest and reasonable mistake of fact

The driver was charged with dangerous driving causing death under the *Crimes Act 1900*. The accident had the characteristics of a "fall asleep" crash: it occurred mid-afternoon, the driver was alone in the vehicle and he made no attempt to avoid a crash. There was evidence the driver veered outside his lane before correcting himself a number of times before the last and fatal time. After the accident, he was diagnosed as suffering from severe obstructive sleep apnoea. The examining doctor stated that the driver was unaware of his illness and the fact that his vehicle veered several times and some time before the collision made no difference to his conclusions as the driver would likely be unaware of his "micro sleeps". In light of the uncontradicted evidence that the driver was ignorant of the fact he suffered from severe sleep apnoea and that the "micro sleeps" during the journey probably would not have alerted the driver to his condition, the Court found that the Crown could not negative the driver's honestly and reasonably held belief that it was safe to drive: *R v Adamczyk* (2010) 10 DCLR(NSW) 215; [2010] NSWDC 76.

s 46 - Certificates concerning use of approved speed measuring devices

Evidence sufficient to raise doubt and the statutory presumption

The driver was charged with speeding 21 kph over the limit based on a lidar reading. In the Local Court, the prosecution relied on the evidence of the police officer and a certificate of accuracy of the lidar device under a cognate provision of South Australian legislation. The only defence evidence was from the driver and his wife, who was a passenger at the relevant time. They said that the vehicle was not over speed limit. The Magistrate accepted that all three witnesses were attempting to give truthful and accurate evidence. He accepted that prima facie the prosecution case was strong and noted the difficulty in overcoming the statutory presumption. However he observed the driver and his wife were just as adamant. Given the large discrepancy in speed, he thought they could not be mistaken, nor was he prepared to find they were lying. He did not know whether the differing evidence could be explained by a mistake by one or more witness,

or an error related to the device. He was not convinced beyond reasonable doubt the offence was committed.

On appeal the prosecution contended that the correct application of the statutory presumption should have resulted in a finding of guilt. The Court held that this contention was not strictly correct. The defence did not specifically quarrel with the accuracy of the device. Rather the defence hypothesis was that there was some sort of operator error. The Court held that the Magistrate did give full weight to the statutory presumption but was still not satisfied that the prosecution had proved that the device was operated and read correctly and that the reading achieved related to the speed of the driver's vehicle: *Police v Hicks* [2010] SASC 136.

Whether evidence raising a doubt can be raised at voir dire as to admissibility of certificate

The following case looked at cognate statutory aid to proof provisions in South Australian traffic legislation. The driver was charged with speeding contrary to r 20 of the *Australian Road Rules*. The alleged offence was detected by a radar speed camera device. After hearing expert evidence on a voir dire that the speed camera had not been operated in accordance with the relevant operating instructions, the Magistrate ruled that the certificates tendered as statutory aids to proof of the offence should not be admitted into evidence. On appeal from the Police to the South Australian Supreme Court, White J held that it was not necessary for the prosecution to prove, separately and independently and before admitting the relevant certificate that the speed camera was in good operating order and condition and that it was operated properly. The proper place for the driver's expert evidence was in the substantive trial and if the evidence was received at that time, the Magistrate would then consider whether the prosecution had excluded, as a reasonable possibility, that the speed registered by the speed camera was unreliable: *Police v Bulgin* [2010] SASC 143.

Possibility of an unreliable reading

The Police argued that expert evidence raising the "possibility" of an incorrect reading was insufficient to constitute "evidence to the contrary". Although the court did not specifically address the question, it held that, if the expert's evidence was received in the trial, the magistrate would have to consider whether the prosecution had excluded, as a "reasonable possibility", that the speed registered by the speed camera was unreliable: *Police v Bulgin* [2010] SASC 143. Given that s 46 is only a statutory aid to proof for establishing a prima facie case and

that it uses the broader term "evidence sufficient to raise doubt" (rather than "evidence to the contrary"), there should be little controversy in NSW with the proposition that evidence in compliance with 73A (ie expert evidence) that raises a possibility of an unreliable reading is sufficient to place the onus on the prosecution of excluding that possibility beyond reasonable doubt, subject to that possibility being a reasonable one.

Evidence sufficient to raise doubt

A Magistrate went behind s 46 certificates to find that she was not satisfied the speed measuring device was operating properly. The basis of this finding was inconsistencies between the time the police officer stated the defendant's vehicle passed through the relevant area and the time recorded on the officer's in-car video (ICV). On appeal to the Supreme Court Price J noted this was a totally irrelevant consideration. Such a discrepancy could not impact upon the accuracy and reliability of the speed measuring device itself, and quoted the statement of Spigelman CJ in *Roads & Traffic Authority (NSW) v Baldock* [2007] NSWCCA 35* that the evidence raising a doubt must be evidence relating to the device as such: *Director of Public Prosecutions (NSW) v Gramelis* [2010] NSWSC 787.

***** Spigelman CJ held that "'evidence that the device was not accurate or not reliable', within the meaning of s 46(2) must be evidence relating to the device as such, not the product of the application of the device in the form of one or more measurements of speed": *Roads & Traffic Authority (NSW) v Baldock* [2007] NSWCCA 35 at [49].

s 73A - Rebuttal of evidence of matters of specialised knowledge

Judicial notice and s 144 *Evidence Act 1995*

A Magistrate's reliance upon her own knowledge of what speed vehicles are capable of reaching whilst in second gear is unlikely to be "knowledge that is not reasonably open to question" under s 144 *Evidence Act 1995*. In any event, the Court was required to raise with the prosecutor her intention to take judicial notice of that knowledge and the Magistrate's failure to do so demonstrated a lack of procedural fairness: *Director of Public Prosecutions (NSW) v Gramelis* [2010] NSWSC 787.

The driver was charged with speeding based on detection by a lidar speed detection device. He was a defence scientist who was allowed by the Magistrate to give expert evidence on the laser speed detection equipment, based on his qualification and experience with respect to the design and operation of lasers generally. The prosecution called expert evidence in rebuttal. The Magistrate found the offence proved. The driver appealed.

The Court found that by allowing the rebuttal evidence, the Magistrate had not offended against the principle that the prosecution should not be allowed to reopen its case except in exceptional circumstances. It was open to the Magistrate to consider exceptional circumstances existed. Further it was important to note that the fact that the driver was not an independent expert was a relevant matter. At the heart of the concept of the expert witness is the giving of independent evidence to assist the court by way of objective, unbiased opinion. Although lack of independence did not go to the admissibility of the driver's expert evidence, it was relevant to the weight to be attached to that evidence: *Kulikovsky v Police* [2010] SASC 58.

NB – This decision did not question the independence of the prosecution expert, who it appears was an employee of the South Australian Police.

4. ROAD TRANSPORT (DRIVER LICENSING) ACT 1998

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

Disqualification resulting from automatic operation of statutory provision – unnecessary for magistrate to make order

Where a disqualification results from the automatic operation of a statutory provision, independently of any court order, it is unnecessary and liable to be confusing for a magistrate to purport to make a disqualification order. Of course, where the legislation permits a magistrate to impose a longer or shorter period of disqualification than the automatic statutory period and the magistrate considers that a longer or shorter period of disqualification would be appropriate in the particular case, then it is appropriate, and indeed necessary, for the magistrate to make an order: *RTA v Papadopoulos* [2010] NSWSC 33.

Sentencing

The offender was convicted of driving whilst disqualified. At the time of the offence he was on parole for previous similar offences. He had more than 50 convictions for traffic offences. Although the court upheld the police appeal against leniency of sentence, it held that where there has been rehabilitation by the offender, that rehabilitation should be allowed to be completed if possible. In this case, where there was evidence of ongoing progress by the offender, fashioning a sentence aimed at his rehabilitation was consistent with the protection of the community: *Police (SA) v Watson* (2010) 55 MVR 535; [2010] SASC 159.

Nic Angelov

21 Speed limit where a speed limit sign applies

(1) The speed limit applying to a driver for a length of road to which a *speed limit sign* applies is the number of kilometres per hour indicated by the number on the sign.
Note. ***Length*** of road is defined in the Dictionary.
(2) However, if the number on the *speed limit sign* is over 100 and the driver is driving a vehicle with a GVM over 4.5 tonnes or a vehicle and trailer combination with a GCM over 4.5 tonnes, the speed limit applying to the driver for the length of road is 100 kilometres per hour.
Note 1. ***Combination*** and ***trailer*** are defined in the Dictionary, ***vehicle*** is defined in rule 15, and ***GCM*** and ***GVM*** are defined in the Act.
Note 2. This subrule is not uniform with the corresponding subrule in rule 21 of the *Australian Road Rules*. Different rules may apply in other Australian jurisdictions.
(3) A *speed limit sign* on a road applies to the length of road beginning at the sign and ending at the nearest of the following:
(a) a *speed limit sign* on the road with a different number on the sign,
(b) an *end speed limit sign* or *speed derestriction sign* on the road,
(c) if the road ends at a T-intersection or dead end—the end of the road.
Note 1. ***T-intersection*** is defined in the Dictionary.
Note 2. Rule 322 (1) and (2) deal with the meaning of a traffic sign ***on*** a road.

Speed limit signs

(not reproduced)

Note 1 for diagrams. There are a number of other permitted versions of the *speed limit sign* and the *end speed limit sign*—see the diagrams in Schedule 3.
Note 2 for diagrams. A *speed limit sign* or *end speed limit sign* may have a different number on the sign—see rule 316 (4).

105 Trucks must enter signs

If the driver of a truck drives past a *trucks must enter sign*, the driver must enter the area indicated by information on or with the sign.

Maximum penalty: 20 penalty units.

Note. ***Truck*** and ***with*** are defined in the Dictionary.

Trucks must enter sign

(not reproduced)

187 Court may impose penalty and disqualify driver on conviction

(cf former Act, s 24)

(1) Subject to section 188 of this Act, section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* and sections 25 and 25A of the *Road Transport (Driver Licensing) Act 1998*, a court that convicts a person of an offence under the road transport legislation may, at the time of the conviction, order the disqualification of the person from holding a driver licence for such period as the court specifies.
(2) If the court makes an order disqualifying the person, the person is disqualified from holding a driver licence for the period specified by the court.
(3) Any disqualification under this section is in addition to any penalty imposed for the offence.
(4) The regulations may:
(a) provide that any driver licence held by a person (or class of persons) who has been convicted of the offence of driving a motor vehicle on a road at a speed which is dangerous to the public under the *Road Transport (Safety and Traffic Management) Act 1999* or of any other prescribed speeding offence is subject to a speed inhibitor condition, and
(b) provide a penalty for any breach of any such condition, and
(c) prescribe any matter necessary or convenient to be prescribed in relation to devices referred to in the definition of ***speed inhibitor condition*** in subsection (7).
(5) The court is to cause particulars of each conviction or order under the road transport legislation to be forwarded to the Authority.
(6) Section 10 of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with any of the following offences if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section, or section 556A of the *Crimes Act 1900*, is or has been applied to or in respect of the person in respect of a charge for another offence (whether of the same or a different kind) of the class referred to in this subsection:
(a) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving negligently (being driving occasioning death or grievous bodily harm),
(b) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle on a road furiously or recklessly or at a speed or in a manner which is dangerous to the public,
(c) an offence under section 9, 11B, 12 (1), 15 (4), 16, 18D (2), 18E (9), 18G (1), 24D (1), 43 or 70 of the *Road Transport (Safety and Traffic Management) Act 1999*,
(c1) an offence under section 52AB of the *Crimes Act 1900*,
(d) a severe risk breach of a mass, dimension or load restraint requirement within the meaning of Part 3.3,
(e) an offence of aiding, abetting, counselling or procuring the commission of any such offence,
(f) an offence referred to in section 10 (5) of the *Traffic Act 1909* as in force immediately before its repeal that was committed before that repeal.
(7) In this section:

road transport legislation does not include the following:

(a) the *Motor Vehicles Taxation Act 1988* or regulations made under that Act,
(b) Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or regulations made for the purposes of that Part (within the meaning of that Part).

speed inhibitor condition means a condition limiting a driver licence to the driving of a motor vehicle to which is affixed a sealed device that prevents the engine from propelling the vehicle at a speed in excess of 60 km/h.

188 Disqualification for certain major offences

(cf former Act, s 25)

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

automatic disqualification means a disqualification under this section from holding a driver licence without specific order of a court.

convicted person means:

(a) a person who is, in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the person at the time of the occurrence out of which the death of or harm to the other person arose, convicted of:
(i) the crime of murder or manslaughter, or
(ii) an offence under section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*, or
(b) a person who is convicted of an offence under section 51A, 51B or 52AB of the *Crimes Act 1900*, or
(c) a person who is convicted of an offence under any of the following provisions:
(i) section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle on a road furiously or recklessly or at a speed or in a manner which is dangerous to the public,
(ii) section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle negligently (being driving occasioning death or grievous bodily harm),
(iii) section 43 of the *Road Transport (Safety and Traffic Management) Act 1999*,
(iv) section 9 (1A), (1), (2) (a) or (b), (3) (a) or (b), (4) (a) or (b) or section 15 (4) or 16 of the *Road Transport (Safety and Traffic Management) Act 1999*,
(v) section 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,
(vi) section 12 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
(vii) section 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,
(viii) section 70 of the *Road Transport (Safety and Traffic Management) Act 1999*,

(ix) section 11B, 18D (2), 18E (9), 18G (1) or 24D (1) of the *Road Transport (Safety and Traffic Management) Act 1999*, or
(d) a person who is convicted of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any such crime or offence.

conviction means the conviction in respect of which a person is a convicted person.

ordered disqualification means disqualification under this section from holding a driver licence that is ordered by a court.

(2) **Disqualification if no previous major offence**
If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is not or has not been convicted of any other major offence (whether of the same or a different kind):
(a) where the conviction is for an offence under section 9 (1A), (1) or (2) or 11B (1) or (3) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 6 months from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 3 months) of disqualification—the person is disqualified from holding a driver licence for such shorter period as may be specified in the order, or
(b) where the conviction is for an offence under section 9 (3) or 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 12 months from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
(c) where the conviction is for an offence under section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 3 years from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
(d) where the conviction is for any other offence:
(i) the person is automatically disqualified for a period of 3 years from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.
(3) **Disqualification if previous major offence**
If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is or has been convicted of one or more other major offences (whether of the same or a different kind):

(a) where the conviction is for an offence under section 9 (1A), (1) or (2) or 11B (1) or (3) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 12 months from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
(b) where the conviction is for an offence under section 9 (3) or 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 3 years from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
(c) where the conviction is for an offence under section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*:
(i) the person is automatically disqualified for 5 years from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
(d) where the conviction is for any other offence:
(i) the person is automatically disqualified for 5 years from holding a driver licence, or
(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 2 years) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.

(4) **Calculation of disqualification periods in case of multiple offences**

If 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle or trailer, the following provisions apply:
(a) for the purpose of ascertaining which of subsections (2) and (3) should apply in relation to any such conviction:
(i) the other of those convictions are to be disregarded, and
(ii) subsection (2) or (3) (as the case may require) is, accordingly, to be the applicable subsection, and
(b) the maximum period of automatic disqualification in respect of all those crimes or offences is to be:
(i) if subsection (2) is applicable—3 years, or
(ii) if subsection (3) is applicable—5 years, and
(c) any minimum period of ordered disqualification is, in respect of those crimes or offences, to be disregarded to the extent that the total period of ordered and (where relevant) automatic disqualification would exceed:
(i) where subsection (2) is applicable—12 months, or
(ii) where subsection (3) is applicable—2 years.

However, nothing in paragraph (c) prevents the court, if it thinks fit, from making any order it could have made if that paragraph had not been enacted.

(5) **Disqualification in addition to any other penalty**
Any disqualification under this section is in addition to any penalty imposed for the offence.
(6) **Relationship to Division 2**
This section has effect subject to the provisions of Division 2.

189 Effect of disqualification

(cf former Act, s 26)

(1) If, as a consequence of being convicted of an offence by a court, a person is disqualified under the road transport legislation (whether or not by an order of the court) from holding a driver licence, the disqualification operates to cancel, permanently, any driver licence held by the person at the time of his or her disqualification.
(2) A disqualification to hold an Australian driver licence held under a law in force in another State or internal Territory by a person who holds a driver licence issued in this State is, for the purposes of subsection (1), to be treated as if it were a disqualification to hold the driver licence issued in this State.
(3) A person who is so disqualified must:
(a) if present at the court (being a court in this State) and in possession of his or her driver licence—surrender the licence to the court immediately after being convicted, or
(b) if present at the court (being a court in this State) but not in possession of the licence or if not present at the court—surrender the licence to the Authority as soon as practicable after being convicted, or
(c) if the person is to be treated under subsection (2) as having been disqualified from holding a driver licence issued in this State—surrender the licence to the Authority as soon as practicable after being disqualified from holding the Australian driver licence referred to in that subsection.

Maximum penalty: 20 penalty units.

(4) Subject to the provisions of Division 2, a person who is disqualified from holding a driver licence cannot obtain another driver licence during the period of disqualification.
(5) If a driver licence is surrendered to the court, the licence is to be delivered to the Authority.
(6) Any period for which a stay of execution is in force under section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001* is not to be taken into account when calculating the length of a period of disqualification under this Division.

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

(cf Traffic Act, s 5 (2) and (2A))

(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

(cf Traffic Act, s 4E (2A), (2B), (6) and (8))

(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.

27 Procedure for taking samples following arrest

(cf Traffic Act, s 5AA (4) and (6)–(10))

(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.
(2D) A police officer may make the arrangements referred to in subsection (2B). The making of such arrangements under this subsection operates to discharge the duty referred to in subsection (2B) to make those arrangements.
(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.

29 Offences related to sobriety assessments and testing for drugs

(cf Traffic Act, s 5AC (1)–(4) and (6)–(8))

(1) A person must not, when required by a police officer to submit to an assessment under section 25, refuse or fail to submit to the assessment in accordance with the directions of the police officer.

Maximum penalty: 10 penalty units.

(2) A person must not:
(a) on being required under this Division by a police officer to provide samples of blood or urine:
(i) refuse or fail to submit to the taking of the sample of blood, or
(ii) refuse or fail to provide the sample of urine,
in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker, or
(b) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in section 25 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to an assessment and the time when the person undergoes that assessment, or
(c) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in section 25 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to an assessment and the time when the person provides a sample that the person is required to provide under this Division.

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) It is a defence to a prosecution for an offence under subsection (1) or (2) (a) if the defendant satisfies the court that the defendant was unable on medical grounds, when the defendant was required to do so, to submit to an assessment or to provide a sample.
(4) It is a defence to a prosecution of a person for an offence under subsection (2) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the event referred to in section 25 (2) (a) (i) or (ii).
(5) If a medical practitioner, registered nurse or prescribed sample taker is informed by a police officer in accordance with this Division that a sample is required to be taken for the purposes of this Division, the medical practitioner, registered nurse or prescribed sample taker must not:
(a) fail to take the sample, or
(b) fail to comply with any requirement made by section 27 (3) or (4) in relation to the sample.

Maximum penalty: 20 penalty units.

(6) It is a defence to a prosecution for an offence under subsection (5) if the medical practitioner, registered nurse or prescribed sample taker satisfies the court that:
(a) the practitioner, nurse or prescribed sample taker believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
(b) the practitioner, nurse or prescribed sample taker did not believe that the person was of or above the age of 15 years and it was reasonable for the practitioner, nurse or prescribed sample taker not to have so believed, or

(c) the practitioner, nurse or prescribed sample taker was, because of the behaviour of the person, unable to take the sample, or
(d) there was other reasonable cause for the practitioner, nurse or prescribed sample taker not to take the sample.
(7) A person must not hinder or obstruct a medical practitioner, registered nurse or prescribed sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Division.

Maximum penalty: 20 penalty units.

37 Evidence of breath test, breath analysis, oral fluid test, oral fluid analysis or blood or urine analysis and related facts not admissible in insurance cases to prove intoxication or drug use

(cf Traffic Act, ss 4E (13), 4G (12) and (13) and 5AB (5) and (6))

(1) For the purposes of any contract of insurance, any of the following facts are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle:
(a) the fact that a person has undergone a breath test or submitted to a breath analysis under Division 3,
(b) the result of a breath test or breath analysis,
(b1) the fact that a person has undergone an oral fluid test or provided a sample for oral fluid analysis under Division 3A,
(b2) the result of an oral fluid test or oral fluid analysis,
(c) the fact that a person has been convicted of an offence under section 9, 11B (1) or (3), 13 (2), 15 (4), 16, 18B (2), 18D (2), 18E (9) or 18G (1).
(2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under Division 3A, 4, 4A or 5 are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or other drug or incapable of driving or of exercising effective control over a vehicle or horse.
(3) Nothing in subsection (1) or (2) precludes the admission of any other evidence to show a fact referred in the subsection.
(4) The provisions of this section have effect despite anything contained in any contract of insurance.
(5) Any covenant, term, condition or provision in any contract of insurance is void:
(a) to the extent that the operation of this section is excluded, limited, modified or restricted, or
(b) to the extent that it purports to exclude or limit the liability of the insurer in the event of any person being convicted of an offence under section 9, 11B (1) or (3) or Division 3 or 3A.
(6) However, nothing in subsection (5) precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision under which the liability of the insurer is excluded or limited.

42 Negligent, furious or reckless driving

(cf Traffic Act, s 4)

(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.

46 Certificates concerning use of approved speed measuring devices

(cf Traffic Act, s 4AB (1) and (2))

(1) In proceedings for any offence against this Act in which evidence is given of a measurement of speed obtained by the use of an approved speed measuring device, a certificate purporting to be signed by an appropriate officer certifying that:
(a) the device is an approved speed measuring device within the meaning of this Act, and
(b) on a day specified in the certificate (being within the time prescribed by the regulations before the alleged time of the offence) the device was tested in accordance with the regulations and sealed by an appropriate officer, and
(c) on that day the device was accurate and operating properly,
is admissible and is prima facie evidence of the particulars certified in and by the certificate.

(2) If any such certificate is tendered in proceedings for an offence, evidence:
(a) of the accuracy or reliability of the approved speed measuring device, or
(b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

(3) In this section:

appropriate officer means:

(a) in the case of an approved speed measuring device that is used in conjunction with, or forms part of, an approved digital camera recording device—a person (or person belonging to a class of persons) authorised by the Authority to install and inspect approved digital camera recording devices or approved speed measuring devices (or both), or
(b) in the case of any other kind of approved speed measuring device—a police officer, or a person authorised by the Commissioner of Police to test a device of that kind.

Note. See also section 73A.

73A Rebuttal of evidence of matters of specialised knowledge

(1) This section applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, as referred to in section 46, 47, 47B, 57, 57B or 69E and for the purposes of proceedings to which those sections apply.

(2) An assertion that contradicts or challenges:
(a) the accuracy or reliability, or the correct or proper operation, of an approved device, or
(b) the accuracy or reliability of information (including a photograph) derived from such a device,

is capable of being sufficient, in proceedings to which this section applies, to rebut such evidence or such a presumption, or to raise such doubt, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

(3) In this section, ***approved device*** means:
(a) an approved camera detection device, or
(b) an approved camera recording device, or
(c) an approved speed measuring device, or
(d) an approved traffic lane camera device, or
(e) an approved average speed detection device.

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).

(1A) Subsection (1) does not apply to a driver of a motor vehicle in relation to a period of disqualification the commencement and completion dates of which have been altered by operation of section 188A of the *Road Transport (General) Act 2005* unless the Authority has given written notice of the altered dates to the driver before the driver is alleged to have driven the vehicle.
Note. Section 239 of the *Road Transport (General) Act 2005* (and regulations made for the purposes of that section) provide for the service and giving of documents to persons under the road transport legislation, which includes this Act.
(2) A person whose driver licence is suspended (otherwise than under section 66 of the *Fines Act 1996*) 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 (otherwise than under section 66 of the *Fines Act 1996*) 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).

(3A) A person whose driver licence is suspended or cancelled under section 66 of the *Fines Act 1996* must not:
(a) in the case of a suspended licence:
(i) drive on a road or road related area a motor vehicle of the class to which the suspended driver licence relates, or
(ii) 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, or
(b) in the case of a cancelled licence:
(i) drive on a road or road related area a motor vehicle of the class to which the cancelled licence related without having subsequently obtained a driver licence for a motor vehicle of that class, or
(ii) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence related and in respect of the application state his or her name falsely or incorrectly or omit to mention the cancellation.

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).

(3B) In determining any penalty or period of disqualification to be imposed on a person for an offence under subsection (3A), a court must take into account the effect the penalty or period of disqualification will have on the person's employment and the person's ability to pay the outstanding fine that caused the person's driver licence to be suspended or cancelled.
(4) For the purposes of subsection (3) (b) or (3A) (b) (ii), 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), (3) (a) and (3A) (b) (i) do not apply to the driving of a motor vehicle in circumstances prescribed by the regulations.
(6) (Repealed)
(7) If a person is convicted by a court of an offence under subsection (1), (2), (3) (a) or (3A), 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) For the purposes of subsection (7), 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 first offence under subsection (3A)—3 months, or

(c) in the case of a second or subsequent offence—2 years.

(11) For the purposes of determining both the maximum penalty and the disqualification period for any offence under this section, an offence is a ***second or subsequent offence*** if:

(a) in relation to an offence under subsection (1), (2) or (3):

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

(ii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence within the meaning of the *Road Transport (General) Act 2005*, or

(iii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or

(iv) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 25 (2), or

(b) in relation to an offence under subsection (3A)—it is the second or subsequent occasion on which the person is convicted of an offence under subsection (3A) within the period of 5 years immediately before the person is convicted of the offence.