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CRIMINAL LAW
NEW SOUTH WALES

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Highlights

● New commentary on Road Transport legislation by Greg Hosking SC
● Legislative amendments

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NEW AND AMENDED COMMENTARY

The Overview of the Road Transport Legislation contains new commentary by Greg Hosking SC:

- **Purpose of the new Road Transport legislation** at [8.20] discusses the new Road Transport Act 2013, the Road Transport Legislation (Repeal and Amendment) Act 2013 and the Road Transport (Statutory Rules) Act 2013 and their roles in the simplification of the structure of the NSW Road Transport legislation.

- **Repealed legislation** at [8.40] lists the legislation that has been repealed following the commencement of the new Road Transport Act 2013.

- **Current legislation** at [8.60] lists all the Road Transport legislation in their current form with references to pertinent subject matter.

- **Frequently arising topics** at [8.80] lists frequently arising topics alphabetically as well as relevant sections and clauses.

The Road Transport Act 2013 contains new commentary by Greg Hosking SC:


- **Licence suspension** at [8.1520] discusses a notice of licence suspension and the possibility of a driver electing to be of good behaviour as an alternative under s 36.

- **Forms of charge and jurisdiction** at [8.2250].

- **Elements of the offences** at [8.2270] discusses the elements that must be proved on a charge of driving while disqualified, suspended or cancelled.

Element (2) Drive a motor vehicle on a road at [8.2310] defines certain terms.

Element (3) Period of disqualification, or vehicle of the class the suspended or cancelled licence related to at [8.2330] discusses the different classes of licences and the certificate evidence relating to the disqualification, suspension or cancellation of the various classes of licences.

Cross references at [8.4790].

Forms of charge and jurisdiction at [8.4810].

Elements of the offences at [8.4830] discusses the elements that must be proved on a charge of driving with the prescribed concentration of alcohol.

Element (1) Driving or attempting to drive a motor vehicle at [8.4850] defines certain terms and discusses the possibility of police requiring a breath test as well as the fact that the offence is not restricted to public streets. The cases cited include McMillan v Reeves (1945) 62 WN (NSW) 126; McNeall v Croker [No 2] (1939) 56 WN (NSW) 149; Burchell v Goodall (1994) 20 MVR 391; R v Abrahams [1984] 1 NSWLR 491; 13 A Crim R 113 and Carr v Walukiciwick [1969] VR 758.


Aiding and abetting at [8.4890] discusses what must be proved on a charge of aiding and abetting an offence of driving under the influence of alcohol. The cases cited include Bruce v Williams (1989) 46 A Crim R 122 and Giorgianni v The Queen (1985) 156 CLR 473; 16 A Crim R 163.

Disqualification periods at [8.4910] lists the various disqualification periods applicable where there has been a conviction for a major offence within five years and otherwise. References to interlock provisions are also made. The case of Gardner v The Queen [2003] NSWCCA 199 is cited.

• Right of appeal from Local Court at [8.4950] discusses the provision for a right of appeal to the District Court.

LEGISLATIVE AMENDMENTS

The Criminal Procedure Act 1986 was amended by the Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act 2013, Sch 1 (Act 10 of 2013), which commenced on 1 Sep 2013.

• The purpose of this Act is to amend the Criminal Procedure Act 1986 in relation to mandatory pre-trial defence disclosure in indictable proceedings; and for other purposes.

Sections 136, 139, 144, 145, 147–149 and Sch 2 were amended. Section 146A was inserted. Sections 141–143 were substituted. Sections 137 and 138 were repealed.

The Evidence Act 1995 was amended by the Evidence Amendment (Evidence of Silence) Act 2013, Sch 1 (Act 9 of 2013), which commenced on 1 Sep 2013.

• The purpose of this Act is to amend the Evidence Act 1995 with respect to inferences that may be drawn from the silence during official questioning of persons accused of serious indictable offences.

Section 89 and Sch 2 were amended. Section 89A was inserted.

The Road Transport Act 2013 was amended by the following Acts:


• The purpose of this Act is to amend the Road Transport Act 2013 with respect to driving safety in connection with obstructions and hazards on roads.

Section 117 was amended.

– Road Transport Amendment (Electronic Traffic Infringement Notices Trial) Act 2013, s 3 (Act 61 of 2013), which commenced on 3 Sep 2013.

• The purpose of this Act is to amend the Road Transport Act 2013 to establish a trial for the service of penalty notices to email addresses or mobile phone numbers where persons elect to have the penalty notices served on them in that way.

Section 196A was inserted.
The *Crimes (Administration of Sentences) Act 1999* was amended by the *Inspector of Custodial Services Act 2012*, Sch 3.3 (Act 55 of 2012), which commenced on 30 Aug 2013.

- The purpose of this Act is to provide for an Inspector of Custodial Services; and for other purposes.

Sections 228 and 230 were amended.

The *Victims Rights and Support Regulation 2013* was amended by the *Victims Rights and Support Amendment (Transitional Provisions) Regulation 2013*, Sch 1 (Reg 442 of 2013), which commenced on 3 Jun 2013.

- The purpose of this Regulation is to amend the *Victims Rights and Support Regulation 2013* to make further savings and transitional provisions consequent on the enactment of the *Victims Rights and Support Act 2013* and to provide for costs and expenses payable with respect to proceedings before the Administrative Decisions Tribunal under the Act with respect to victims support.

Clauses 13–16 were inserted.