



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997

No. 51 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997

No. 51 of 1997

An Act to amend the *Motor Traffic (Alcohol and Drugs) Act 1977*

[Notified in ACT Gazette S264: 19 September 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Motor Traffic (Alcohol and Drugs) Act 1977*.¹

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of “prescribed concentration” and substituting the following definition:

“ ‘prescribed concentration’—

- (a) in relation to a special driver—means .02 grams of alcohol per 100 millilitres of blood; and
- (b) in relation to any other person—means .05 grams of alcohol per 100 millilitres of blood;”;

(b) by omitting from subsection (1) the definition of “offence involving alcohol or drugs”;

(c) by inserting in subsection (1) the following definitions:

“ ‘approved rehabilitation program’—

- (a) in relation to alcohol dependence—means a program approved under section 44; and
- (b) in relation to drug dependence within the meaning of the *Drugs of Dependence Act 1989*—means treatment at an approved treatment centre under that Act;

‘level’, in relation to a concentration of alcohol in blood, has the meaning given by subsection (3);

‘special driver’ means—

- (a) a person who is not licensed to drive a motor vehicle;
- (b) the holder of a learner licence, provisional licence, probationary licence or special licence; or

- (c) the driver of—
- (i) a heavy motor vehicle;
 - (ii) a dangerous goods vehicle;
 - (iii) a Commonwealth vehicle;
 - (iv) a public motor vehicle;
 - (v) a private hire car; or
 - (vi) a restricted hire vehicle;”;
- (d) by adding at the end the following subsections:

“(3) A reference in this Act to a concentration of alcohol in blood at a level that is specified in the second column of the following table shall be read as a reference to a concentration of alcohol in 100 millilitres of blood that is specified in the third column of the table opposite that level:

Item	Level	Blood alcohol concentration
1	Level 1	.02 grams or more but less than .05 grams
2	Level 2	.05 grams or more but less than .08 grams
3	Level 3	.08 grams or more but less than .15 grams
4	Level 4	.15 grams or more

“(4) For the purposes of this Act, a person is not licensed to drive a motor vehicle of a particular kind if—

- (a) the person’s driving licence for such a vehicle is suspended under a law of the Territory;
- (b) the person is disqualified by force of, or under, a law of the Territory from holding any driving licence or a driving licence for such a vehicle; or
- (c) for any other reason, the person is—
 - (i) not the holder of a driving licence for such a vehicle; and
 - (ii) not entitled under section 107, 107A or 108 of the *Motor Traffic Act 1936* to drive such a vehicle.”.

Detention for breath analysis

5. Section 11 of the Principal Act is amended by omitting from paragraph (2) (b) all the words after “the person is” and substituting “a special driver”.

Prescribed blood alcohol concentration exceeded

6. Section 19 of the Principal Act is amended by omitting from subsection (1) “a fine not exceeding 30 penalty units” and substituting “a penalty ascertained in accordance with section 26”.

Interpretation

7. Section 25 of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of “first offender” and substituting the following definition:

“ ‘first offender’, in relation to an offence, means a person convicted of the offence other than a repeat offender;”;

(b) by omitting from subsection (1) the definitions of “previous offender” and “traffic infringer”;

(c) by inserting in subsection (1) the following definitions:

“ ‘disqualifying offence’ has the meaning given by subsection (2);

‘driving licence’ includes a learner licence receipt;

‘repeat offender’ has the meaning given by subsection (3);”;

and

(d) by omitting subsections (2) to (7) (inclusive) and substituting the following subsections:

“(2) For the purposes of this Part, an offence against any of the following provisions of this Act is a disqualifying offence:

(a) section 19 (prescribed blood alcohol concentration exceeded);

(b) section 22 (refusing to provide breath sample);

(c) section 23 (refusing blood test etc.);

(d) section 24 (driving under the influence of intoxicating liquor or a drug);

(e) an offence against any other provision of this Act that is prescribed by the regulations.

“(3) For the purposes of this Part, a person convicted of a disqualifying offence is a repeat offender in relation to that offence if, during the 5 years ending on the date of the conviction, the person has been convicted of another offence specified in subsection (4).

“(4) For the purposes of subsection (3), each of the following offences is specified:

- (a) a disqualifying offence;
- (b) a corresponding offence;
- (c) an offence against any of the following provisions of the *Motor Traffic Act 1936*:
 - (i) section 11D (contravening conditions on special licence);
 - (ii) subsection 129 (1) or section 147A (dangerous driving etc.);
 - (iii) subsection 129 (1A) (negligent driving);
 - (iv) section 191P (driving etc. while suspended or disqualified); or
- (d) an offence of culpable driving.”.

Substitution

8. Sections 26A and 28 of the Principal Act are repealed and the following section is substituted:

Fines and imprisonment—s. 19 offences

“26. (1) Where a special driver is convicted of an offence against subsection 19 (1) and the convicting Court finds that the concentration of alcohol in the person’s blood was at a level specified in the second column of the table at the end of this section, the person is punishable—

- (a) in the case of a first offender—by the penalty specified in the third column of the table opposite that level; and
- (b) in the case of a repeat offender—by the penalty specified in the fourth column of the table opposite that level.

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“(2) Where a person other than a special driver is convicted of an offence against subsection 19 (1) and the convicting Court finds that the concentration of alcohol in the person’s blood was at level 2, 3 or 4, the person is punishable—

- (a) in the case of a first offender—by the penalty specified in the third column of the table at the end of this section opposite the relevant level; and
- (b) in the case of a repeat offender—by the penalty specified in the fourth column of the table opposite the relevant level.

Item	Blood alcohol concentration level	Penalty—first offender	Penalty—repeat offender
1	Level 1	Fine not exceeding 5 penalty units	Fine not exceeding 10 penalty units
2	Level 2	Fine not exceeding 5 penalty units	Fine not exceeding 10 penalty units
3	Level 3	Fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both	Fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both
4	Level 4	Fine not exceeding 15 penalty units or imprisonment for a period not exceeding 9 months, or both	Fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months, or both

Conditional release of convicted person

9. Section 29 of the Principal Act is amended—

(a) by omitting paragraphs (1) (d) and (e) and substituting the following paragraphs:

“(d) he or she will, during the period so specified or such shorter period as the Court specifies in the order, undertake an approved rehabilitation program in accordance with the reasonable requirements of the person in charge of the program;

(e) he or she will, during the period so specified, comply with such conditions (including conditions concerning the undertaking of the approved rehabilitation program) as the Court specifies in the order; and”;

(b) by inserting after subsection (1) the following subsection:

“(1A) The Court shall only make an order under subsection (1)—

(a) with the convicted person’s consent; and

(b) if satisfied that the person in charge of the rehabilitation program has agreed to the convicted person undertaking the program.”.

Substitution

10. Sections 31 to 35 (inclusive), and Parts V and VI, of the Principal Act are repealed and the following sections substituted:

Cancellation of driving licence

“31. (1) Where the holder of a driving licence is convicted of a disqualifying offence, the Court may cancel the person’s driving licence.

“(2) The cancellation takes effect in accordance with subsection 35 (1).

Driving licence disqualification—first offenders, s. 19

“32. (1) This section applies only to first offenders.

“(2) Where a Court convicts a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person’s blood was at a level specified in the second column of the table at the end of this section, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

“(3) Where a Court convicts a person other than a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person’s blood was at level 2, 3 or 4, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

Item	Blood alcohol concentration level	Maximum disqualification
1	Level 1	3 months
2	Level 2	6 months
3	Level 3	12 months
4	Level 4	3 years

Driving licence disqualification—repeat offenders, s. 19

“33. (1) This section applies only to repeat offenders.

“(2) Where a Court convicts a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person’s blood was at a level specified in the second column of the table at the end of this section, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

“(3) Where a Court convicts a person other than a special driver of an offence against subsection 19 (1) and finds that the concentration of alcohol in the person’s blood was at level 2, 3 or 4, the Court may disqualify the person from holding a driving licence for a period not exceeding the period specified in the third column of the table opposite that level.

Item	Blood alcohol concentration level	Maximum disqualification
1	Level 1	12 months
2	Level 2	12 months
3	Level 3	3 years
4	Level 4	5 years

Driving licence disqualification—offences other than s. 19

“34. (1) Where a Court convicts a first offender of a disqualifying offence, other than an offence against subsection 19 (1), the Court may disqualify the person from holding a driving licence for a period not exceeding 3 years.

“(2) Where a Court convicts a repeat offender of a disqualifying offence, other than an offence against subsection 19 (1), the Court may disqualify the person from holding a driving licence for a period not exceeding 5 years.

Timing of licence cancellation and disqualification

“35. (1) Where a driving licence is cancelled under section 31 and the former licensee is disqualified from holding a driving licence under section 32, 33, 34 or 37, the cancellation and disqualification take effect—

- (a) on the relevant conviction by the Court; or

(b) if the Court specifies a later date of effect—on the date specified.

“(2) Where a person who is not the holder of a driving licence is disqualified from holding a driving licence under section 32, 33 or 34, the disqualification takes effect on the relevant conviction by the Court.

Disqualification subject to grant of special licence

“36. Where a person, other than a special licensee, is disqualified from holding a driving licence under section 32, 33 or 34, the disqualification has effect subject to the grant of a special licence.

Disqualification etc.—further special licence

“37. (1) Where a person’s special licence is cancelled by force of section 31, then, under this subsection—

- (a) any suspended licence granted to the person is cancelled together with the special licence; and
- (b) the person is disqualified from holding another special licence during the remainder of the period for which the person was originally disqualified.

“(2) A disqualification by force of subsection (1) is in addition to any other disqualification from holding a driving licence imposed on the person under section 32, 33 or 34 or any other law of the Territory.

“(3) For the purposes of subsection (1), the period for which a person was originally disqualified is the period during which the person was disqualified from holding a driving licence, disregarding the period for which the special licence was granted.

Additional powers of Court

“38. The powers of a Court under this Part are in addition to any other powers of the Court.

Notice to Registrar

“39. The Registrar of a Court shall give to the Registrar of Motor Vehicles particulars of—

- (a) each conviction by the Court of a person of a disqualifying offence; and
- (b) each period of disqualification specified by the Court in relation to such a conviction.”.

Certificate evidence

11. Section 41 of the Principal Act is amended by inserting after paragraph (1) (ba) the following paragraph:

“(bb) a certificate purporting to be signed by the Registrar and stating that a person is not licensed, or otherwise entitled, to drive any motor vehicle or a motor vehicle of a particular kind is evidence of the matters stated in the certificate;”.

Oral evidence concerning s. 41 certificate

12. Section 43 of the Principal Act is amended by omitting from subsection (1) “or an offence of culpable driving”.

Substitution

13. Part VIII of the Principal Act is repealed and the following Part substituted.

“PART VIII—REHABILITATION PROGRAMS

Approval of programs

“44. (1) For the purposes of this Act, the Minister may approve a program of therapy or education which the Minister believes on reasonable grounds would assist in the rehabilitation of persons suffering from alcohol dependence.

“(2) An approval shall be given by notice in the *Gazette*.

Conditions

“44A. (1) An approval under section 44 shall specify any condition to which it is subject.

“(2) Without limiting the generality of subsection (1), a condition of an approval may require the person in charge of the program to report to the Registrar of the Court about the progress of persons whom the Court has ordered to undertake the program.

Review by Administrative Appeals Tribunal

“44B. Application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions of the Minister under section 44:

- (a) refusing to approve a program;
- (b) approving a program subject to a condition;

- (c) varying or revoking—
 - (i) the approval of a program; or
 - (ii) a condition to which such an approval is subject;
- (d) refusing to revoke a condition to which an approval of a program is subject.”.

Right of arrested person to medical examination

14. Section 47 of the Principal Act is amended by omitting from subsection (1) “(other than an offence against section 34 or 46 or Part V or VI)”.

Repeal

15. Section 48 of the Principal Act is repealed.

PART III—TRANSITIONAL

Interpretation

16. In this Part, unless the contrary intention appears—

“amended Motor Traffic Act” means the *Motor Traffic Act 1936* as amended by the *Motor Traffic (Amendment) Act (No. 2) 1997*;

“amended Principal Act” means the Principal Act as amended by this Act;

“commencement day” means the day on which this Act (other than sections 1, 2 and 3) commences.

Application

17. Subject to this Part, Parts III and IV of the amended Principal Act apply only in relation to an offence committed on or after the commencement day.

Driving licences currently suspended

18. Where—

- (a) a driving licence was suspended for a period under section 31 of the Principal Act; and
- (b) but for the repeal of that section, the period would have ended on or after the commencement day;

the licence remains suspended by force of this subsection, subject to the amended Motor Traffic Act, until the end of that period.

Driving licences—current disqualifications

19. (1) Where—

- (a) a person was disqualified from holding a driving licence for a period under section 31 of the Principal Act; and
- (b) but for the repeal of that section, the period of disqualification would have ended on or after the commencement day;

the person remains disqualified from holding a driving licence by force of this subsection, subject to the amended Motor Traffic Act, until the end of that period.

(2) Where—

- (a) under section 31 or 32 of the Principal Act, a person was disqualified from holding a driving licence unless and until a Court orders otherwise; and
- (b) no such order had been made before the repeal of that section;

the person remains disqualified from holding a driving licence by force of this subsection, subject to the amended Motor Traffic Act, unless the Court orders otherwise (whether or not it makes an order under section 11A of that Act for the grant of a special licence to the person).

(3) An application for an order under subsection (2) shall be filed with the Registrar of the Court with an affidavit of the applicant setting out the grounds on which the order is sought.

(4) The respondents to an application are—

- (a) the Registrar of Motor Vehicles; and
- (b) the chief police officer.

Former special licences

20. Where—

- (a) a special licence was in force under section 37 of the Principal Act; and
- (b) but for the repeal of that section, the licence would have remained in force subject to that Act for a period that would have ended on or after the commencement day;

then, by force of this section, the licence remains in force on and after the commencement day as if it were a special licence under the amended Motor Traffic Act.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 7 and 48, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

On the day on which the *Motor Traffic (Alcohol and Drugs) Act 1977* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

Section	Alteration
22	Omit the heading, substitute the following heading: Refusing to provide breath sample
23	Omit the heading, substitute the following heading: Refusing blood test etc.

[Presentation speech made in Assembly on 15 May 1997]