



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 2) 1997

No. 53 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:

Short title

1. This Act may be cited as the *Motor Traffic (Alcohol and Drugs) (Amendment) Act (No. 2) 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, or respective days, 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

Interpretation

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘accident’ means an accident on a public street or in a public place, whether within or outside the Territory, that involves a motor vehicle;

‘driver involved in an accident’ means a driver of a motor vehicle that is involved in an accident who—

- (a) appears to have attained the age of 15 years; and
- (b) attends, or is admitted to, a hospital for the purpose of examination or treatment as a consequence of the accident;

‘nurse’ means a person who is a registered nurse within the meaning of the *Nurses Act 1988*.”

Taking blood samples from persons in custody

5. Section 15 of the Principal Act is amended—

(a) by inserting in subsection (1) “or a nurse” after “practitioner”;

(b) by inserting after subsection (2) the following subsection:

“(2A) A reference in this section to the taking of a blood sample shall be read as a reference to the taking of a blood sample pursuant to a requirement under subsection (1).”;

(c) by omitting subsection (4) and substituting the following subsection:

“(4) A medical practitioner or nurse shall not refuse to take a sample of a person’s blood for analysis—

- (a) if permitted to do so by the person under subsection (1);
or

- (b) if the practitioner or nurse is of the opinion that the person is, because of his or her medical condition, incapable of giving or refusing permission to the taking of such a sample—if requested to do so by a police officer under this section.

Penalty: 10 penalty units.”;

- (d) by inserting in subsections (5) and (6) “or nurse” after “practitioner”; and
- (e) by omitting subsections (8), (9) and (10).

Insertion

6. After section 15 of the Principal Act the following section is inserted:

Taking blood samples from persons in hospital

“15AA. (1) A medical practitioner or a nurse who, in a hospital, attends to a person whom the medical practitioner or nurse believes on reasonable grounds to be a driver involved in an accident, shall, within 2 hours of the person’s arrival at the hospital, take from that person a sample of the person’s blood for analysis.

Penalty: 10 penalty units.

“(2) A person taking a sample of blood under this section shall—

- (a) place approximately equal quantities of the sample into 2 containers;
- (b) mark or label each container for future identification; and
- (c) ensure that each container is sealed.

“(3) A person who has taken a sample of blood under this section shall—

- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

“(4) A police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.”.

Analysis of blood samples

7. Section 15A of the Principal Act is amended—

- (a) by inserting in subsection (1) “that has been taken under section 15 or 15AA and” after “person’s blood”; and
- (b) by adding at the end the following subsections:

“(3) Where a police officer has reasonable cause to suspect that—

- (a) a person whose blood is referred to in this section has in his or her body a drug other than alcohol; or
- (b) the behaviour of the person does not arise, or does not wholly arise, from the presence of alcohol in his or her body;

the police officer may request an analyst to analyse the sample to ascertain the concentration in the blood of any drug other than alcohol.

“(4) An analyst shall comply with a request under subsection (3).”.

Insertion

8. After section 15A of the Principal Act the following section is inserted:

Statements to be provided

“15B. (1) A police officer shall arrange for a person from whom a blood sample has been taken under section 15 or 15AA to be given a written statement within a reasonable time, having regard to the person’s medical condition, after an analysis under section 15A is carried out.

“(2) The statement shall specify—

- (a) the date on which and the time at which the blood sample was taken;
- (b) the place where the blood sample was taken;
- (c) the result of the analysis; and
- (d) the address at which the blood sample is being held.

“(3) If both sealed containers were put in a one-way box for collection by an approved analyst, the statement shall also inform the person to the effect that an unanalysed sample of the person’s blood may be obtained from the analyst, within 6 months after the blood sample was taken, on the request of the person or of another person authorised in writing by him or her to collect the blood sample.”.

Medical examinations

9. Section 16 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) This section applies to—

(a) a person who—

(i) has been required to undergo a screening test or to provide a sample of his or her breath for analysis; and

(ii) has been arrested on reasonable suspicion of having committed an offence against section 24 or an offence of culpable driving; and

(b) a driver involved in an accident.”;

(b) by inserting in subsection (2) “and to give, or permit the taking of, body samples” after “examination”;

(c) by omitting from subsection (3) “If” and substituting “In the case of a person referred to in paragraph (1) (a), if”;

(d) by omitting subsections (4), (5) and (6) and substituting the following subsections:

“(4) A medical practitioner requested by a police officer to carry out a medical examination of a person to whom this section applies for the purpose referred to in subsection (2) shall carry out the medical examination within 2 hours of the person’s arrival at hospital.

Penalty: 10 penalty units.

“(5) A medical practitioner requested by a police officer to take a sample from the body of a person to whom this section applies for the purpose referred to in subsection (2) shall, within 2 hours of the person’s arrival at hospital—

- (a) take the sample; or
- (b) request a nurse to take the sample.

Penalty: 10 penalty units.

“(6) A nurse requested by a medical practitioner or a police officer to take a sample from the body of a person to whom this section applies shall take the sample within 2 hours of the person’s arrival at hospital.

Penalty: 10 penalty units.

“(7) A person taking a sample under this section shall—

- (a) place approximately equal quantities of the sample into 2 containers;
- (b) mark or label each container for future identification; and
- (c) ensure that each container is sealed.

“(8) A person who has taken a sample under this section shall—

- (a) if satisfied that the person from whom the sample has been taken is incapable of understanding the procedures that have been applied to him or her—put both sealed containers in a one-way box; or
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

“(9) A police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.”.

Substitution

10. Section 17 of the Principal Act is repealed and the following sections are substituted:

Analysis of body samples

“16A. (1) Where only 1 sealed container of a particular person’s body sample has been put in a one-way box under subsection 16 (8), the analyst by whom it is collected shall analyse it to ascertain—

- (a) whether any drug other than alcohol was present in the person’s body when the sample was taken;
- (b) if any such drug is found to have been present—the concentration, quantity or other measurement of that drug; and
- (c) where the sample is of the person’s blood—the concentration of alcohol in the blood.

“(2) Where 2 sealed containers of a particular person’s body samples have been put in a one-way box under subsection 16 (8), the analyst by whom they have been collected shall—

- (a) analyse the sample in one of the containers in accordance with subsection (1); and
- (b) keep the other container sealed and under refrigeration until—
 - (i) the person, or another person authorised by the first-mentioned person, requests the analyst to give him or her the sample; or
 - (ii) 6 months have elapsed since the sample was taken from the person.

Exemptions from requirements to take blood samples or carry out examinations

“17. (1) In this section—

‘specified procedure’ means—

- (a) the taking of a sample—
 - (i) of a person’s blood under this Act; or
 - (ii) from the body of a person under section 16; or
- (b) the carrying out of a medical examination under section 16.

“(2) A medical practitioner or nurse is not required to carry out a specified procedure on a person—

- (a) if he or she is of the opinion that to do so would be detrimental to the person’s medical condition;
- (b) in the case of a procedure under section 15 or 16—if the person objects to the carrying out of the procedure and persists in so objecting after a medical practitioner, nurse or police officer has informed the person that, unless the objection is based on religious or other conscientious grounds or on medical grounds, the refusal may constitute an offence punishable as provided by this Act; or
- (c) in the case of a procedure under section 15AA—the medical practitioner or nurse believes on reasonable grounds that a sample of the blood of the person—
 - (i) has already been taken under this Act; or
 - (ii) will be taken under section 15.

“(3) It is a defence to a prosecution for a breach of subsection 15 (4), 15AA (1) or 16 (4), (5) or (6) if the defendant satisfies the court that—

- (a) by reason of the behaviour of the person in relation to whom the relevant specified procedure was to be carried out, the defendant was unable to comply with the subsection; or
- (b) there was other reasonable cause for the failure to comply with the subsection.”.

Protection of police officers and medical staff

11. Section 18 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(5) The Territory shall indemnify and keep indemnified a medical practitioner or nurse who carries out a specified procedure when required to do so by this Act in respect of any damages that he or she becomes liable to pay as a result of carrying out the procedure.

“(5A) In subsection (5)—

‘specified procedure’ has the same meaning as in section 17.”.

Prescribed blood alcohol concentration exceeded

12. Section 19 of the Principal Act is amended by inserting “or 15AA” after “15” in paragraph (3) (b) of the definition of “relevant period”.

Refusal to submit to blood test or medical examination

13. Section 23 of the Principal Act is amended—

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

“(1A) A person from whom a blood sample is required to be taken under subsection 15AA (1) shall not behave in such a manner as to make it impossible or impractical for the sample to be taken.

Penalty: 30 penalty units.”;

(b) by inserting in subsection (3) “, (1A)” after “(1)”; and

(c) by omitting from subsection (3) “failure or refusal” and substituting “failure, refusal or behaviour (as the case requires)”.

Certificate of evidence

14. Section 41 of the Principal Act is amended—

(a) by inserting in paragraph (1) (c) “or a nurse” after “practitioner” (first occurring);

(b) by adding at the end of subparagraph (1) (c) (i) “or a nurse, as the case requires”;

(c) by omitting subparagraph (1) (c) (vi) and substituting the following subparagraph:

“(vi) he or she—

(A) gave 1 container to the person from whom the sample had been taken and put the other container in a one-way box; or

(B) put both containers in a one-way box;”;

(d) by inserting in paragraph (1) (cb) “or a nurse” after “practitioner” (first occurring);

(e) by adding at the end of subparagraph (1) (cb) (i) “or a nurse, as the case requires”;

(f) by inserting in subparagraph (1) (cb) (iv) “or nurse, as the case requires,” after “practitioner”;

(g) by omitting from subparagraph (1) (cb) (vii) “he or she” and substituting “where the sample of blood was taken under section 15—he or she”;

- (h) by inserting after paragraph (1) (cb) the following paragraph:
 - “(cc) a certificate that appears to be a certificate referred to in subsection 4G (9), (10) or (11) of the *Traffic Act 1909* of the State of New South Wales is evidence of the matters stated in the certificate;”; and
- (i) by inserting in subparagraph (1) (d) (ii) “or nurse” after “practitioner”.

Evidence for insurance purposes

15. Section 41A of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (a) “or 15AA (1)”;
- (b) by omitting paragraph (1) (b) and substituting the following paragraph:
 - “(b) that a medical practitioner or nurse dealt with a container holding a sample of blood in accordance with subsection 15 (6) or 15AA (3);”;
- (c) by omitting from paragraph (1) (c) “subsection 15 (8)” and substituting “section 15B”;
- (d) by omitting from paragraph (1) (d) “subsection 15 (8)” and substituting “section 15B”;
- (e) by omitting from subsection (2) “subsection 15 (8)” and substituting “section 15B”;
- (f) by omitting from subsection (5) “(2) or (3)” and substituting “(3) or (4)”; and
- (g) by adding at the end of the definition of “relevant offence” in subsection (6) “or 15AA (1)”.

NOTE

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 7 and 48, 1996; No. 51, 1997.

Penalty units

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

[Presentation speech made in Assembly on 19 June 1997]

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