

AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC ORDINANCE (NO. 6) OF 1973

EXPLANATORY MEMORANDUM

No. 57 of 1973

Recent decisions in the Courts have demonstrated short-comings in the Breathalyzer provisions of the Motor Traffic Ordinance 1936-1973. As the Ordinance now stands the Breathalyzer provisions are virtually unworkable.

The Motor Traffic Ordinance (No. 6) of 1973 has been drafted to rectify these short-comings as outlined below:

- Section 139C of the existing Motor Traffic Ordinance deems the alcohol concentration in an accused person's blood at the time of an offence to be the concentration measured subsequently by the Breathalyzer unless the contrary is proved. This has been interpreted to mean that if an accused person can demonstrate that it is probable that he had even a slightly different concentration (either higher or lower) at the time of the offence to the concentration measured by the Breathalyzer the effect of the deeming provision is nullified.

Section 2 of the proposed Ordinance will amend section 139C to provide that the Breathalyzer measurement of the blood/alcohol concentration is evidence of the concentration at the time of the offence. Thus a person will not be entitled to acquittal merely because he can demonstrate, on the balance of probability, that he had a higher alcohol concentration than the Breathalyzer reading.

- Prosecutions of person for refusing to submit to breath tests at the present time cannot succeed. This is because the certificate evidencing that a person is an approved Breathalyzer operator is not admissible in these proceedings.

Paragraphs 3(a) and (d) of the proposed Ordinance will remove this anomaly and will provide that the abovementioned certificates are admissible in any proceedings in a court.

- To simplify court proceedings, paragraphs 3(b) and (c) of the proposed Ordinance provide that a Police Officer may tender in evidence a certificate stating that he gave to the accused person a statement of the result of the breath test as is required by sub-section 139E (13).

- Section 139G of the existing Ordinance empowers a Police Officer to require a person to submit to a blood test in certain circumstances. This section requires that the test of a sample of the person's blood be carried out within two hours of the person arriving at the hospital.

Section 4 of the proposed Ordinance will remove this anomaly by requiring only that the sample of a person's blood be taken in the two hours.

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Minister's Initials