



Australian Capital Territory

Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010

A2010-27

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Offences against Act—application of Criminal Code etc Section 4, note 1	2
5 Section 5	3
6 Approval of operators, analysts and laboratories New section 6 (1A)	4
7 Sections 11 and 12	5
8 New section 12AA	8
9 Precautions for privacy Section 13	9
10 Section 14 heading	9
11 Section 14 (1)	9
12 Section 14 (3)	9

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Contents

	Page
13	Section 14 (3) (a) 10
14	Taking blood samples from people in custody Section 15 (1) (a) and (b) 10
15	Analysis of blood samples Section 15A (1) 10
16	Section 15A (2) (a) 11
17	Medical examinations Section 16 (1) (a) (i) 11
18	Protection of police officers and medical staff Section 18 (3) (a) 11
19	New section 18B 12
20	New section 20 12
21	New section 22A 13
22	Section 27 heading 14
23	Section 27 (a) 14
24	Certificate of evidence New section 41 (1) (aa) 14
25	New section 41 (1) (ba) 16
26	Section 41 (1) (c) 17
27	Section 41 (1) (e) (iii) 17
28	New section 42AA 17
29	New section 42C 18
30	New section 47A 18
31	Dictionary, new definitions 19
32	Dictionary, definitions of <i>approved analyst</i> and <i>approved breath analysis instrument</i> 19
33	Dictionary, new definition of <i>approved drug screening device</i> 19
34	Dictionary, definition of <i>approved operator</i> 19
35	Dictionary, new definition of <i>approved oral fluid analysis instrument</i> 20
36	Dictionary, definition of <i>approved screening device</i> 20
37	Dictionary, definition of <i>disqualifying offence</i> 20
38	Dictionary, new definition of <i>oral fluid analysis</i> 20
39	Dictionary, new definition of <i>prescribed drug</i> 21
40	Dictionary, definition of <i>screening test</i> 21



Australian Capital Territory

Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010

A2010-27

An Act to amend the *Road Transport (Alcohol and Drugs) Act 1977*

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

1 Name of Act

This Act is the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Act 2010*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Road Transport (Alcohol and Drugs) Act 1977*.

4 Offences against Act—application of Criminal Code etc Section 4, note 1

insert

- s 20 (Driving with prescribed drug in oral fluid or blood)
- s 22A (Refusing to provide oral fluid sample)

5 Section 5

substitute

5 Approval of screening devices

- (1) The Minister may approve a device for this subsection (an ***approved alcohol screening device***) if the Minister considers that the device—
 - (a) is designed and made to indicate, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the person's blood and, if so, to give an indication of the concentration of alcohol in the person's blood; and
 - (b) is suitable for use in screening tests under part 2.
- (2) The Minister may approve a device for this subsection (an ***approved drug screening device***) if the Minister considers that the instrument—
 - (a) is designed and made to indicate, when a sample of oral fluid of a person is collected in the device by the person chewing or sucking on it (or a particular part of it), whether a prescribed drug is present in the person's oral fluid; and
 - (b) is suitable for use in screening tests under part 2.
- (3) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

5A Approval of analysis instruments

- (1) The Minister may approve an instrument for this subsection (an ***approved breath analysis instrument***) if the Minister considers that the instrument—
 - (a) is designed and made to ascertain the concentration of alcohol present in a sample of a person's breath and can record the concentration in grams per 100mL of blood; and

- (b) is suitable for use in analysis under part 2.
- (2) The Minister may approve an instrument for this subsection (an *approved oral fluid analysis instrument*) if the Minister considers that the instrument—
 - (a) is designed and made to ascertain the presence of a drug in a sample of the person's oral fluid; and
 - (b) is suitable for use in analysis under part 2.
- (3) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

6 Approval of operators, analysts and laboratories

New section 6 (1A)

insert

- (1A) The chief police officer may authorise a police officer to carry out oral fluid analyses if the officer has—
 - (a) undergone a course approved by the Minister as a course for the instruction of police officers in the carrying out of oral fluid analyses; and
 - (b) completed the course to the satisfaction of the chief police officer.

7 Sections 11 and 12

substitute

11 Detention for breath or oral fluid analysis

- (1) This section applies if—
- (a) a person undergoes a screening test under a requirement made by a police officer under section 8, section 9 or section 10 and an approved alcohol screening device indicates to the police officer—
 - (i) that the concentration of alcohol in the person's blood is at least the prescribed concentration; or
 - (ii) for a person the police officer has reasonable grounds to believe is a special driver—that the concentration of alcohol in the person's blood is at least 0.02g of alcohol per 100mL of blood; or
 - (b) a person undergoes a screening test under a requirement made by a police officer under section 8, section 9 or section 10 and an approved drug screening device indicates to the police officer that a prescribed drug is present in the person's oral fluid; or
 - (c) a person who has been required by a police officer under section 8, section 9 or section 10 to undergo a screening test refuses to undergo the screening test; or
 - (d) a person who has been required by a police officer under section 8, section 9 or section 10 to undergo a screening test fails to undergo the screening test in accordance with the direction of the police officer.
- (2) The police officer may take the person into custody.

- (3) If the person is taken into custody, a police officer must take the person, as soon as practicable, to a police station or another convenient place to carry out a breath analysis, an oral fluid analysis or both for the person.
- (4) In this section:
prescribed drug means—
 - (a) methylamphetamine; or
 - (b) delta-9-tetrahydrocannabinol; or
 - (c) N, α -Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA); or
 - (d) any other drug prescribed by regulation.

12 Breath or oral fluid analysis

- (1) A person who has been taken into custody under section 11 must give, in accordance with the reasonable directions of a police officer, either or both of the following (as directed by the police officer):
 - (a) a sample of the person's breath;
 - (b) a sample of the person's oral fluid.
- (2) The police officer taking a sample of a person's oral fluid under this section must ensure that—
 - (a) part of the sample is stored and sealed in a container; and
 - (b) a label is attached to the container that—
 - (i) is signed by the police officer who took the sample; and
 - (ii) states the name of the person from whom the sample was taken; and
 - (iii) states the time and place when the sample was taken.

- (3) An analysis of breath must be carried out by an approved operator using an approved breath analysis instrument.
- (4) An analysis of oral fluid must be carried out by an approved operator using an approved oral fluid analysis instrument.
- (5) A regulation may make provision about the following:
 - (a) the procedures to be followed by an approved operator immediately before, during, and immediately after, carrying out a breath analysis or oral fluid analysis;
 - (b) the conditions that must exist for the use of a particular approved analysis instrument;
 - (c) the conditions during which a particular approved analysis instrument must not be used;
 - (d) the results that must be obtained from procedures to be followed immediately after carrying out a breath or oral fluid analysis and without which the analysis must be disregarded for this Act.
- (6) If, because of a regulation made for subsection (5) (d), an analysis must be disregarded in relation to a person, a police officer may require the person to give, in accordance with the reasonable directions of the officer, another sample of the person's breath or oral fluid for analysis using another approved analysis instrument.
- (7) As soon as practicable after the analysis has been carried out, the approved operator who carried out the analysis must give the person a written statement, signed by the operator, containing the particulars required by regulation.

8 New section 12AA

after section 12, insert

12AA Analysis of oral fluid at approved laboratory

- (1) This section applies if the result of an oral fluid analysis under section 12 (4) shows that a prescribed drug is present in the sample.
- (2) The approved operator must ensure that the sample in the container mentioned in section 12 (2) is taken to an approved laboratory for confirmation of the result.
- (3) An analysis of the sample in the container must be carried out by an approved analyst to confirm whether a prescribed drug is present in the sample.
- (4) The analyst must take reasonable care to ensure that a part of the sample sufficient for analysis to be carried out by or for the person who gave the sample (the *tested person*) is protected and preserved until—
 - (a) if a request is made under subsection (5)—the tested person receives the part of the sample; or
 - (b) in any other case—6 months have passed since the tested person gave the sample.
- (5) Within 6 months after the sample is given, the tested person, or another person authorised by the tested person, may request that a part of the sample sufficient for analysis be made available to the tested person as soon as practicable.
- (6) If a request is made under subsection (5), the analyst must—
 - (a) ensure that a part of the sample sufficient for analysis is made available to the tested person as soon as practicable; and
 - (b) give reasonable assistance to the tested person to ensure that the sample is protected and preserved until it is analysed.

9 Precautions for privacy
Section 13

omit

breath analysis

substitute

breath or oral fluid analysis

10 Section 14 heading

substitute

14 Restrictions on screening tests and breath and oral fluid analyses

11 Section 14 (1)

omit everything before paragraph (a), substitute

- (1) A police officer must not require a person to undergo a screening test under section 8, section 9 or section 10, or provide a sample of the person's breath or oral fluid for analysis under section 12, and a police officer must not begin or continue the analysis under section 12—

12 Section 14 (3)

omit everything before paragraph (a), substitute

- (3) A police officer must not require a person to undergo a screening test under section 8, section 9 or section 10, or to provide a sample of the person's breath or oral fluid for analysis under section 12—

13 Section 14 (3) (a)

substitute

- (a) if it appears to the police officer that it may, because of injury suffered by the person or otherwise, be dangerous or not practicable for the person to undergo the screening test or to provide the sample; or

**14 Taking blood samples from people in custody
Section 15 (1) (a) and (b)**

substitute

- (a) a police officer does not, because of section 14 (3) (a) or (b) require a person to undergo a screening test or to provide a sample of breath or oral fluid for analysis; or
- (b) because the analysis instrument available is not in working order or an approved analysis instrument is not available, it is not practicable to carry out the breath or oral fluid analysis;

**15 Analysis of blood samples
Section 15A (1)**

substitute

- (1) If only 1 sealed container of a particular person's blood that has been taken under section 15 or section 15AA has been put in a one-way box for collection by an approved analyst, the analyst must analyse the blood to ascertain—
 - (a) the concentration of alcohol in the blood; and
 - (b) if asked by a police officer to do so—the presence of a prescribed drug in the blood.

16 Section 15A (2) (a)

substitute

- (a) analyse the blood in 1 of the containers to ascertain—
 - (i) the concentration of alcohol in the blood; and
 - (ii) if asked by a police officer to do so—the presence of a prescribed drug in the blood; and

**17 Medical examinations
Section 16 (1) (a) (i)**

substitute

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

**18 Protection of police officers and medical staff
Section 18 (3) (a)**

substitute

- (a) if the sample of the person's breath or oral fluid has been analysed—the time when the approved operator gives the person the written statement mentioned in section 12 (7); or

19 New section 18B

in part 2, insert

18B Permitted use of blood or oral fluid samples

A sample of oral fluid or blood given or taken under this Act may only be used for the following purposes:

- (a) analysis of the sample in accordance with the Act;
- (b) research relating to drivers of motor vehicles affected by drugs, but only if identifying information about the person who provided the sample cannot be ascertained from it.

20 New section 20

insert

20 Driving with prescribed drug in oral fluid or blood

- (1) A person commits an offence if the person—
 - (a) has been the driver of a motor vehicle on a public street or in a public place; and
 - (b) has, within the relevant period, a prescribed drug in the person's oral fluid or blood.

Maximum penalty:

- (a) for an offence by a first offender—10 penalty units; and
- (b) for an offence by a repeat offender—25 penalty units, imprisonment for 3 months or both.

(2) In this section:

relevant period means the period beginning when the person stopped being the driver of the vehicle and ending at the latest time when—

- (a) a breath or oral fluid analysis of the person may be carried out under this Act; or
- (b) if section 15 (Taking blood samples from people in custody) or section 15AA (Taking blood samples from people in hospital) applies—a sample of the person’s blood may be taken under that section.

21 New section 22A

insert

22A Refusing to provide oral fluid sample

- (1) This section applies to a person who—
 - (a) has been the driver of a motor vehicle on a public street or in a public place; and
 - (b) has, in accordance with this Act, been required to provide a sample of oral fluid for analysis.
- (2) The person commits an offence if—
 - (a) the person refuses to provide a sample of oral fluid for analysis; or
 - (b) the person fails to provide a sample of oral fluid in accordance with reasonable directions of a police officer.

Maximum penalty: 30 penalty units.

22 Section 27 heading

substitute

27 Imprisonment—s 22, s 22A, s 23 and s 24 offences

23 Section 27 (a)

substitute

- (a) a person is convicted of an offence against any of the following provisions:
- section 22 (Refusing to provide breath sample);
 - section 22A (Refusing to provide oral fluid sample);
 - section 23 (Refusing blood test etc);
 - section 24 (Driving under the influence of intoxicating liquor or a drug); and

**24 Certificate of evidence
New section 41 (1) (aa)**

insert

- (aa) a certificate purporting to be signed by a police officer and stating—
- (i) that the police officer was on a date stated in the certificate an approved operator; and
 - (ii) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an approved oral fluid analysis instrument; and
 - (iii) the instrument used in the analysis, by reference to its model number, patent number and serial number; and

- (iv) that the approved oral fluid analysis instrument was in proper working order; and
- (v) the procedures followed and precautions taken immediately before the breath analysis, during the breath analysis and immediately after the completion of the breath analysis; and
- (vi) that the person named in the certificate provided a sample of the person's oral fluid for analysis in accordance with the directions of the police officer who made the requirement; and
- (vii) the steps that were taken to ensure that it was not readily apparent to members of the public that the oral fluid analysis was being carried out; and
- (viii) that, in following the procedures for which a regulation makes provision that stated results are to be obtained, the results stated in the certificate were obtained; and
- (ix) that the result recorded or shown by the instruments as the result of the analysis was a particular figure, level or percentage or was not less than and not more than a particular figure, level or percentage; and
- (x) that, as soon as practicable after the oral fluid analysis was carried out, the police officer signed and gave to the person mentioned in subparagraph (ii) the statement required by section 12 (7);

is evidence of the matters stated in the certificate; and

25 New section 41 (1) (ba)

insert

- (ba) a certificate purporting to be signed by a police officer and stating—
- (i) that the police officer was on a date stated in the certificate an approved operator; and
 - (ii) that, at a place and at a time and on a date stated in the certificate, a person named in the certificate was required by a stated police officer to provide a sample of the person's oral fluid for analysis by an approved oral fluid analysis instrument; and
 - (iii) the instrument available to be used in the analysis, by reference to its model number, patent number and serial number; and
 - (iv) that the approved oral fluid analysis instrument was in proper working order; and
 - (v) the procedures followed immediately before the person was required to provide a sample of the person's oral fluid for analysis and the results obtained in following those procedures; and
 - (vi) that the person refused or failed to provide a sample of his or her breath for analysis;
- is evidence of the matters stated in the certificate; and

26 Section 41 (1) (c)

substitute

- (c) a written statement mentioned in section 12 (7) that is a print-out from an approved breath analysis instrument or approved oral fluid analysis instrument is evidence of the matters stated in the statement; and

27 Section 41 (1) (e) (iii)

omit

or to provide a sample of the person's breath for breath analysis under section 12 (Breath analysis);

substitute

or to provide a sample of the person's breath or oral fluid for analysis under section 12 (Breath or oral fluid analysis);

28 New section 42AA

after section 42, insert

42AA Effect of noncompliance—analysis of oral fluid

- (1) This section applies if the court hearing a charge for an offence against this Act arising out of the carrying out of an oral fluid analysis is not satisfied that there has been compliance with every provision of this Act relating to the carrying out of the analysis.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned in subsection (1) would not have affected the result obtained in the analysis, the court must dismiss the charge.

29 New section 42C

insert

42C Effect of noncompliance—refusal to give sample of oral fluid

- (1) This section applies if the court hearing a charge for an offence against section 22A is not satisfied that there has been compliance with every provision of this Act relating to that part of the carrying out of an oral fluid analysis that is required to be carried out before the sample of oral fluid is supplied.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) Unless the court is satisfied that the failure to comply with the provisions of this Act mentioned in subsection (1) was such that, had the failure not happened and the oral fluid analysis taken place, the result obtained in the analysis would have indicated the presence of a prescribed drug, the court must dismiss the charge.

30 New section 47A

insert

47A Stopping, search and detaining—Crimes Act, s 207 and s 209

For the *Crimes Act 1900*, section 207 (1) (Stopping, searching and detaining people) or section 209 (1) (Stopping, searching and detaining conveyances), it is not reasonable grounds for suspicion in relation to a person, thing or circumstance if the suspicion is formed on the basis of the result of a screening test under this Act only.

31 Dictionary, new definitions

insert

approved alcohol screening device means a device that is approved by the Minister under section 5 (1).

approved analysis instrument means an approved breath analysis instrument or an approved oral fluid analysis instrument.

32 Dictionary, definitions of *approved analyst* and *approved breath analysis instrument*

substitute

approved analyst means a person who is appointed by the Minister under section 6 (2).

approved breath analysis instrument means an instrument that is approved by the Minister under section 5A (1).

33 Dictionary, new definition of *approved drug screening device*

insert

approved drug screening device means a device that is approved by the Minister under section 5 (2).

34 Dictionary, definition of *approved operator*

substitute

approved operator means—

- (a) for a breath analysis—a police officer who is authorised under section 6 (1); and
- (b) for an oral fluid analysis—a police officer who is authorised under section 6 (1A).

35 Dictionary, new definition of *approved oral fluid analysis instrument*

insert

approved oral fluid analysis instrument means a device that is approved by the Minister under section 5A (2).

36 Dictionary, definition of *approved screening device*

omit

37 Dictionary, definition of *disqualifying offence*

substitute

disqualifying offence means an offence against—

- (a) section 19 (Prescribed blood alcohol concentration exceeded); or
- or
- (b) section 20 (Driving with prescribed drug in oral fluid or blood); or
- (c) section 22 (Refusing to provide breath sample); or
- (d) section 22A (Refusing to provide oral fluid sample); or
- (e) section 23 (Refusing blood test etc); or
- (f) section 24 (Driving under the influence of intoxicating liquor or a drug); or
- (g) another provision of this Act prescribed by regulation.

38 Dictionary, new definition of *oral fluid analysis*

insert

oral fluid analysis, in relation to a person, means an analysis of a sample of the person's oral fluid carried out for this Act using an approved oral fluid analysis instrument.

39 Dictionary, new definition of *prescribed drug*

insert

prescribed drug—see section 11 (4).

40 Dictionary, definition of *screening test*

substitute

screening test, for a person, means either or both of the following (as directed by a police officer):

- (a) a test of a sample of the person's breath using an approved alcohol screening device;
- (b) a test of a sample of the person's oral fluid using an approved drug screening device.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 December 2009.

2 Notification

Notified under the Legislation Act on 13 July 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2010, which originated in the Legislative Assembly as the Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2009 and was passed by the Assembly on 30 June 2010.

Acting Clerk of the Legislative Assembly

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