



Australian Capital Territory

Road Transport (Alcohol and Drugs) Amendment Act 2014

A2014-21

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Australian Capital Territory

Road Transport (Alcohol and Drugs) Amendment Act 2014

A2014-21

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

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

J2013-328

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Road Transport (Alcohol and Drugs) Amendment Act 2014*.

2 Commencement

This Act commences on the day after its notification day.

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

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, dot point 4**

substitute

- s 22B (Failing to stay for screening test)
- s 22C (Refusing to undergo screening test)

**5 Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer
New sections 8 (1A) and (1B)**

insert

- (1A) The person must remain at the place where the alcohol screening test is being carried out until the test is completed in accordance with the police officer's directions.

- (1B) In addition, if an alcohol screening device is not immediately available and the police officer has reasonable cause to suspect that the person has alcohol in the person's body, the police officer may direct the person to remain at the place where the alcohol screening test is to be carried out for the time (not exceeding 30 minutes) reasonably necessary for an alcohol screening device to be made available and the test to be completed.

Example—screening device not immediately available

there is no working screening device at the place where the test is to be carried out

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**6 Power to require alcohol screening test if vehicle involved in accident—driver
New section 9 (2)**

insert

- (2) The person must remain at the place where the alcohol screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**7 Power to require alcohol screening test if vehicle involved in accident—driver trainer
New section 9A (2)**

insert

- (2) The person must remain at the place where the alcohol screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**8 Power to require alcohol screening test for culpable driving—driver and driver trainer
New section 10 (3)**

insert

- (3) The person must remain at the place where the alcohol screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**9 Power to require drug screening test if vehicle not involved in accident—driver and driver trainer
New section 13A (2A)**

insert

(2A) In addition, if a drug screening device is not immediately available and the police officer has reasonable cause to suspect that the person has a drug in the person's body, the police officer may direct the person to remain at the place where the drug screening test is to be carried out for the time (not exceeding 30 minutes) reasonably necessary for a drug screening device to be made available and the test to be completed.

Example—screening device not immediately available

there is no working screening device at the place where the test is to be carried out

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**10 Power to require drug screening test if vehicle involved in accident—driver
Section 13B (2)**

substitute

- (2) The person must remain at the place where the drug screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**11 Power to require drug screening test if vehicle involved in accident—driver trainer
Section 13BA (2)**

substitute

- (2) The person must remain at the place where the drug screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

12 Power to require drug screening test for culpable driving—driver and driver trainer
Section 13C (3)

substitute

- (3) The person must remain at the place where the drug screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions.

Example—time reasonably necessary

a screening device is not immediately available and the police officer directs the person to remain at the place while a device is made available

Note 1 A person commits an offence if a person fails to comply with the direction of a police officer under this section—see s 22B (Failing to stay for screening test).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

13 Prescribed drug in oral fluid or blood—driver or driver trainer
New section 20 (2A)

insert

- (2A) A defendant in a prosecution for an offence against this section cannot rely on the [Criminal Code](#), section 36 (Mistake of fact—strict liability) in relation to the identity of the prescribed drug if the defendant claims to have—
- (a) considered, and been under a mistaken belief about, the identity of the prescribed drug; and
 - (b) believed that the prescribed drug was a controlled drug.

14 Section 20 (4), new definition of *controlled drug*

insert

controlled drug—see the [Criminal Code](#), section 600.

15 Section 22B

substitute

22B Failing to stay for screening test

- (1) A person commits an offence if—
 - (a) a police officer requires the person to undergo—
 - (i) an alcohol screening test under—
 - (A) section 8 (Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer); or
 - (B) section 9 (Power to require alcohol screening test if vehicle involved in accident—driver); or
 - (C) section 9A (Power to require alcohol screening test if vehicle involved in accident—driver trainer); or
 - (D) section 10 (Power to require alcohol screening test for culpable driving—driver and driver trainer); or
 - (ii) a drug screening test under—
 - (A) section 13A (Power to require drug screening test if vehicle not involved in accident—driver and driver trainer); or
 - (B) section 13B (Power to require drug screening test if vehicle involved in accident—driver); or
 - (C) section 13BA (Power to require drug screening test if vehicle involved in accident—driver trainer); or

- (D) section 13C (Power to require drug screening test for culpable driving—driver and driver trainer); and
- (b) the person fails to remain at the place where the screening test is to be, or is being, carried out until the test is completed in accordance with the police officer's directions.

Maximum penalty: 20 penalty units.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- (2) An offence against this section is a strict liability offence.

22C Refusing to undergo screening test

- (1) A person commits an offence if—
 - (a) a police officer requires the person to undergo—
 - (i) an alcohol screening test under—
 - (A) section 8 (Power to require alcohol screening test if vehicle not involved in accident—driver and driver trainer); or
 - (B) section 9 (Power to require alcohol screening test if vehicle involved in accident—driver); or
 - (C) section 9A (Power to require alcohol screening test if vehicle involved in accident—driver trainer); or
 - (D) section 10 (Power to require alcohol screening test for culpable driving—driver and driver trainer); or
 - (ii) a drug screening test under—
 - (A) section 13A (Power to require drug screening test if vehicle not involved in accident—driver and driver trainer); or
 - (B) section 13B (Power to require drug screening test if vehicle involved in accident—driver); or

- (C) section 13BA (Power to require drug screening test if vehicle involved in accident—driver trainer); or
 - (D) section 13C (Power to require drug screening test for culpable driving—driver and driver trainer); and
- (b) the person fails to undergo the screening test in accordance with the reasonable directions of a police officer.

Maximum penalty: 30 penalty units.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the failure was based on medical grounds.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

**16 Driver etc intoxicated
Section 24A (2) and (3)**

omit

17 Section 27 heading

substitute

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

18 Section 27 (a)

substitute

- (a) a person is convicted of an offence against any of the following provisions:
- (i) section 22 (Refusing to provide breath sample);
 - (ii) section 22A (Refusing to provide oral fluid sample);

- (iii) section 22C (Refusing to undergo screening test);
- (iv) section 23 (Refusing blood test etc);
- (v) section 24 (Driving under the influence of intoxicating liquor or a drug); and

19 Section 47

substitute

47 Right of arrested person to medical examination

- (1) A police officer who arrests a person for an offence against this Act must tell the person that the person may ask for a medical examination by a doctor or authorised nurse practitioner.
- (2) If the person asks for a medical examination, the police officer must—
 - (a) if the person requests examination by a particular doctor or nurse practitioner—give the person reasonable assistance to arrange for medical examination by the doctor or nurse practitioner; and
 - (b) if the person does not request examination by a particular doctor or nurse practitioner, or if it is not reasonably practicable for the examination to be undertaken as requested—arrange for medical examination of the person by a doctor, or nurse practitioner, employed by the chief police officer to provide forensic medical services.

Example—reasonable assistance

give person access to a telephone to call his or her own doctor

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The arrested person is liable for the costs of any medical examination under this section.

20 Dictionary, definition of *disqualifying offence*, new paragraph (da)

insert

(da) section 22C (Refusing to undergo screening test); or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2013.

2 Notification

Notified under the [Legislation Act](#) on 22 May 2014.

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) Amendment Bill 2014, which originated in the Legislative Assembly as the Road Transport (Alcohol and Drugs) Amendment Bill 2013 and was passed by the Assembly on 13 May 2014.

Clerk of the Legislative Assembly

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