



Australian Capital Territory

Motor Traffic (Alcohol and Drugs) Ordinance 1977

Ord1977-17

Republication No 0A (RI)

Effective: 28 December 1977 – 13 October 1980

Republication date of printed version: 31 March 1979

Reissued electronically: 4 May 2012

Last amendment made by Ord1978-46
(republication for amendments by Ord1977-52
and Ord1978-46)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Motor Traffic (Alcohol and Drugs) Ordinance 1977* effective from 28 December 1977 to 13 October 1980.

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AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC (ALCOHOL AND DRUGS) ORDINANCE 1977

Incorporating all amendments by legislation made to 31 March 1979

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24478/79 R78/1528 Cat. No. 79 7795 1—Recommended retail price 60c

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MOTOR TRAFFIC (ALCOHOL AND DRUGS) ORDINANCE 1977

An Ordinance to Provide for the Detection of Persons who drive Motor Vehicles after consuming Alcohol or Drugs, for Offences by Those Persons, and to Provide Measures for the Treatment and Rehabilitation of Those Persons

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Motor Traffic (Alcohol and Drugs) Ordinance 1977*.¹ Short title
2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.¹ Commencement
3. The *Motor Traffic Ordinance 1936* is incorporated, and shall be read as one, with this Ordinance. Incorporation of the Motor Traffic Ordinance
4. (1) In this Ordinance, unless the contrary intention appears— Interpretation
 - “approved analyst” means a person appointed by the Minister under section 6;
 - “approved breath analysing instrument” means an instrument of a type approved by the Minister under section 5;
 - “approved operator” means a member of the Police Force authorized by the Commissioner of Police under section 6;
 - “approved screening device” means a device of a type approved by the Minister under section 5;
 - “breath analysis”, in relation to a person, means an analysis of a sample of the person’s breath carried out for the purposes of this Ordinance by means of an approved breath analysing instrument;
 - “Court” means—
 - (a) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in or before, the Supreme Court—the Supreme Court; and
 - (b) in relation to proceedings in or a matter before, or in relation to proceedings or matters that may be brought in

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or before, the Court of Petty Sessions—the Court of Petty Sessions;

“drive a motor vehicle” includes—

- (a) start or attempt to start the engine of a motor vehicle;
- (b) put or attempt to put in motion a motor vehicle; or
- (c) be in, and in charge of, a motor vehicle,

and the expressions “driver of a motor vehicle” and “person who drives a motor vehicle” have corresponding meanings;

“medical practitioner” means a person who is a registered medical practitioner within the meaning of the *Medical Practitioners Registration Ordinance 1930*;

“offence involving alcohol or drugs” means—

- (a) an offence against Part III;
- (b) an offence against section 34, 38 or 40;
- (c) an offence of culpable driving arising out of the driving of a motor vehicle by a person under the influence of intoxicating liquor committed after the commencement of this Ordinance;
- (d) an offence of culpable driving arising out of the driving of a motor vehicle by a person under the influence of intoxicating liquor committed before the commencement of this Ordinance;
- (e) an offence against sub-section 13A (5) or against Part VIIIA of the *Motor Traffic Ordinance 1936* as amended and in force at any time before the commencement of this Ordinance; or
- (f) an offence against sub-section 193A (4) or (5) of the *Motor Traffic Ordinance 1936* as amended and in force before the commencement of this Ordinance, being an offence by a person whose driving licence was suspended or cancelled, or who has been disqualified from holding a driving licence, on his conviction for an offence referred to in paragraph (d) or (e);

“prescribed concentration” means a concentration of .08 grams of alcohol per 100 millilitres of blood;

“public street” means a street, road, lane or footpath (including a street, road, lane or footpath on or forming part of a bridge) that is open to or used by the public and includes an entrance driveway leading to a parcel of land;

“public place” means—

- (a) an off-street parking area;
- (b) an area available for the parking of motor vehicles on, or in the vicinity of licensed premises within the meaning of the *Liquor Ordinance 1975*;

- (c) an area available for the parking of motor vehicles by persons attending a drive-in theatre or other open air theatre;
- (d) a loading area;
- (e) a wharf, pier or jetty;
- (f) the foreshores, as defined in the *Lakes Ordinance 1976*, of a lake as defined in that Ordinance; or
- (g) any part of a park, reserve, recreational or sporting ground, race course or other open place, to which the public has access whether with or without payment for admission or which is used by the public;

“screening test” in relation to a person, means a test of sample of the breath of the person carried out for the purposes of this Ordinance by means of an approved screening device.

(2) A reference in this Ordinance to a public place shall be read as including a reference—

- (a) to the entrances to, the exits from, and the passages and driveways in, a public place; and
- (b) to the passageways and driveways on a parcel of land on which licensed premises within the meaning of the *Liquor Ordinance 1975* are erected.

5. (1) The Minister may, by notice in writing, approve instruments of a type described in the notice to be approved breath analysing instruments for the purposes of this Ordinance if he is of opinion that—

Approval of types of instruments and devices

- (a) instruments of that type have been designed and constructed for the purpose of analysing the concentration of alcohol in a sample of a person's breath and showing or recording a result that represents the concentration, in grams per 100 millilitres of blood, of alcohol in the blood of that person; and
- (b) instruments of that type are suitable for use in analyses under Part II.

(2) The Minister may, by notice in writing, approve devices of a type described in the notice to be approved screening devices for the purposes of this Ordinance if he is of opinion that—

- (a) devices of that type have been designed and made for the purpose of indicating, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the blood of the person and, if so, of giving an indication of the concentration of alcohol in the blood of the person; and
- (b) devices of that type are suitable devices for use in tests under Part II of this Ordinance.

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Approval of operators and analysts

6. (1) The Commissioner of Police may, by notice in writing, authorize a member of the Police Force to carry out breath analyses if the member has—

- (a) before or after the commencement of this Ordinance, undergone a course approved, before or after that commencement, by the Minister as a course for the instruction of members of the Police Force in the carrying out of breath analyses; and
- (b) completed the course to the satisfaction of the Commissioner of Police.

(2) A reference in sub-section (1) to the Minister shall be read as a reference to the Minister who, at the relevant time, was or is the Minister administering the *Seat of Government (Administration) Act 1910*.

(3) The Minister may, by notice in writing, appoint such analysts as he considers necessary for the purposes of this Ordinance.

Notices to be published in the *Gazette*

Amended by No. 46, 1978, s. 3

7. A copy of each notice under sections 5 and 6 shall be published in the *Gazette*.

PART II—EXAMINATION OF PERSONS FOR ALCOHOL OR DRUGS

Power to require screening test where a vehicle not involved in an accident

8. A member of the Police Force may require a person to undergo a screening test in accordance with the directions of that member where—

- (a) the person is the driver of a motor vehicle on a public street or in a public place and the member of the Police Force has reasonable cause to suspect that the person has alcohol or a drug in his body; or
- (b) the member of the Police Force has reasonable cause to suspect that—
 - (i) the person was shortly before the requirement is made the driver of a motor vehicle on a public street or in a public place; and
 - (ii) the person has alcohol or a drug in his body.

Power to require screening test where motor vehicle involved in accident

9. Where a motor vehicle is involved in an accident on a public street or in a public place, a member of the Police Force may require a person to undergo a screening test in accordance with the directions of that member—

- (a) where the member of the Police Force has reasonable cause to suspect that the person was the driver of the motor vehicle at the time of the accident; or

(b) where—

- (i) the member of the Police Force does not know or has doubt as to who was the driver of the motor vehicle at the time of the accident; and
- (ii) the member of the Police Force has reasonable cause to suspect that the person was in the vehicle at the time of the accident.

10. A member of the Police Force who has reasonable cause to suspect that a person has committed an offence of culpable driving may require the person to undergo a screening test in accordance with the directions of that member.

Power to require screening test in case of culpable driving

11. Where—

- (a) a person undergoes a screening test in pursuance of a requirement made by a member of the Police Force under section 8, 9 or 10 and the approved screening device used in the screening test indicates to the member of the Police Force that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration;
- (b) a person who has been required by a member of the Police Force under section 8, 9 or 10 to undergo a screening test refuses to undergo the screening test; or
- (c) a person who has been required by a member of the Police Force under section 8, 9 or 10 to undergo a screening test fails to undergo the screening test in accordance with the direction of the member of the Police Force,

Detention for the purpose of breath analysis
Amended by No. 52, 1977, § 3

the member of the Police Force may take the person into custody and, if he takes the person into custody, the member of the Police Force shall take the person or shall place the person in the custody of another member of the Police Force who shall take the person, as soon as practicable to a Police Station or some other convenient place for the purpose of having a breath analysis of the person carried out.

12. (1) Subject to section 14, a person who has been taken into custody in pursuance of section 11 shall, when required to do so by the member of the Police Force by whom the requirement under section 8, 9 or 10 was made, provide, in accordance with the reasonable directions of that member, a sample of his breath for breath analysis.

Breath analysis

- (2) A breath analysis shall be carried out by an approved operator.
- (3) The regulations may—
 - (a) make provisions for and in relation to the procedures to be followed by an approved operator immediately before commencing a breath analysis by means of an approved breath analysing instrument of a specified type, during the breath analysis and immediately after the completion of the breath analysis;

- (b) make provision that, unless specified conditions exist when carrying out, and specified results are obtained from the procedures to be followed before commencing, a breath analysis by means of the instrument to be used in the breath analysis, the approved operator shall not use that instrument in carrying out the breath analysis; and
- (c) make provision that, unless specified results are obtained from the procedures to be followed immediately after the completion of the breath analysis, the analysis of the sample of the breath is to be disregarded for the purposes of this Ordinance.

(4) Where, by reason of regulations made for the purposes of paragraph (3) (c), an analysis of the sample of the breath of a person is to be disregarded for the purposes of this Ordinance, the member of the Police Force referred to in sub-section (1) may, if another breath analysing instrument is available at the Police Station or other place at which the requirement under sub-section (1) is made, require the person to provide, in accordance with the reasonable directions of that member, a sample of his breath for breath analysis by means of that other instrument.

(5) As soon as practicable after the breath analysis has been carried out, the approved operator who carried out the breath analysis shall give to the person a written statement, signed by the approved operator, containing the particulars required by the regulations to be included in such a statement.

Precautions
for privacy

13. The approved operator carrying out a breath analysis shall take all steps that are reasonably practicable to ensure that it is not readily apparent to members of the public that the breath analysis is being carried out.

Requirement
to undergo
screening
test or breath
analysis not
to be made
in certain
circum-
stances

14. (1) A member of the Police Force shall not require a person to undergo a screening test under section 8, 9 or 10 or require a person to provide a sample of his breath for breath analysis under section 12, and an approved operator shall not commence or continue the breath analysis of a person under section 12—

- (a) in the case of an accident—
 - (i) if more than 2 hours have elapsed since the accident occurred; or
 - (ii) if the person is taken to hospital—if more than 2 hours have elapsed since the arrival of the person at the hospital, whichever is the later;
- (b) in a case where a member of the Police Force attending the scene of an accident has doubt as to the time at which the accident occurred and a person found at or near the scene of the accident is suspected on reasonable grounds to have been the driver of, or in, the vehicle at the time of the accident—if more than 2 hours have elapsed since the person was found, or, if the

person is taken to hospital, since his arrival at the hospital, whichever is the later; or

- (c) in any other case—if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle.

(2) A member of the Police Force shall not require a person to undergo a screening test under section 8, 9 or 10 or to provide a sample of his breath for breath analysis under section 12—

- (a) if it appears to the member of the Police Force that it may be, by reason of injury suffered by the person or otherwise, dangerous for that person to undergo a screening test or to submit his breath for analysis or both;
- (b) if the person is in hospital and the medical practitioner attending the person, after being informed by the member of the Police Force of his intention to make the requirement, certifies in writing his opinion that compliance with the requirement would be detrimental to the person's medical condition; or
- (c) in the case of a person who is at his place of abode—
 - (i) unless the person was, or the member of the Police Force has reasonable cause to suspect that the person was, the driver of a motor vehicle at the time when it was involved in an accident on a public street or in a public place;
 - (ii) unless the member of the Police Force has reasonable cause to suspect that the person has committed an offence of culpable driving; or
 - (iii) unless the requirement is made immediately after a motor vehicle driven by the person has stopped at or near the person's place of abode and the member of the Police Force making the requirement, having followed the motor vehicle while it was being driven on the public street, has reasonable cause to suspect that the person has alcohol or a drug in his body.

15. (1) Where—

Blood tests

- (a) a member of the Police Force does not, by reason of paragraph 14 (2) (a) or (b) require a person to undergo a screening test or to provide a sample of his breath for breath analysis; or
- (b) because the breath analysing instrument available is not in working order or an approved breath analysing instrument is not available, it is not practicable to carry out the breath analysis,

the member of the Police Force may require the person to permit a sample of his blood to be taken by a medical practitioner for analysis and, if the person is not in hospital, may take the person into custody and take the person, or place the person in the custody of another member of the Police Force who shall take the person, as soon as practicable to a hospital for that purpose.

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(2) A requirement shall not be made under sub-section (1) after the expiration of whichever of the periods specified in sub-section 14 (1) is applicable in relation to the person.

(3) A sample of a person's blood shall be taken as soon as practicable after the arrival of the person at hospital and shall not be taken more than 2 hours after the arrival of the person at hospital.

(4) A medical practitioner may, if he is of the opinion that a person is, by reason of his medical condition, incapable of giving or refusing his permission to the taking of a sample of his blood, take a sample of the person's blood when requested by a member of the Police Force to do so.

(5) The medical practitioner taking a sample of a person's blood under this section shall—

- (a) take a sample of that person's blood in the presence of a member of the Police Force;
- (b) place approximately equal quantities of the sample of blood into 2 containers and, on a label affixed to each container, sign his name and endorse the name of the person from whom the sample was taken and the date on which and time at which the sample was taken;
- (c) ensure that each container is sealed; and
- (d) give one of the containers to the person and the other container to the member of the Police Force who made the requirement.

(6) The member of the Police Force shall arrange for the sample of blood in the container given to him to be analysed by an approved analyst to ascertain the concentration of alcohol in the blood.

Medical examinations

16. (1) This section applies to a person who—

- (a) has been required to undergo a screening test or to provide a sample of his breath for analysis; and
- (b) has been arrested on reasonable suspicion of having committed an offence against section 24 or an offence of culpable driving.

(2) Where a member of the Police Force has reasonable cause to suspect—

- (a) that a person to whom this section applies has in his body a drug other than alcohol; or
- (b) that the behaviour of the person does not arise, or does not wholly arise, from the presence of alcohol in his body,

the member of the Police Force may require that person to submit to a medical examination in accordance with this section for the purpose of ascertaining whether the condition of the person is caused, or contributed to, by the presence in his body of a drug other than alcohol.

(3) If the person is not in hospital, the member of the Police Force may take the person into custody and take the person, or place him in the custody of another member of the Police Force who shall take the person, as soon as practicable to a hospital for the purposes of the medical examination.

(4) A medical practitioner requested by a member of the Police Force to carry out a medical examination of a person under this section may—

- (a) carry out the medical examination; and
- (b) require the person to give, or permit the taking of, samples from the body of the person,

for the purpose of ascertaining whether the condition of the person is caused by, or contributed to by, the presence in his body of a drug other than alcohol.

(5) A medical practitioner who takes, or to whom is given, a sample from the body of the person shall—

- (a) place approximately equal quantities of the sample into 2 containers and, on a label affixed to each container, sign his name and endorse the name of the person from whom the sample was taken and the date on which and the time when the sample was taken;
- (b) ensure that each container is sealed; and
- (c) give one of the containers to the person and the other container to the member of the Police Force who made the requirement.

(6) The member of the Police Force shall arrange for the sample in the container given to him to be analysed by an approved analyst.

17. A medical practitioner shall not take a sample of a person's blood under section 15 or carry out a medical examination or take, or require the taking of, a sample from the body of a person under section 16—

- (a) if he is of the opinion that to do so would be detrimental to that person's medical condition;
- (b) after the expiration of the period of 2 hours after the arrival of the person at hospital; or
- (c) if the person required to submit to the medical examination, to give or to permit the taking of the sample of his blood or other body sample objects to doing so and persists in his objection after the medical practitioner or a member of the Police Force has informed him that, unless his objection is based on religious or other conscientious grounds or on medical grounds, his refusal may constitute an offence punishable as provided by this Ordinance.

Circumstances in which a medical practitioner may refuse to take a blood sample or carry out a medical examination

Rights and protection of members of the Police Force and medical practitioners

18. (1) A member of the Police Force to whom this section applies who, in the exercise or intended exercise of a power conferred by this Ordinance, takes a person into custody and takes the person to a place for the purposes of this Ordinance, is not liable, by reason only of the taking into custody of the person and the holding of the person in custody, in an action arising out of the taking into custody of the person and holding of the person in custody.

(2) Sub-section (1) applies to—

- (a) a member of the Police Force who believes on reasonable grounds that a person who has been taken into custody is liable to be taken into custody; and
- (b) where such a member of the Police Force has taken a person into custody and has placed the person in the custody of another member of the Police Force, that other member of the Police Force.

(3) Subject to section 45, the provisions of this Ordinance do not authorize taking into custody of a person and the holding of a person in custody after—

- (a) where a sample of the breath of the person has been analysed—the time when the approved operator gives to the person the written statement referred to in sub-section 12 (5);
- (b) where the person is required to permit the taking of a sample of his blood or to submit to a medical examination—the sample of the blood of the person has been taken or the medical examination is completed; or
- (c) the expiration of whichever of the periods referred to in sub-section 14 (1) is applicable in relation to the person.

(4) Nothing in section 15 or 16 shall be construed as requiring a medical practitioner to take a sample of the blood of a person or to carry out a medical examination of a person.

(5) The Commonwealth shall indemnify and keep indemnified a medical practitioner—

- (a) who takes, for the purposes of a blood test, a sample of the blood of a person in accordance with section 15;
- (b) who carries out a medical examination of a person under section 16; or
- (c) who takes or requires the taking of a body sample under section 16,

in respect of any damages that he becomes liable to pay as a result of the taking of the sample or the carrying out of the medical examination.

(6) Sub-section (5) applies whether the person was or was not capable, by reason of his mental condition, of giving or refusing his consent to the taking of a sample of his blood or to the medical examination.

PART III—OFFENCES

19. A person who—
- (a) has been the driver of a motor vehicle on a public street or in a public place;
 - (b) has, in accordance with the provisions specified in this Ordinance, been required to provide a sample of his breath for breath analysis; and
 - (c) has provided a sample of his breath for breath analysis,
- is guilty of an offence if the result of the breath analysis as recorded or shown by the approved breath analysing instrument used in the analysis is or exceeds .08.
- Offence where blood alcohol concentration exceeds prescribed concentration
20. A person who—
- (a) has been the driver of a motor vehicle on a public street or in a public place;
 - (b) has, in accordance with the provisions of this Ordinance, been required to provide a sample of his blood for analysis; and
 - (c) has provided a sample of his blood for analysis,
- is guilty of an offence if the concentration of alcohol in his blood as determined by the analysis is equal to or more than the prescribed concentration.
- Offence where blood alcohol concentration exceeds prescribed concentration
21. Where a person charged with an offence against section 19 or 20 was the driver of the motor vehicle only for the reason that he was in, and in charge of, a motor vehicle on a public street or in a public place, it is a defence if the person charged establishes that—
- (a) he had not started, or attempted to start, the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and
 - (b) he did not intend to drive the motor vehicle until a time when the concentration of alcohol in his blood would be less than a concentration equal to the prescribed concentration.
- Defence if person did not intend to drive motor vehicle
22. 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 the provisions specified in this Ordinance, been required to provide a sample of his breath for breath analysis,
- is guilty of an offence if—
- (c) he refuses to provide a sample of his breath for breath analysis; or
 - (d) he fails or refuses to provide a sample of his breath in accordance with the reasonable directions of the member of the Police Force who made the requirement.
- Refusal to provide sample of breath for analysis

Refusal to submit to blood test or medical examination

23. (1) 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 the provisions specified in this Ordinance, been required to permit a sample of his blood to be taken for analysis,

is guilty of an offence if he fails or refuses to permit a sample of his blood to be taken for that purpose.

(2) A person who is required under section 16 to undergo a medical examination is guilty of an offence if—

- (a) he fails or refuses to submit himself to the medical examination; or
- (b) he fails or refuses, when required by the medical practitioner conducting the examination, to give or permit the taking of a sample from his body for analysis.

(3) It is a defence to a prosecution for an offence against sub-section (1) or (2) if the person charged establishes that his failure or refusal was based on religious or other conscientious grounds or on medical grounds.

Driving under the influence of intoxicating liquor or a drug

24. (1) A person who drives a motor vehicle on a public street or in a public place while under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of having proper control of the motor vehicle is guilty of an offence.

(2) A charge for an offence against sub-section (1) is not open to objection on the ground only that it alleges that the person charged was under the influence of intoxicating liquor or of a drug and on the hearing of such a charge—

- (a) evidence that the person was under the influence of intoxicating liquor or of a drug or of intoxicating liquor and a drug is admissible; and
- (b) if the evidence establishes that the person was under the influence either of intoxicating liquor, of a drug or both intoxicating liquor and a drug, the person may be convicted of the offence with which he is charged.

(3) Where—

- (a) a person is charged with an offence against sub-section (1); and
- (b) the charge is made only for the reason that the person was in, and in charge of, the motor vehicle on a public street or in a public place,

it is a defence if the person charged establishes that—

- (c) he had not started, or attempted to start, the engine of the motor vehicle and had not put, or attempted to put, the motor vehicle in motion; and

- (d) he did not intend to drive the motor vehicle so long as he was under the influence of intoxicating liquor, of the drug or both.

PART IV—PENALTIES

25. (1) In this Part—

Interpretation

“corresponding offence” means an offence against a law of a State or Territory, whether in force before or after the commencement of this Ordinance, arising out of the driving of a motor vehicle by a person who is or may be affected by the consumption of alcohol or a drug or both;

“first offender” means—

- (a) a person who is not a previous offender; or
- (b) a person who, having been a previous offender, has, by reason of sub-section (4) or (5), ceased to be a previous offender;

“previous offender” means a person who is convicted of an offence against this Ordinance and has previously been convicted of an offence against this Ordinance or of a corresponding offence.

(2) For the purposes of this Part, a person shall be regarded as having previously been convicted of an offence against this Ordinance, or of a corresponding offence if it is proved that that offence was committed at a time or on a date earlier than the time or date at or on which an offence against this Ordinance is proved to have been committed by the person.

(3) Where it is proved that, on the hearing of proceedings against a person for an offence against this Ordinance or for a corresponding offence, the court before which the proceedings were heard found that the offence had been proved but, without proceeding to a conviction, discharged the person, that person shall, for the purposes of this Part, be deemed to have been convicted of that offence.

Amended by
No. 52, 1977, s. 4

(4) For the purposes of this Part, a person, who has been dealt with by the Supreme Court under section 90A of the *Court of Petty Sessions Ordinance* 1930 upon his committal in accordance with that section for an offence of culpable driving, shall be deemed to have been convicted of that offence.

(5) Where, on the occasion on which a person was previously convicted of an offence against this Ordinance or of a corresponding offence, his licence to drive a motor vehicle was suspended or cancelled or the person was disqualified from driving a motor vehicle, the person shall be taken to have ceased to be a previous offender if and only if—

- (a) the person has again become the holder of a licence to drive a motor vehicle;

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- (b) the period that commenced on the date on which he again became the holder of the licence referred to in paragraph (a) and ended on the date on which he is convicted of the offence against this Ordinance is not less than 5 years; and
- (c) the person has, throughout the period referred to in paragraph (b), been the holder of a licence to drive a motor vehicle.

(6) Where, on the occasion on which a person was previously convicted of an offence against this Ordinance or of a corresponding offence, his licence to drive a motor vehicle was not suspended or cancelled or the person was not disqualified from driving a motor vehicle, the person shall be taken to have ceased to be a previous offender if and only if the person has been the holder of a licence for a period of not less than 5 years after the date on which he was previously convicted.

(7) In sub-sections (5) and (6), a reference to a licence to drive a motor vehicle shall not be read as including a special licence to drive a motor vehicle granted under section 13A of the *Motor Traffic Ordinance 1936* or of that Ordinance as amended and in force immediately before the commencement of this Ordinance, under a corresponding provision of a law of a State or Territory or a special licence granted under section 36 of this Ordinance, or under a corresponding provision of a law of a State or Territory.

Penalties for offences by first offenders

26. The penalty for an offence by a first offender against section 19, 20, 22, 23 or 24 is a fine not exceeding \$1,000.

Penalties for offences by previous offenders

27. The penalty for an offence by a previous offender against section 19, 20, 22, 23 or 24 is a fine not exceeding \$2,000.

Circumstances in which Court may impose sentence of imprisonment

28. (1) Where—

- (a) a person is convicted of an offence against section 19, 20, 22, 23 or 24; and
- (b) the Court considers that, in all the circumstances and having regard to the antecedents of the person (including convictions against him for offences against this Ordinance, against the *Motor Traffic Ordinance 1936* or against a law of a State or Territory that makes corresponding provisions), that it is appropriate to do so,

the Court may, in addition to, or in substitution of, a pecuniary penalty, sentence the person to a term of imprisonment not exceeding—

- (c) in the case of an offence by a first offender—6 months; or
- (d) in the case of an offence by a previous offender—12 months.

29. (1) Where a person is convicted of an offence against this Ordinance, the Court—

Conditional
release of
offenders
after
conviction

- (a) on an application by the convicted person; and
- (b) if it is satisfied that the convicted person is suffering from alcohol or drug dependency,

may, instead of ordering the convicted person to pay a pecuniary penalty or sentencing him to a term of imprisonment, order that the person be discharged upon his giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the Court that—

- (c) he will be of good behaviour for such period, not exceeding 2 years, as the Court thinks fit;
- (d) he will, during the period so specified or such shorter period as the Court specifies in the order, submit himself for treatment at a referral centre established under Part VIII in accordance with the reasonable requirements of the person in charge of the centre;
- (e) he will, during the period so specified, comply with such conditions (which conditions may include conditions relating to his attendance at the referral centre specified in the order) as the Court thinks fit to specify in the order; and
- (f) he will pay to the Commonwealth any amount, not exceeding the amount of the pecuniary penalty that might have been imposed on him on his conviction, by specified instalments as provided in the order.

(2) Where—

- (a) a person is discharged upon his giving security as required by sub-section (1); and
- (b) an information is laid before a Magistrate or the Clerk of the Court that the person has failed to comply with any of the conditions specified in the order,

the Magistrate or Clerk may issue a summons requiring the person to appear before the Court and to show cause why he should not be dealt with by the Court under this section or, if the information is laid on oath, the Magistrate or Clerk may issue a warrant for the arrest of the person and for his being brought before the Court to be dealt with under sub-section (3).

(3) Where a person appears before the Court on a summons or warrant issued under sub-section (2), the Court may, if satisfied that the person has failed to comply with the conditions specified in the order, impose on the person any penalty which the Court would, if the person had then and there been convicted of the offence with which he was originally charged, be empowered to impose or make any order (including a further order under sub-section (1)) which the Court would then be empowered to make.

(4) The Court may, when making an order in pursuance of sub-section (3), also order that any recognizance given by the person or by a surety for him be forfeited and that any other security given by or in respect of him be enforced.

Power of the Court to mitigate total amount to be paid by convicted person

30. (1) Where the Court makes an order under sub-section 29 (1), the Court may include in the order a direction that, if the convicted person has, during a specified period, complied with the conditions specified in the order, the person should have liberty to apply for an order under this section.

(2) On an application under this section, the Court may, after giving notice of the application to such person or persons as it thinks fit and upon hearing the applicant and the person or persons to whom notice of the application has been given, order that the applicant be no longer required to pay any further instalments and may make such other order in relation to the conditions as it thinks fit.

(3) Where an order is made under sub-section (2) that a person is no longer required to pay any further instalments, the person and any surety each cease to be liable for the payment of any further instalments.

Suspension or cancellation of licence or disqualification—first offenders

31. Where a first offender is convicted by a Court of an offence referred to in paragraph (a), (b) or (c) of the definition of "offence involving alcohol or drugs" in sub-section 4 (1), the Court shall—

- (a) if the first offender is the holder of a driving licence—suspend the driving licence for such a period, being a period of not less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, cancel the licence and direct that the person be disqualified from holding a driving licence unless and until such time as the Court otherwise orders;
- (b) if the first offender is a person deemed to be licensed to drive a motor vehicle under section 107 or 108 of the *Motor Traffic Ordinance 1936*—disqualify him from holding a driving licence for such a period, being a period of not less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, disqualify him from holding a driving licence unless and until the Court otherwise orders; or
- (c) if the first offender does not hold a driving licence and is not a person referred to in paragraph (b)—disqualify him from holding a driving licence for such a period, being a period of not less than 3 months, as the Court directs or, if the Court considers the circumstances warrant it so doing, disqualify him from holding a driving licence unless and until the Court otherwise orders.

32. (1) Where a previous offender is convicted by a Court of an offence referred to in paragraph (a), (b) or (c) of the definition of "offence involving alcohol or drugs" in sub-section 4 (1), the Court shall—

Cancellation and disqualification—previous offenders

- (a) if the previous offender is the holder of a driving licence—cancel the licence and direct that he be disqualified from holding a driving licence unless and until the Court otherwise orders; or
- (b) if the previous offender is not the holder of a driving licence or is a person deemed to be licensed under section 107 or 108 of the *Motor Traffic Ordinance 1936*—disqualify him from holding a driving licence unless and until the Court otherwise orders.

(2) The powers conferred on a Court by this section are in addition to any other powers of the Court.

(3) Where the Court of Petty Sessions, in pursuance of section 92A of the *Court of Petty Sessions Ordinance 1930*, commits a person to the Supreme Court for sentence, sub-sections (1) and (2) apply as if the person had been convicted by the Supreme Court.

(4) Where a Court makes an order under this section, the Court shall cause particulars of the order to be forwarded to the Registrar of Motor Vehicles.

33. (1) Where a driving licence is suspended for a period under this Ordinance, the holder of the licence shall, from the date of the suspension, cease to be licensed to drive a motor vehicle and shall, subject to Part V, be disqualified from holding a driving licence for the period of the suspension.

Effect of suspension or cancellation of a licence

(2) Where a licence to drive a motor vehicle is cancelled under this Ordinance, the holder of the licence shall, from and including the date of the cancellation, cease to be the holder of a licence to drive a motor vehicle and shall be disqualified from holding a licence to drive a motor vehicle unless and until the Court otherwise orders.

34. (1) Where a person's driving licence has been suspended for a period, or a person has been disqualified from holding a licence for a period, on his conviction for an offence involving alcohol or drugs, the person is guilty of an offence if during that period—

Driving while licence suspended or cancelled

- (a) he obtains a driving licence other than a special licence under Part V; or
- (b) he drives a motor vehicle except in pursuance of such a special licence.

(2) Where a person's driving licence has been cancelled, or the person has been disqualified from holding a driving licence unless and until the Court otherwise orders, on his conviction for an offence involving alcohol or drugs, the person is guilty of an offence if—

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- (a) he obtains a driving licence otherwise than in pursuance of an order of the Court under Part VI; or
- (b) he, not having been granted a licence in pursuance of an order of the Court under Part VI, drives a motor vehicle.

(3) The penalty for an offence against sub-section (1) or (2) is a fine not exceeding \$2,000 or a term of imprisonment for a period not exceeding 12 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period.

Requirements to be complied with where licence suspended or cancelled

35. (1) Where the driving licence of a person is suspended or cancelled, the person shall forthwith after the conviction return the licence to the Registrar.

(2) A suspended driving licence shall, unless subsequently cancelled or the period of the licence has expired, be returned after the expiration of the period of suspension by the Registrar to the person to whom it was granted.

(3) A person whose driving licence has been suspended or cancelled is not entitled to a refund of fees for the remaining period for which the licence was granted.

(4) The Court shall cause particulars of all convictions, cancellations and suspensions of driving licences and disqualifications from holding a driving licence and orders of the Court to be forwarded to the Registrar.

PART V—SPECIAL LICENCES TO DRIVE MOTOR VEHICLES

Applications for special licences to drive

36. (1) Where, on the conviction of a person for an offence involving alcohol or drugs, the Court—

- (a) suspends the person's driving licence for a period under this Ordinance; or
- (b) disqualifies a person from holding a driving licence for a period under this Ordinance,

the person may apply orally to the Court, at the time the Court orders the suspension or disqualification, for an order directing the Registrar of Motor Vehicles to grant to the person a special licence to drive a motor vehicle.

(2) Where, on the conviction for an offence involving alcohol or drugs, the Court has—

- (a) suspended a person's driving licence for a period under this Ordinance or under the *Motor Traffic Ordinance 1936* as amended and in force from time to time; or
- (b) disqualified a person from holding a driving licence for a period under this Ordinance or under the *Motor Traffic Ordinance 1936* as amended and in force from time to time,

the person at any time during that period may, by written application, apply to the Court by which he was convicted for an order directing the Registrar of Motor Vehicles to grant to the person a special licence to drive a motor vehicle.

(3) Where an application is made orally to the Court, the Court may, if it thinks fit, adjourn the application to enable the Registrar of Motor Vehicles to give a certificate or notice in writing referred to in sub-section (5).

(4) Where an application in writing is made to the Court, the Court shall cause notice of the application and of the time fixed for the hearing of the application to be given to the Registrar of Motor Vehicles.

(5) The Registrar of Motor Vehicles may before the adjourned hearing or the hearing of an application, as the case requires—

(a) by instrument in writing lodged with the Court, certify that he has no ground under section 10, 11 or 12 of the *Motor Traffic Ordinance 1936* for refusing to grant a driving licence to the applicant; or

(b) if he has a ground under section 10, 11 or 12 of that Ordinance for refusing to grant to the applicant a driving licence, give, by instrument in writing lodged with the Court, notice that he intends, on the hearing of the application, to oppose the application on the grounds specified in the notice.

(6) In the application, for the purposes of sub-section (5), of section 11 of the *Motor Traffic Ordinance 1936*, a reference in that last-mentioned section to the conviction of a person shall not be read as extending to the conviction of that person referred to in sub-section (1) or (2) of this section.

(7) The Registrar shall cause a copy of a certificate referred to in paragraph (5) (a) or a copy of the notice referred to in paragraph (5) (b), as the case requires, to be served on the applicant for the special licence.

(8) Where the Registrar has given notice that he intends to oppose an application for a special licence, the Registrar is entitled to be represented on the hearing of the application.

37. (1) If, on the hearing of an application under this Part, the Court is satisfied that, by reason of the person's employment, of matters associated with his employment or of exceptional circumstances, it is a proper case to do so, the Court shall order the Registrar of Motor Vehicles to grant to the applicant a special licence entitling the applicant to drive a motor vehicle of such a class, on such days in the period during which his licence to drive a motor vehicle is suspended or during which he has been disqualified from holding a driving licence, between such hours on those days and on such other conditions (if any), as the Court

Grant of
special
licences

thinks reasonable and orders to be specified in the special licence, but, if not so satisfied, the Court shall refuse the application.

(2) Without limiting the generality of the powers conferred on it by sub-section (1), the Court may direct that the person to whom the special licence is granted shall not consume intoxicating liquor between such hours as are specified in the special licence.

(3) The Registrar of Motor Vehicles shall, upon payment of the fee prescribed under the *Motor Traffic Ordinance 1936*, comply with the order of the Court.

Offences by holders of special licences

38. (1) In this section, "special licence" means—

- (a) a special licence granted under section 37; or
- (b) a special licence granted under section 13A of the *Motor Traffic Ordinance 1936*.

(2) Where a special licence orders that the person to whom it has been granted shall not consume alcoholic liquor during hours specified in the special licence, the person to whom the special licence has been granted is guilty of an offence if he consumes alcoholic liquor during the hours so specified.

(3) A person to whom a special licence has been granted is guilty of an offence if he fails to comply with the conditions specified in the special licence.

(4) The penalty for an offence against sub-section (2) or (3) is a fine not exceeding \$200 or imprisonment for a term not exceeding 6 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period.

(5) Where a person is convicted of an offence against this section, his special licence to drive a motor vehicle and his suspended driving licence shall, by force of this section, be cancelled.

Supreme Court may remit application to Court of Petty Sessions

39. Where an application is made under sub-section 36 (2) to the Supreme Court for an order directing the grant of a special licence, the Supreme Court may, if it thinks fit, remit the application to the Court of Petty Sessions for hearing and determination.

PART VI—RESTORATION OF CANCELLED DRIVING LICENCES

Restoration of cancelled licences

40. (1) A person whose driving licence has been cancelled, or who has been disqualified from holding a driving licence unless and until the Court otherwise orders, on his conviction for an offence involving alcohol or drugs may apply to the Court by which he was convicted for an order that he be granted a driving licence.

(2) The Court shall cause notice of the application to be given to the Commissioner of Police and to the Registrar.

(3) On the hearing of an application under this section—

(a) the Commissioner of Police, the Registrar and the applicant are entitled to be heard and to call evidence, including evidence by a medical practitioner; and

(b) the Court shall have regard to—

(i) the period during which the applicant has been disqualified from holding a driving licence;

(ii) the conduct of the applicant (especially in relation to the consumption of alcohol or drugs) during that period;

(iii) the physical and mental condition of the applicant;

(iv) any evidence of medical or other treatment (including rehabilitation programs) undergone by the applicant; and

(v) the effect that the making of an order for the grant of a driving licence may have with regard to the safety of the applicant and other persons.

(4) The Court may—

(a) make an order directing that the Registrar of Motor Vehicles grant a driving licence to the applicant if it is, having regard to matters referred to in paragraph 3 (b), satisfied that it is appropriate to do so; or

(b) dismiss the application if it is not so satisfied.

(5) The Court may, in an order under this section, direct that the driving licence be granted on such terms and conditions, and for such period, as it thinks fit.

(6) Where the Court directs that a driving licence be granted on terms and conditions, the person to whom the licence is granted is guilty of an offence if he fails to comply with the terms or conditions subject to which the licence was granted.

(7) The penalty for an offence against sub-section (6) is a fine not exceeding \$200 or imprisonment for a term not exceeding 6 months or both a fine not exceeding that amount and imprisonment for a period not exceeding that term.

(8) Where a person is convicted of an offence against sub-section (6), the driving licence granted in pursuance of this section shall, by force of the conviction, be cancelled.

PART VII—EVIDENCE

Certificates
to be
evidence

41. In any proceedings in a Court—

(a) a certificate purporting to be signed by a member of the Police Force and stating—

- (i) he was on a specified date a member of the Police Force and authorized by the Commissioner of Police to carry out breath analyses;
- (ii) that, at a place and at a time and on a date specified in the certificate a person named in the certificate was required by a specified member of the Police Force to provide a sample of his breath for breath analysis by an approved breath analysing instrument;
- (iii) the type of instrument used in the analysis;
- (iv) that the approved breath analysing instrument was in proper working order;
- (v) the procedures followed, and precautions taken by him immediately before the breath analysis, during the breath analysis and immediately after the completion of the breath analysis;
- (vi) that the person named in the certificate provided a sample of his breath for analysis in accordance with the directions of the member of the Police Force who made the requirement;
- (vii) that, in following such of those procedures in respect of which the regulations make provision that specified results are to be obtained, the results specified in the certificate were obtained;
- (viii) that the figure recorded or shown by the approved breath analysing instrument as the result of the analysis was a specified figure or was not less than a specified figure and not more than another specified figure, as the case requires; and
- (ix) that, as soon as practicable after the breath analysis was carried out, he signed and delivered to the person referred to in sub-paragraph (a) (ii) a statement as required by section 12 (5),

is *prima facie* evidence of the matters stated in the certificate and of the facts on which they are based;

(b) a certificate purporting to be signed by the member of the Police Force and stating—

- (i) he was on a specified date a member of the Police Force and authorized by the Commissioner of Police to carry out breath analyses;

- (ii) that, at a place and at a time and on a date specified in the certificate, a person named in the certificate was required by a specified member of the Police Force to provide a sample of his breath for breath analysis by an approved breath analysing instrument;
 - (iii) the type of instrument available for the purpose of the analysis;
 - (iv) that the approved breath analysing instrument was in proper working order;
 - (v) the procedures followed by him immediately before the person was required to provide a sample of his breath for the breath analysis and the results obtained in following those procedures; and
 - (vi) that the person referred to refused or failed to provide a sample of his breath for analysis,
- is *prima facie* evidence of the matters stated in the certificate and of the facts on which they are based;
- (c) a certificate purporting to be signed by a medical practitioner stating that—
 - (i) he is a medical practitioner;
 - (ii) at a specified place and on a date and at a time specified, he took a sample of blood or other body sample of a person named in the certificate;
 - (iii) he placed approximately equal quantities of the sample of blood or other body sample into 2 containers;
 - (iv) on a label affixed to each container, he signed his name and endorsed the name of the person from whom the sample was taken and the date on which and the time at which the sample was taken;
 - (v) each container was sealed; and
 - (vi) he gave one of the containers to the person named on the label and the other container to a specified member of the Police Force,is *prima facie* evidence of the matters stated in the certificate;
 - (d) a certificate purporting to be signed by an approved analyst and stating that—
 - (i) he is an approved analyst;
 - (ii) he analysed a sample from a sealed container to which was affixed a label purporting to be signed by a medical practitioner named in the certificate and bearing the name of a person specified in the certificate as the person from whom the sample was taken and the date and time when the sample was taken;
 - (iii) the analysis to which the sample was subjected; and
 - (iv) the result of the analysis,

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is *prima facie* evidence of the matters stated in the certificate and of the facts on which they are based; and

- (e) a certificate expressed to be given for the purposes of this paragraph, purporting to be signed by a person specified or described in the regulations and containing statements in relation to matters permitted by the regulations to be stated in such a certificate is *prima facie* evidence of matters stated in the certificate and of the facts on which they are based.

Effect of non-compliance with Ordinance or regulations

42. (1) This section applies where the Court hearing a charge for an offence against this Ordinance arising out of the carrying out of a breath analysis or the analysis of a sample of the blood or from the body of a person is not satisfied that there has been compliance with every provision of the Ordinance or the regulations relating to the carrying out of the breath analysis or the analysis of the sample of blood.

(2) Unless the Court is satisfied that the result which would have been obtained if there had been compliance with every provision referred to in sub-section (1) would have been not less than the result obtained in the analysis, the Court shall dismiss the charge.

Person charged may require evidence to be given orally

43. (1) A person who has been charged with an offence against this Ordinance or an offence of culpable driving may give notice in writing to the Commissioner of Police that he will require the attendance, for the purpose of giving evidence orally, at court on the hearing of the charge of each or any person by whom a certificate referred to in section 41 is given.

(2) Notice under sub-section (1) may be given by leaving it at, or posting it to, the Commissioner of Police at Police Headquarters, Canberra, not less than 7 days before the date fixed for the hearing of the proceedings against the person charged or within such shorter period as the Court allows.

(3) Notwithstanding that a notice has been given under sub-section (2) and that the persons referred to in the notice give evidence relating to the matters stated in the certificates, the certificates referred to in section 41—

- (a) are admissible in evidence;
- (b) are evidence of the matters stated in the certificates and of the facts upon which they are based; and
- (c) have such probative value as the Court determines consistently with the other evidence before the Court.

PART VIII—REFERRAL CENTRES

44. (1) In this section—

“ Minister ” means the Minister of State for Health;

“ prescribed services ” means medical and other services and facilities for or in relation to the treatment and rehabilitation of persons suffering from alcohol dependence or drug dependence.

Establishment of referral centres

(2) The Minister may, by instrument in writing, establish at a place, or at places, specified in the instrument, a referral centre or referral centres for the provision of prescribed services.

(3) A copy of an instrument under sub-section (2) shall be published in the *Gazette*.

(4) The Minister shall arrange for the provision, without charge, of prescribed services at a referral centre established under this section for persons who submit themselves for treatment at a referral centre as a condition of a recognizance entered into under section 29.

PART IX—MISCELLANEOUS

45. (1) Subject to sub-section (2), a member of the Police Force may, without a warrant, arrest a person if he has reasonable cause to suspect that the person is guilty of an offence against this Ordinance.

Power of arrest

(2) A member of the Police Force who has an approved screening device immediately available for use is not entitled to arrest without a warrant a person whom he suspects is guilty of an offence against section 24 (1) unless and until he has required that person to undergo a screening test and the person has undergone, or refused to undergo, the screening test.

46. (1) A person who, having been taken into custody by a member of the Police Force in pursuance of section 11, 15 or 16 of this Ordinance, escapes from the custody of that member of the Police or from the custody of another member of the Police in whose custody he has been placed is guilty of an offence.

Penalty for escaping from custody

(2) The penalty for an offence against sub-section (1) is—

(a) in the case of a person who is a first offender within the meaning of Part IV—a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months or both a fine not exceeding that amount and a term of imprisonment not exceeding that period; or

(b) in the case of a person who is a previous offender within the meaning of Part IV—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both a fine not

exceeding that amount and a term of imprisonment not exceeding that period.

Right of arrested person to request medical examination

47. (1) A member of the Police Force who arrests a person for an offence against this Ordinance (other than an offence against section 34, Part V or VI) shall inform the arrested person or another person acting on behalf of the arrested person that the arrested person is entitled to be medically examined by a medical practitioner to be nominated by the arrested person or by the other person.

(2) Where the arrested person or the other person on his behalf requests the member of the Police Force to arrange such a medical examination, the member of the Police Force shall, as far as it is practicable and as soon as it is practicable to do so, arrange for the medical examination of the arrested person.

Charges for a number of offences

48. (1) A person may be charged with—

- (a) two or more offences against this Ordinance; and
- (b) an offence of culpable driving and an offence or two or more offences against this Ordinance,

arising from the fact that he was on a particular occasion the driver of a motor vehicle, but a person who is convicted of one such offence shall not, except as provided by sub-section (2), be convicted of the other offence or of any of those other offences.

(2) Where a person is charged with—

- (a) an offence against section 34, Part V or Part VI; and
- (b) an offence, or two or more offences, referred to in sub-section (1),

he may be convicted of the offence against section 34, Part V or VI and the other offence or one of the other offences referred to in paragraph (b).

Default term of imprisonment

49. Where the Court orders a pecuniary penalty to be paid by a person convicted of an offence against this Ordinance, the Court shall specify in the order the period of imprisonment to be served by the person convicted in default of payment of the penalty, being a period not exceeding the period of imprisonment for which the person may be sentenced by the Court for the offence of which he is convicted.

Offences to be dealt with summarily

50. Offences against this Ordinance are punishable on summary conviction.

Notices may be given before date fixed under section 2

51. At any time after the making of this Ordinance and before the date fixed under section 2, the Minister may give a notice in writing referred to in sub-section 5 (1), 5 (2) or 6 (3) and the Commissioner of Police may give a notice in writing referred to in sub-section 6 (1), but a notice so given does not have effect until the date fixed under section 2.

52. (1) The Minister may make regulations, not inconsistent with Regulations this Ordinance, prescribing all matters that are required or permitted to be prescribed by this Ordinance.

(2) Regulations may be made under sub-regulation (1) at any time after the notification of the making of this Ordinance is published in the *Gazette* and before the date fixed under section 2, but regulations so made do not have effect until the date so fixed.

NOTE

1. The *Motor Traffic (Alcohol and Drugs) Ordinance 1977* as shown in this reprint comprises Ordinance No. 17, 1977 as amended by the other Ordinances specified in the following table:

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement
<i>Motor Traffic (Alcohol and Drugs) Ordinance 1977</i>	No. 17, 1977	21 June 1977	1 Dec 1977 (<i>see Gazette</i> 1977, No. S242, p. 1)
<i>Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1977</i>	No. 52, 1977	27 Sept 1977	27 Sept 1977
<i>Ordinances Revision Ordinance 1978</i>	No. 46, 1978	28 Dec 1978	28 Dec 1978