

AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1985

No. 51 of 1985

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 12 September 1985.

J. A. ROWLAND
Administrator

By His Excellency's Command,

G. SCHOLES
Minister of State for Territories

An Ordinance to amend the *Motor Traffic (Alcohol and Drugs) Ordinance 1977*

Short title

1. This Ordinance may be cited as the *Motor Traffic (Alcohol and Drugs) (Amendment) Ordinance 1985*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Motor Traffic (Alcohol and Drugs) Ordinance 1977*.²

Interpretation

3. Section 4 of the Principal Ordinance is amended by inserting after the definition of "drive a motor vehicle" in sub-section (1) the following definition:

“ ‘drug’ means—

- (a) a substance specified in Schedule 1;
- (b) a substance that is a Schedule 8 substance or a Schedule 12 substance within the meaning of the *Poisons and Narcotic Drugs Ordinance 1978*; or
- (c) any other substance that, on its own or in combination with alcohol, may influence the driving of the person who has taken the drug;”.

Approval of instruments and types of devices

4. Section 5 of the Principal Ordinance is amended by omitting from sub-section (1) “the Schedule” and substituting “Schedule 2”.

Approval of operators and analysts

5. Section 6 of the Principal Ordinance is amended by omitting sub-section (2).

Breath analysis

6. Section 12 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (3) (a) “of a specified type”; and
- (b) by inserting after sub-section (3) the following sub-section:

“(3A) Regulations made for the purposes of sub-section (3) may prescribe different procedures in respect of different types of approved breath analysing instruments.”.

Certificates to be evidence

7. Section 41 of the Principal Ordinance is amended—

- (a) by omitting paragraph (aa) and substituting the following paragraph:

“(aa) a copy of a notice, being a notice—

- (i) that purports to be signed by the Minister or a delegate of the Minister; and

- (ii) that is affixed, by any means, to an instrument,

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

- (b) by omitting sub-paragraph (a) (iii) and substituting the following sub-paragraphs:
- “(iii) the instrument used in the analysis, by reference to its model number, patent number and serial number;
 - (iiia) that affixed to the instrument so used was a notice in accordance with the form set out in Schedule 2 purporting to be signed by the Minister or a delegate of the Minister;
 - (iiib) that the notice set out in the certificate, or annexed to the certificate and authenticated as prescribed, is a copy of the notice referred to in sub-paragraph (iiia);”;
- (c) by inserting after sub-paragraph (a) (vi) the following sub-paragraph:
- “(via) the steps that were taken to ensure that it was not readily apparent to members of the public that the breath analysis was being carried out;”;
- (d) by omitting sub-paragraph (b) (iii) and substituting the following sub-paragraphs:
- “(iii) the instrument available for the purpose of the analysis, by reference to its model number, patent number and serial number;
 - (iiia) that affixed to the instrument so used was a notice in accordance with the form set out in Schedule 2 purporting to be signed by the Minister or a delegate of the Minister;
 - (iiib) that the notice set out in the certificate, or annexed to the certificate and authenticated as prescribed, is a copy of the notice referred to in sub-paragraph (iiia);”;
- (e) by inserting after paragraph (c) the following paragraph:
- “(ca) a certificate purporting to be signed by a medical practitioner stating that—
 - (i) he is a medical practitioner;
 - (ii) at a specified hospital and on a date and at a time specified, he was attending the person named in the certificate;

- (iii) he was informed by a police officer of the officer's intention to require a person to undergo a screening test under section 8, 9 or 10 or to provide a sample of this breath for breath analysis under section 12; and
 - (iv) he was of the opinion at the time he was so informed that—
 - (A) compliance with the requirement would be detrimental to the person's medical conditions; or
 - (B) compliance with the requirement would not be detrimental to the person's medical condition,is *prima facie* evidence of the matters stated in the certificate and of the facts on which they are based;"; and
- (f) by adding at the end thereof the following sub-sections:

“(2) A certificate expressed to be given for the purposes of a paragraph of this section is not inadmissible by reason only of the fact that the certificate relates to one, or some only, of the matters referred to in that paragraph.

“(3) For the purposes of sub-paragraph (1) (a) (iiib), the prescribed authentication is a statement, appearing at the foot of the copy of the notice, signed by the officer who certifies as to the matters specified in sub-paragraph (1) (a) (iiia), as follows:

‘This notice is a true copy of the notice affixed to the instrument referred to in sub-paragraph 41 (1) (a) (iiia).

(Date) (Signature of Police Officer)’.

“(4) For the purposes of sub-paragraph (1) (b) (iiib), the prescribed authentication is a statement, appearing at the foot of the copy of the notice, signed by the officer who certifies as to the matters specified in sub-paragraph (1) (b) (iiia), as follows:

‘This notice is a true copy of the notice affixed to the instrument referred to in sub-paragraph 41 (1) (b) (iiia).

(Date) (Signature of Police Officer)’.

8. Section 42 of the Principal Ordinance is repealed and the following sections substituted:

Effect of non-compliance: analysis of breath or blood

“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 taking and analysis of a sample of the blood of a person is not satisfied that there has been compliance with every provision of this Ordinance or the regulations relating to the carrying out of the breath analysis or the taking and analysis of the sample of blood.

“(2) Unless the Court is satisfied that the failure to comply with the provisions of this Ordinance or the regulations referred to in sub-section (1) was such that, had the failure not occurred, the result obtained in—

- (a) the breath analysis would have been, or exceeded, .08; or
- (b) the analysis of the sample of blood would have been equal to, or exceeded, the prescribed concentration,

as the case requires, the Court shall dismiss the charge.

Effect of non-compliance: analysis of body sample

“42A. (1) This section applies where the Court hearing a charge for an offence against this Ordinance arising out of the giving or taking, as the case requires, and the analysis, of a sample from the body of a person is not satisfied that there has been compliance with every provision of this Ordinance or the regulations relating to the giving or taking, and the analysis, of the sample from the body of a person.

“(2) Unless the Court is satisfied that the failure to comply with the provisions of this Ordinance or the regulations referred to in sub-section (1) would not have affected the result obtained in the analysis, the Court shall dismiss the charge.

Effect of non-compliance: refusal to give sample of breath.

“42B. (1) This section applies where the Court hearing a charge for an offence against section 22 is not satisfied that there has been compliance with every provision of this Ordinance and the regulations relating to that part of the carrying out of a breath analysis that is required to be carried out before the sample of breath is supplied.

“(2) Unless the court is satisfied that the failure to comply with the provisions of this Ordinance or the regulations referred to in sub-section (1)

was such that, had the failure not occurred and the breath analysis taken place, the result obtained in the analysis would have been, or exceeded, .08, the Court shall dismiss the charge.”.

Schedule 1

9. The Principal Ordinance is amended by inserting before the Schedule the following Schedule:

“SCHEDULE 1

Section 3

Drugs

Amitriptyline and other tricyclic antidepressants.

Antihistamines, and all tertiary nitrogenous organic bases which possess pharmacological properties characteristic of antihistamine substances.

Barbituric acid and its derivatives.

Carbromal.

Chloral hydrate and its derivatives.

Chlordiazepoxide and other substances structurally derived from benzodiazepine with ataractic properties.

Chlormezanone.

Chlorpromazine and other substances structurally derived from phenothiazine with ataractic properties.

Chlorprotixene and other thioxanthines.

Ethchlorvynol.

Ethinamate.

Glutethimide.

Haloperidol and other substances structurally derived from butyrophenone with ataractic properties.

Meprobamate.

Mianserin and to the tetracyclic antidepressants.

Paraldehyde.

Phenelzine and other monoamine oxidase inhibitors with ataractic properties.”.

Schedule 2

10. The Schedule to the Principal Ordinance is amended by omitting—

“THE SCHEDULE”,

and substituting—

“SCHEDULE 2”

Additional amendments

11. The Principal Ordinance is amended as set out in the Schedule.

SCHEDULE

Section 11

ADDITIONAL AMENDMENTS OF PRINCIPAL ORDINANCE

1. The following provisions of the Principal Ordinance are amended by omitting “member of the Police Force” (wherever occurring) and substituting “Police officer”:

Sub-sections 4 (1) and 6 (1), sections 8, 9, 10A, 11, 12, 14, 15 and 16, paragraph 17 (c), section 18, paragraph 22 (d), sections 41 and 45, sub-sections 46 (1), section 47.

2. The Principal Ordinance is further amended as set out in the following table:

Provision	Amendment
Paragraph 6 (1) (a).....	Omit “members of the Police Force”, substitute “police officers”.
Sub-section 46 (1)	Omit “member of the Police” (wherever occurring), substitute “police officer”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 19 September 1985.
2. No. 17, 1977 as amended by No. 52, 1977; No. 46, 1978; No. 37, 1980; No. 16, 1981; No. 29, 1981; No. 94, 1982.