



AUSTRALIAN CAPITAL TERRITORY

## **Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989**

**No. 24 of 1989**

---

---

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

[Notified in ACT Gazette S40: 7 December 1989]

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

#### **Short title**

1. This Act may be cited as the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989*.

#### **Principal Act**

2. In this Act, “Principal Act” means the *Motor Traffic (Alcohol and Drugs) Act 1977*.<sup>1</sup>

**Interpretation****3.** Section 4 of the Principal Act is amended—

- (a) by omitting from the definition of “medical practitioner” in subsection (1) “1930” and substituting “1930, or a person who is an approved qualified person within the meaning of section 38A of that Act”; and
- (b) by inserting the following definition:

“ ‘one-way box’ means a locked box, with a hole capable of receiving containers of blood samples, from which the containers cannot be removed unless the box is unlocked with a key kept by an approved analyst;”.

**Restrictions on screening tests and breath analyses****4.** Section 14 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or her” after “his” (first occurring);
- (b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraph:

“(a) in the case of an accident—

(i) where the person is taken to hospital—if more than 2 hours have elapsed since his or her arrival at the hospital; or

(ii) in any other case—if more than 2 hours have elapsed since the accident occurred; or”;

- (c) by inserting after subsection (1) the following subsection:

“(1A) Where subparagraph (1) (a) (ii) applies and—

(a) a police officer attending the scene of the accident has doubt as to the time at which the accident occurred;

(b) the relevant person is found at or near the scene of the accident; and

(c) the police officer has reasonable cause to suspect that the person was in the vehicle at the time of the accident;

subsection (1) applies in relation to that person if more than 2 hours have elapsed since the person was found.”;

- (d) by inserting in subsection (2) “or her” after “his” (wherever occurring);

- (e) by inserting in paragraph (2) (a) “or not practicable” after “dangerous”; and
- (f) by omitting from paragraph (2) (a) “or both”.

### **Taking blood samples**

5. Section 15 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or her” after “his” (wherever occurring);
- (b) by inserting in subsection (2) “or (1A)” after “14 (1)”;
- (c) by inserting in subsection (4) “or she” after “he”;
- (d) by inserting in subsection (4) “or her” after “his” (wherever occurring);
- (e) by inserting after subsection (4) the following subsection:
  - “(4A) A police officer shall not make a request under subsection (4) after the end of whichever of the periods specified in subsection 14 (1) or (1A) is applicable in relation to the person.”;
- (f) by omitting from paragraph (5) (b) “name and endorse” and substituting “or her name and write”;
- (g) by adding at the end of paragraph 5 (b) “and”;
- (h) by omitting from paragraph 5 (c) “; and”;
- (i) by omitting paragraph 5 (d); and
- (j) by omitting subsection (6) and substituting the following subsections:

“(6) The medical practitioner shall—

- (a) if he or she is of the opinion that the person was, at the time the blood sample was taken, incapable of giving or refusing his or her permission to take a sample of his or her blood—put both sealed containers in a one-way box; and
- (b) in any other case—give 1 sealed container to the person and put the other sealed container in a one-way box.

“(7) The police officer shall arrange for the container or containers to be collected from the one-way box by an approved analyst as soon as practicable.

“(8) The police officer shall give the person a written statement within a reasonable time, having regard to the person’s medical condition, after the analysis under section 15A is carried out.

“(9) The statement shall specify—

- (a) the date on which and the time at which the blood sample was taken;
- (b) the place where the blood sample was taken;
- (c) the result of the analysis carried out under section 15A; and
- (d) the address at which the blood sample is being held.

“(10) If both sealed containers were put in the one-way box for collection by an approved analyst, the statement shall also inform the person to the effect that an unanalysed sample of the person’s blood may be obtained from the analyst, within 6 months after the blood sample was taken, on the request of the person or of another person authorised in writing by the first-mentioned person to collect the blood sample.”.

### **Insertion**

**6.** After section 15 of the Principal Act the following section is inserted:

#### **Analysis of blood samples**

“15A. (1) If only 1 sealed container of a particular person’s blood has been put in a one-way box for collection by an approved analyst, the analyst shall analyse the blood to ascertain the concentration of alcohol in the blood.

“(2) If 2 sealed containers of a particular person’s blood have been put in a one-way box for collection by an approved analyst, the analyst shall—

- (a) analyse the blood in 1 of the containers to ascertain the concentration of alcohol in the blood; and
- (b) keep the other container sealed and under refrigeration until—
  - (i) the person, or another person authorised in writing by the first-mentioned person to collect the unanalysed blood sample, requests the analyst to give him or her that sample;
  - or

- (ii) the period of 6 months after the blood was taken from the person ends;
- whichever happens first.”.

### **Blood alcohol exceeding prescribed concentration**

7. Section 20 of the Principal Act is amended—

- (a) by inserting “or her” after “his” (wherever occurring); and
- (b) by adding at the end the following subsection:

“(2) A person who—

- (a) has been the driver of a motor vehicle on a public street or in a public place; and
- (b) has had a sample of blood taken for analysis in accordance with subsection 15 (4);

is guilty of an offence if the concentration of alcohol in the blood as determined by the analysis is equal to or more than the prescribed concentration.”.

### **Certificate evidence**

8. Section 41 of the Principal Act is amended—

- (a) by omitting from subparagraph (1) (a) (i) “he” and substituting “that he or she”;
- (b) by inserting in subparagraph (1) (a) (ii) “or her” after “his”;
- (c) by omitting from subparagraph (1) (a) (v) “, and precautions taken by him” and substituting “and precautions taken”;
- (d) by inserting in subparagraph (1) (a) (vi) “or her” after “his”;
- (e) by inserting in subparagraph (1) (a) (ix) “or she” after “he”;
- (f) by omitting from paragraph (1) (b) “the” (first occurring) and substituting “a”;
- (g) by omitting from subparagraph (1) (b) (i) “he” and substituting “that he or she”;
- (h) by inserting in subparagraph (1) (b) (ii) “or her” after “his”;
- (i) by omitting from subparagraph (1) (b) (v) “by him”;
- (j) by inserting in subparagraphs (1) (b) (v) and (vi) “or her” after “his”;
- (k) by inserting in subparagraphs (1) (c) (i) to (iv) (inclusive) and (vi) “or she” after “he”;

- (l) by omitting from subparagraph (1) (c) (iv) “name and endorsed” and substituting “or her name and wrote”;
- (m) by inserting in subparagraphs (1) (ca) (i) to (iv) (inclusive) “or she” after “he” (wherever occurring);
- (n) by omitting from subparagraph (1) (ca) (iii) “this” and substituting “the person’s”;
- (o) by inserting after paragraph (1) (ca) the following paragraph:
  - “(cb) a certificate purporting to be signed by a medical practitioner stating that—
    - (i) he or she is a medical practitioner;
    - (ii) at a specified place and on a date and at a time specified, he or she took a sample of blood from the person named in the certificate;
    - (iii) he or she placed approximately equal quantities of the sample of blood into 2 containers;
    - (iv) on a label affixed to each container, the medical practitioner signed his or her name and wrote 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;
    - (vi) he or she—
      - (A) gave 1 container to the person named in the certificate and put the other container in a one-way box; or
      - (B) put both containers in a one-way box; and
    - (vii) he or she held the opinion at the time when the sample was taken that the person was at that time, because of the person’s medical condition, incapable of giving or refusing permission to take a sample of blood;is *prima facie* evidence of the matters stated in the certificate;”;
- (p) by omitting from paragraph (1) (d) “that”; and
- (q) by omitting from subparagraphs (1) (d) (i) and (ii) “he” and substituting “that he or she”.

**Insertion**

9. After section 41 of the Principal Act the following section is inserted:

**Evidence for insurance purposes**

“41A. (1) Notwithstanding section 41, evidence—

- (a) that a sample of blood was taken from a person pursuant to subsection 15 (4);
- (b) that a medical practitioner dealt with containers holding blood samples in accordance with subsection 15 (6);
- (c) that a statement was given pursuant to subsection 15 (8);
- (d) of the content of a statement issued pursuant to subsection 15 (8);
- (e) that the person was found guilty of an offence against subsection 20 (2) in relation to the blood;
- (f) that, in consequence of the person’s being found guilty or being convicted of an offence against subsection 20 (2) in relation to the blood, an order was made in relation to the person;
- (g) that the person was charged with an offence against subsection 20 (2) in relation to the blood and, pursuant to section 556A of the Crimes Act, the charge was dismissed, or an order was made in respect of the person; or
- (h) pursuant to section 448 of the Crimes Act, an offence against subsection 20 (2) in relation to the blood was taken into account in passing sentence upon the person;

is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable or of exercising effective control over a motor vehicle.

“(2) A statement given to a person pursuant to subsection 15 (8) is not, in any proceedings in relation to an insurance contract, admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable of driving or of exercising effective control over a motor vehicle.

“(3) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude, limit, modify or restrict the liability of the insurer if the owner or the driver of a motor vehicle is convicted of an offence against this Act.

“(4) A covenant, term, condition or provision of an insurance contract is void to the extent that it purports to exclude, limit, modify or restrict the operation of this section.

“(5) Nothing in this section shall be taken as precluding the inclusion in an insurance contract of a covenant, term, condition or provision that excludes, limits, modifies or restricts the liability of the insurer otherwise than by a covenant, term, condition or provision of a kind referred to in subsection (2) or (3).

“(6) In subsection (1), ‘Crimes Act’ means the *Crimes Act 1900* of the State of New South Wales in its application to the Territory.”.

#### **Additional amendments**

**10.** The Principal Act is amended as set out in the Schedule.

---

### **SCHEDULE**

Section 10

#### **ADDITIONAL AMENDMENTS**

##### **Subsection 6 (1)—**

Omit “member”, substitute “officer”.

##### **Sections 8, 9 and 10—**

Omit “member”, substitute “officer”.

##### **Subsections 10A (1) and (2)—**

Omit “member” (wherever occurring), substitute “officer”.

##### **Subsections 12 (1) and (4)—**

(a) Omit “member”, substitute “officer”.

(b) After “his”, insert “or her”.



---

**NOTE**

1. Ordinance No. 17, 1977 as amended by No. 52, 1977; No. 46, 1978; No. 37, 1980; Nos. 16 and 29, 1981; No. 94, 1982; No. 63, 1984; Nos. 51 and 67, 1985; No. 9, 1987; Nos. 14, 21 and 38, 1989.

*[Presentation speech made in Assembly on 28 September 1989.]*

© Australian Capital Territory 1989