



AUSTRALIAN CAPITAL TERRITORY

## **Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990**

**No. 64 of 1990**

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

[Notified in ACT Gazette S 98: 24 December 1990]

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 1990*.

#### **Commencement**

2. This Act commences on 1 January 1991.

#### **Principal Act**

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

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

- (a) by omitting from subsection (1) the definition of “prescribed concentration” and substituting the following definition:

“ ‘prescribed concentration’ means—

- (a) in the case of a person under the age of 25 years who is not an experienced driver—.02 grams of alcohol per 100 millilitres of blood;
- (b) in the case of the driver of a heavy motor vehicle, a dangerous goods vehicle or a public motor vehicle—.02 grams of alcohol per 100 millilitres of blood; or
- (c) in any other case—.05 grams of alcohol per 100 millilitres of blood;”;

- (b) by inserting in subsection (1) the following definitions:

“ ‘dangerous goods vehicle’ means a vehicle on which a sign or marking is or is required to be exhibited pursuant to a provision of, or under any code prescribed by, the Dangerous Goods Regulation, 1978 of the State of New South Wales in its application in the Territory by virtue of the *Dangerous Goods Act 1984*;

‘experienced driver’ means a person who has held a licence granted under section 10 of the *Motor Traffic Act 1936* or under a corresponding law of a State or another Territory for a period of, or periods totalling, not less than 3 years;

‘heavy motor vehicle’ means—

- (a) a motor vehicle that has a manufacturer’s gross vehicle mass (within the meaning of the *Motor Vehicles (Dimensions and Mass) Act 1990*) exceeding 15 tonnes; or
- (b) a motor vehicle and trailer combination, or a combination of semi-trailer coupled to a motor vehicle, that has a manufacturer’s gross combination mass (within the meaning of that Act) exceeding 15 tonnes;”.

### **Written statement relating to screening test**

5. Section 10A of the Principal Act is amended by inserting after the word “shall” in subsection (1) “, if the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration,”.

### **Detention for the purpose of breath analysis**

6. Section 11 of the Principal Act is amended by adding at the end the following subsection:

“(2) Where—

- (a) pursuant to paragraph (1) (a) the approved screening device used in the screening test indicates to the police officer that the concentration of alcohol in the blood of the person is equal to or more than .02 grams of alcohol per 100 millilitres of blood; and
- (b) the police officer has reasonable grounds to believe that the person is a person referred to in paragraph (a) or (b) of the definition of ‘prescribed concentration’ in section 4;

subsection (1) applies in relation to that person accordingly.”.

### **Offence where blood alcohol concentration exceeds prescribed concentration**

7. Section 19 of the Principal Act is amended by omitting “.08” and substituting “the prescribed concentration”.

### **Interpretation**

8. Section 25 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘traffic infringer’ means a person on whom a traffic infringement notice has been served in respect of an offence against section 19 or 20 where—

- (a) the penalty referred to in paragraph 26A (f) has been paid; or
- (b) that penalty has not been paid and—
  - (i) that notice has not been withdrawn under subsection 180A (4) of the *Motor Traffic Act 1936*; and
  - (ii) the Court has not dismissed an information laid in respect of the offence to which that notice relates;”.

**Insertion**

9. After section 26 of the Principal Act the following section is inserted:

**First offenders—traffic infringement notice**

“26A. Where a police officer has reason to believe that—

- (a) a person has committed an offence against section 19 or 20;
- (b) that person is not a traffic infringer;
- (c) that person is a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies; and
- (d) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

section 180A of the *Motor Traffic Act 1936* applies to that offence as if—

- (e) that offence were a prescribed offence for the purposes of that section; and
- (f) the prescribed penalty for the purposes of that section were \$500 for that offence.”.

**Circumstances in which Court may impose sentence of imprisonment**

10. Section 28 of the Principal Act is amended by adding at the end the following subsection:

“(2) Where—

- (a) a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19 or 20; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.”.

**Suspension or cancellation of licence or disqualification—first offenders**

11. Section 31 of the Principal Act is amended by adding at the end the following subsection:

“(2) Where—

- (a) a person to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19 or 20; and

- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.”.

**Cancellation and disqualification—previous offenders**

**12.** Section 32 of the Principal Act is amended by adding at the end the following subsections:

“(5) Where—

- (a) a previous offender to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19 or 20; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

subsection (1) does not apply.

“(6) Where—

- (a) a traffic infringer to whom the prescribed concentration of .05 grams of alcohol per 100 millilitres of blood applies is convicted of an offence against section 19 or 20; and
- (b) the prescribed concentration has not been exceeded by more than .03 grams of alcohol per 100 millilitres of blood;

the Court shall—

- (c) if the traffic infringer is the holder of a driving licence—suspend the driving licence for such a period, being a period of not more than 6 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, or until such time as, the Court otherwise orders;
- (d) if the traffic infringer is a person deemed to be licensed to drive a motor vehicle under section 107 or 108 of the *Motor Traffic Act 1936*—disqualify him or her from holding a driving licence for such a period, being a period of not more than 6 months, as the Court directs or, if the Court considers the circumstances warrant it doing so, disqualify him or her from holding a driving licence unless, or until such time as, the Court otherwise orders; or

- (e) if the traffic infringer does not hold a driving licence and is not a person referred to in paragraph (b)—disqualify him or her from holding a driving licence for such a period, being a period of not more than 6 months, as the Court directs or, if the Court considers the circumstances warrant it so doing, disqualify him or her from holding a driving licence unless, or until such time as, the Court otherwise orders.”.

**Effect of non-compliance: analysis of breath or blood**

**13.** Section 42 of the Principal Act is amended by omitting from paragraph (2) (a) “.08” and substituting “the prescribed concentration”.

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

**14.** Section 42B of the Principal Act is amended by omitting from subsection (2) “.08” and substituting “the prescribed concentration”.

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**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; Acts Nos. 23 and 24, 1989.

*[Presentation speech made in Assembly on 11 December 1990.]*