



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Alcohol and Drugs) (Amendment) Act 1992

No. 63 of 1992

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

[Notified in ACT Gazette S183: 30 October 1992]

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 1992*.

Principal Act

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

Interpretation

3. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “approved breath analysing instrument” and substituting the following definition:

“ ‘approved breath analysis instrument’ means an instrument of a type approved, or deemed to have been approved, under subsection 5 (1);”.

Approval of instruments etc.**4.** Section 5 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Where the Minister is of the opinion that a particular type of instrument—

- (a) is designed and constructed to ascertain the concentration of alcohol present in a sample of a person’s breath and is capable of recording that concentration in grams per 100 millilitres of blood; and
- (b) is suitable for use in analyses under Part II;

the Minister may, by notice in the *Gazette*, approve that type of instrument for the purposes of this Act.”; and

- (b) by omitting from subsection (2) “by notice in writing” and substituting “by notice in the *Gazette*”.

Detention for the purpose of breath analysis

5. Section 11 of the Principal Act is amended by omitting from subsection (1) “he takes the person into custody, the police” and substituting “so, the”.

Precautions for privacy

6. Section 13 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply where the breath analysis is carried out at a police station.”.

Certificate evidence**7.** Section 41 of the Principal Act is amended—

- (a) by omitting paragraph (1) (aa);
- (b) by omitting subparagraphs (1) (a) (iia) and (iib);
- (c) by omitting subparagraphs (1) (b) (iia) and (iib);
- (d) by inserting after paragraph (1) (b) the following paragraph:

“(ba) a written statement referred to in subsection 12 (5), being a print-out from an approved breath analysis instrument, is evidence of the matters stated in the statement;”;

- (e) by omitting from subsection (1) “*prima facie*” (wherever occurring) and “and of the facts on which they are based” (wherever occurring); and
- (f) by omitting subsections (3) and (4).

Further amendments

8. (1) The following provisions of the Principal Act are amended by omitting “analysing” (wherever occurring) and substituting “analysis”:

Subsection 4 (1) (definition of “breath analysis”), paragraph 12 (3) (a), subsections 12 (3A) and (4), paragraph 15 (1) (b), section 19 and subparagraphs 41 (1) (a) (ii), (iv) and (viii) and (b) (ii) and (iv).

(2) The following provisions of the Principal Act are amended by inserting “or she” after “he” (wherever occurring):

Subsections 5 (2) and 6 (3), section 21, paragraphs 21 (a) and (b), 24 (3) (c) and 25 (5) (b), subsection 25 (6), paragraph 32 (1) (a) and subsections 36 (8), 38 (2) and (3), 40 (6), 43 (1), 46 (1) and 48 (1) and (2).

(3) The following provisions of the Principal Act are amended by inserting “or her” after “his” (wherever occurring):

Paragraphs 16 (1) (a) and (2) (a) and (b), subsections 16 (2) and (4), paragraphs 16 (5) (a), 18 (3) (b), 19 (b) and (c) and 21 (b) and subsections 25 (5) and (6), 38 (5) and 47 (2).

(4) The following provisions of the Principal Act are amended by inserting “or her” after “him” (wherever occurring):

Subsections 16 (3) and (6) and 29 (4) and paragraphs 31 (1) (b) and (c) and 32 (1) (b).

(5) The Principal Act is amended as set out in the Schedule.

Repeal

9. Schedule 2 to the Principal Act is repealed.

Savings

10. Where, immediately before the commencement of this Act, an instrument of a particular type was approved under subsection 5 (1) of the Principal Act, that type of instrument shall be deemed to have been approved under subsection 5 (1) of the Principal Act as amended by this Act, and subsection 27 (1) of the *Interpretation Act 1967* shall be taken to apply accordingly.

SCHEDULE

Subsection 8 (5)

Subsection 4 (1) (paragraph (f) of the definition of “offence involving alcohol or drugs”)—

Omit “his”.

Paragraph 17 (a)—

Omit “he”, substitute “the practitioner”.

Paragraph 17 (c)—

- (a) Omit “his” (first occurring).
- (b) Omit “his objection”, substitute “objecting”.
- (c) Omit “him”, substitute “the person”.
- (d) Omit “his” (third and fourth occurring), substitute “the”.

Subsection 18 (5)—

Omit “he”, substitute “the practitioner”.

Subsection 18 (6)—

- (a) Insert “or her” after “his” (first occurring).
- (b) Omit “his” (second and third occurring).

Paragraph 22 (b)—

Omit “his”.

Paragraphs 22 (c) and (d)—

- (a) Insert “or she” after “he”.
- (b) Omit “his”.

Paragraph 23 (1) (b)—

Omit “his”.

Subsection 23 (1)—

- (a) Insert “or she” after “he”.
- (b) Omit “a sample of his blood”, substitute “the sample”.

Paragraph 23 (2) (a)—

- (a) Insert “or she” after “he”.
- (b) Omit “himself”.

SCHEDULE—continued

Paragraph 23 (2) (b)—

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

Subsection 23 (3)—

Omit “his”, substitute “the”.

Paragraph 24 (2) (b)—

Omit “with which he is charged”.

Paragraph 24 (3) (d)—

- (a) Insert “or she” after “he” (first occurring).
- (b) Omit “so long as he was”, substitute “while”.

Subsection 25 (4)—

Omit “his”.

Paragraph 28 (1) (b)—

Omit “against him”.

Subsection 29 (1)—

- (a) Insert “or her” after “him”.
- (b) Omit “his” (first occurring).

Paragraph 29 (1) (c)—

Insert “or she” after “he”.

Paragraph 29 (1) (d)—

- (a) Insert “or she” after “he”.
- (b) Omit “himself for”, substitute “to”.

Paragraph 29 (1) (e)—

- (a) Insert “or she” after “he”.
- (b) Omit “his”, substitute “the”.

Paragraph 29 (1) (f)—

- (a) Insert “or she” after “he”.
- (b) Omit “him on his”, substitute “the”.

SCHEDULE—continued

Paragraph 29 (2) (a)—

Omit “his”.

Subsection 29 (2)—

(a) Insert “or she” after “he”.

(b) Omit “his being”, substitute “the person to be”.

Subsection 29 (3)—

Omit “with which he was”.

Subsection 34 (1)—

Omit “his”.

Paragraphs 34 (1) (a) and (b)—

Insert “or she” after “he”.

Subsection 34 (2)—

Omit “his”.

Paragraphs 34 (2) (a) and (b)—

Insert “or she” after “he”.

Subsection 36 (2)—

Omit “by which he was convicted”.

Paragraph 36 (5) (a)—

Omit “he has”, substitute “there is”.

Paragraph 36 (5) (b)—

(a) Omit “he has”, substitute “there is”.

(b) Insert “or she” after “he” (second occurring).

Subsection 36 (6)—

(a) Omit “subsection (5), of section 11”, substitute “subsection 11 (5)”.

(b) Omit “of this section”.

Subsection 37 (1)—

(a) Omit “the person’s”, substitute “the applicant’s”.

(b) Insert “or her” after “his” (first occurring).

SCHEDULE—continued

- (c) Omit “his” (second occurring), substitute “the applicant’s”.
- (d) Insert “or she” after “he”.

Subsection 40 (1)—

- (a) Omit “his”.
- (b) Omit “by which he was convicted”.
- (c) Insert “or she” after “he” (second occurring).

Subsection 45 (2)—

- (a) Omit “Crimes Act, 1900 of the State of New South Wales in its application to the Territory”, substitute “*Crimes Act 1900*”.
- (b) Insert “or she” after “he” (wherever occurring).

Section 49—

Omit “he”, substitute “the person”.

NOTE

1. Reprinted as at 30 September 1991.

[Presentation speech made in Assembly on 15 October 1992]

© Australian Capital Territory 1992