

2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Road Transport (Alcohol and Drugs) Amendment Bill 2013

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Road Transport (Alcohol and Drugs) Amendment Bill 2013

A Bill for

An Act to amend the *Road Transport (Alcohol and Drugs) Act 1977*

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

1 **1 Name of Act**

2 This Act is the *Road Transport (Alcohol and Drugs) Amendment*
3 *Act 2013*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Road Transport (Alcohol and Drugs) Act 1977*.

10 **4 Offences against Act—application of Criminal Code etc**
11 **Section 4, note 1, dot point 4**

12 *substitute*

- 13 • s 22B (Failing to stay for screening test)
- 14 • s 22C (Refusing to undergo screening test)

15 **5 Power to require alcohol screening test if vehicle not**
16 **involved in accident—driver and driver trainer**
17 **New section 8 (1A)**

18 *insert*

19 (1A) The person must remain at the place where the alcohol screening
20 test is being carried out for the time (not exceeding 30 minutes)
21 reasonably necessary for the test to be completed in accordance with
22 the police officer's directions.

23 **Example—time reasonably necessary**

24 a screening device is not immediately available and the police officer directs the
25 person to remain at the place while a device is made available

26 *Note 1* A person commits an offence if a person fails to comply with the
27 direction of a police officer under this section—see s 22B (Failing to
28 stay for screening test).

1 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
2 does not limit, the meaning of the provision in which it appears (see
3 [Legislation Act](#), s 126 and s 132).

4 **6 Power to require alcohol screening test if vehicle**
5 **involved in accident—driver**
6 **New section 9 (2)**

7 *insert*

8 (2) The person must remain at the place where the alcohol screening
9 test is being carried out for the time (not exceeding 30 minutes)
10 reasonably necessary for the test to be completed in accordance with
11 the police officer’s directions.

12 **Example—time reasonably necessary**

13 a screening device is not immediately available and the police officer directs the
14 person to remain at the place while a device is made available

15 *Note 1* A person commits an offence if a person fails to comply with the
16 direction of a police officer under this section—see s 22B (Failing to
17 stay for screening test).

18 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

1 **7 Power to require alcohol screening test if vehicle**
2 **involved in accident—driver trainer**
3 **New section 9A (2)**

4 *insert*

- 5 (2) The person must remain at the place where the alcohol screening
6 test is being carried out for the time (not exceeding 30 minutes)
7 reasonably necessary for the test to be completed in accordance with
8 the police officer's directions.

9 **Example—time reasonably necessary**

10 a screening device is not immediately available and the police officer directs the
11 person to remain at the place while a device is made available

12 *Note 1* A person commits an offence if a person fails to comply with the
13 direction of a police officer under this section—see s 22B (Failing to
14 stay for screening test).

15 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 [Legislation Act](#), s 126 and s 132).

18 **8 Power to require alcohol screening test for culpable**
19 **driving—driver and driver trainer**
20 **New section 10 (3)**

21 *insert*

- 22 (3) The person must remain at the place where the alcohol screening
23 test is being carried out for the time (not exceeding 30 minutes)
24 reasonably necessary for the test to be completed in accordance with
25 the police officer's directions.

26 **Example—time reasonably necessary**

27 a screening device is not immediately available and the police officer directs the
28 person to remain at the place while a device is made available

29 *Note 1* A person commits an offence if a person fails to comply with the
30 direction of a police officer under this section—see s 22B (Failing to
31 stay for screening test).

1 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
2 does not limit, the meaning of the provision in which it appears (see
3 [Legislation Act](#), s 126 and s 132).

4 **9 Power to require drug screening test if vehicle not**
5 **involved in accident—driver and driver trainer**
6 **Section 13A (2)**

7 *substitute*

8 (2) The person must remain at the place where the drug screening test is
9 being carried out for the time (not exceeding 30 minutes) reasonably
10 necessary for the test to be completed in accordance with the police
11 officer's directions.

12 **Example—time reasonably necessary**

13 a screening device is not immediately available and the police officer directs the
14 person to remain at the place while a device is made available

15 *Note 1* A person commits an offence if a person fails to comply with the
16 direction of a police officer under this section—see s 22B (Failing to
17 stay for screening test).

18 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

1 **10 Power to require drug screening test if vehicle involved in**
2 **accident—driver**
3 **Section 13B (2)**

4 *substitute*

- 5 (2) The person must remain at the place where the drug screening test is
6 being carried out for the time (not exceeding 30 minutes) reasonably
7 necessary for the test to be completed in accordance with the police
8 officer's directions.

9 **Example—time reasonably necessary**

10 a screening device is not immediately available and the police officer directs the
11 person to remain at the place while a device is made available

12 *Note 1* A person commits an offence if a person fails to comply with the
13 direction of a police officer under this section—see s 22B (Failing to
14 stay for screening test).

15 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 [Legislation Act](#), s 126 and s 132).

18 **11 Power to require drug screening test if vehicle involved in**
19 **accident—driver trainer**
20 **Section 13BA (2)**

21 *substitute*

- 22 (2) The person must remain at the place where the drug screening test is
23 being carried out for the time (not exceeding 30 minutes) reasonably
24 necessary for the test to be completed in accordance with the police
25 officer's directions.

26 **Example—time reasonably necessary**

27 a screening device is not immediately available and the police officer directs the
28 person to remain at the place while a device is made available

29 *Note 1* A person commits an offence if a person fails to comply with the
30 direction of a police officer under this section—see s 22B (Failing to
31 stay for screening test).

1 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
 2 does not limit, the meaning of the provision in which it appears (see
 3 [Legislation Act](#), s 126 and s 132).

4 **12 Power to require drug screening test for culpable**
 5 **driving—driver and driver trainer**
 6 **Section 13C (3)**

7 *substitute*

8 (3) The person must remain at the place where the drug screening test is
 9 being carried out for the time (not exceeding 30 minutes) reasonably
 10 necessary for the test to be completed in accordance with the police
 11 officer's directions.

12 **Example—time reasonably necessary**

13 a screening device is not immediately available and the police officer directs the
 14 person to remain at the place while a device is made available

15 *Note 1* A person commits an offence if a person fails to comply with the
 16 direction of a police officer under this section—see s 22B (Failing to
 17 stay for screening test).

18 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
 19 does not limit, the meaning of the provision in which it appears (see
 20 [Legislation Act](#), s 126 and s 132).

21 **13 Prescribed drug in oral fluid or blood—driver or driver**
 22 **trainer**
 23 **New section 20 (2A)**

24 *insert*

25 (2A) A defendant in a prosecution for an offence against this section
 26 cannot rely on the [Criminal Code](#), section 36 (Mistake of fact—
 27 strict liability) in relation to the identity of the prescribed drug if the
 28 defendant claims to have—

29 (a) considered, and been under a mistaken belief about, the
 30 identity of the prescribed drug; and

31 (b) believed that the prescribed drug was a controlled drug.

1 **14 Section 20 (4), new definition of *controlled drug***

2 *insert*

3 *controlled drug*—see the [Criminal Code](#), section 600.

4 **15 Section 22B**

5 *substitute*

6 **22B Failing to stay for screening test**

7 (1) A person commits an offence if—

8 (a) a police officer requires the person to undergo—

9 (i) an alcohol screening test under—

10 (A) section 8 (Power to require alcohol screening test if
11 vehicle not involved in accident—driver and driver
12 trainer); or

13 (B) section 9 (Power to require alcohol screening test if
14 vehicle involved in accident—driver); or

15 (C) section 9A (Power to require alcohol screening test
16 if vehicle involved in accident—driver trainer); or

17 (D) section 10 (Power to require alcohol screening test
18 for culpable driving—driver and driver trainer); or

19 (ii) a drug screening test under—

20 (A) section 13A (Power to require drug screening test if
21 vehicle not involved in accident—driver and driver
22 trainer); or

23 (B) section 13B (Power to require drug screening test if
24 vehicle involved in accident—driver); or

25 (C) section 13BA (Power to require drug screening test
26 if vehicle involved in accident—driver trainer); or

- 1 (D) section 13C (Power to require drug screening test
2 for culpable driving—driver and driver trainer); and
- 3 (b) the person fails to remain at the place where the screening test
4 is being carried out for the time (not exceeding 30 minutes)
5 reasonably necessary for the test to be completed in accordance
6 with the police officer's directions.

7 Maximum penalty: 20 penalty units.

8 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- 9 (2) An offence against this section is a strict liability offence.

10 **22C Refusing to undergo screening test**

- 11 (1) A person commits an offence if—
- 12 (a) a police officer requires the person to undergo—
- 13 (i) an alcohol screening test under—
- 14 (A) section 8 (Power to require alcohol screening test if
15 vehicle not involved in accident—driver and driver
16 trainer); or
- 17 (B) section 9 (Power to require alcohol screening test if
18 vehicle involved in accident—driver); or
- 19 (C) section 9A (Power to require alcohol screening test
20 if vehicle involved in accident—driver trainer); or
- 21 (D) section 10 (Power to require alcohol screening test
22 for culpable driving—driver and driver trainer); or
- 23 (ii) a drug screening test under—
- 24 (A) section 13A (Power to require drug screening test if
25 vehicle not involved in accident—driver and driver
26 trainer); or

- 1 (B) section 13B (Power to require drug screening test if
2 vehicle involved in accident—driver); or
- 3 (C) section 13BA (Power to require drug screening test
4 if vehicle involved in accident—driver trainer); or
- 5 (D) section 13C (Power to require drug screening test
6 for culpable driving—driver and driver trainer); and
- 7 (b) the person fails to undergo the screening test in accordance
8 with the reasonable directions of a police officer.

9 Maximum penalty: 30 penalty units.

10 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- 11 (2) An offence against this section is a strict liability offence.
- 12 (3) It is a defence to a prosecution for an offence against this section if
13 the defendant proves that the failure was based on medical grounds.

14 *Note* The defendant has a legal burden in relation to the matters mentioned in
15 s (3) (see [Criminal Code](#), s 59).

16 **16 Driver etc intoxicated**
17 **Section 24A (2) and (3)**

18 *omit*

19 **17 Section 27 heading**

20 *substitute*

21 **27 Imprisonment—s 22, s 22A, s 22C, s 23 and s 24 offences**

22 **18 Section 27 (a)**

23 *substitute*

- 24 (a) a person is convicted of an offence against any of the following
25 provisions:
- 26 (i) section 22 (Refusing to provide breath sample);

- 1 (ii) section 22A (Refusing to provide oral fluid sample);
2 (iii) section 22C (Refusing to undergo screening test);
3 (iv) section 23 (Refusing blood test etc);
4 (v) section 24 (Driving under the influence of intoxicating
5 liquor or a drug); and

6 **19 Section 47**

7 *substitute*

8 **47 Right of arrested person to medical examination**

- 9 (1) A police officer who arrests a person for an offence against this Act
10 must tell the person that the person may ask for a medical
11 examination by a doctor or authorised nurse practitioner.
- 12 (2) If the person asks for a medical examination, the police officer
13 must—
- 14 (a) if the person requests examination by a particular doctor or
15 nurse practitioner—give the person reasonable assistance to
16 arrange for medical examination by the doctor or nurse
17 practitioner; and
- 18 (b) if the person does not request examination by a particular
19 doctor or nurse practitioner, or if it is not reasonably
20 practicable for the examination to be undertaken as
21 requested—arrange for medical examination of the person by a
22 doctor, or nurse practitioner, employed by the chief police
23 officer to provide forensic medical services.

24 **Example—reasonable assistance**

25 give person access to a telephone to call his or her own doctor

26 *Note* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 [Legislation Act](#), s 126 and s 132).

1 (3) The arrested person is liable for the costs of any medical
2 examination under this section.

3 **20 Dictionary, definition of *disqualifying offence*, new**
4 **paragraph (da)**

5 *insert*

6 (da) section 22C (Refusing to undergo screening test); or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2013.

2 Notification

Notified under the [Legislation Act](#) on 2013.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
