



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 146 of 1972

An Act to amend the Road Traffic Act, 1961-1972.

[Assented to 7th December, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Road Traffic Act Amendment Act (No. 2), 1972". Short title.

(2) The Road Traffic Act, 1961-1972, as amended by this Act, may be cited as the "Road Traffic Act, 1961-1972".

(3) The Road Traffic Act, 1961-1972, is hereinafter referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 47a of the principal Act is repealed and the following section is enacted and inserted in its place:— Repeal of s. 47a of principal Act and enactment of section in its place—

47a. In this Act—

"alcotest" means a test by means of an apparatus of a kind approved by the Governor by which the presence of alcohol in the blood of a person is indicated by the discolouration of a reagent contained in the apparatus upon contact with the breath exhaled by that person:

Interpretation.

“breath analysing instrument” means an apparatus of a kind approved as a breath analysing instrument by the Governor:

“breath analysis” means an analysis of breath by a breath analysing instrument:

“prescribed concentration of alcohol” means a concentration of .08 grams or more of alcohol in a hundred millilitres of blood.

Amendment of principal Act, s. 47b—
Driving, etc., with prescribed concentration of alcohol in blood.

4. Section 47b of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) In determining whether an offence is a first, second, third or subsequent offence for the purposes of subsection (1) of this section—

(a) offences previously committed against this section, section 47 of this Act and section 47e of this Act shall be taken into consideration as previous offences;

but

(b) only such offences as occurred within the period of five years immediately preceding the commission of that offence shall be taken into consideration.

Repeal of s. 47e of principal Act and enactment of section in its place—

Requirement that a person submit to alcotest or breath analysis.

5. Section 47e of the principal Act is repealed and the following section is enacted and inserted in its place:—

47e. (1) Where a member of the police force believes upon reasonable grounds that any person, while driving a motor vehicle or attempting to put a motor vehicle in motion—

(a) has behaved in a manner that indicates that his ability to drive the motor vehicle is impaired;

or

(b) has been involved in an accident,

that member of the police force may, subject to subsection (2) of this section, require that person to submit to an alcotest or breath analysis, or both.

(2) An alcotest or breath analysis must be performed within two hours after the occurrence of the behaviour or accident referred to in subsection (1) of this section.

(3) When a person is required under this section to submit to an alcotest or breath analysis he shall not refuse or fail to comply with all reasonable directions of a member of the police force in relation to the requirement and, in particular shall not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of a member of the police force.

Penalty—

(a) for a first offence, not more than one hundred dollars, and in addition to that penalty, the court shall by order disqualify the person convicted of the offence from holding or obtaining a driver's licence for a period of not less than six months and not more than twelve months;

or

(b) for a second or subsequent offence, not more than two hundred and fifty dollars or imprisonment for not more than six months and, in addition to either penalty, the court shall by order disqualify the person convicted of the offence from holding or obtaining a driver's licence for a period of not less than twelve months and not more than two years.

(4) It shall be a defence to a prosecution under subsection (3) of this section that—

(a) the requirement or direction to which the prosecution relates was not lawfully made;

or

(b) there was in the circumstances of the case good cause for the refusal or failure of the defendant to comply with the requirement or direction.

(5) No person is entitled to refuse or fail to comply with a requirement or direction under this section on the ground that by complying with that requirement or direction he would, or might, furnish evidence that could be used against him.

(6) In determining whether an offence is a first, second or subsequent offence for the purposes of subsection (3) of this section—

(a) offences previously committed against this section, section 47 of this Act and section 47b of this Act shall be taken into consideration as previous offences;

but

(b) only such offences as occurred within the period of five years immediately preceding the commission of that offence shall be taken into consideration.

Amendment of principal Act, s. 47f—
Person may request that blood sample be taken.

6. Section 47f of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) A person required in accordance with this Act to submit to an alcotest or breath analysis may request that a sample of his blood be taken at his expense by a medical practitioner nominated by him.

Amendment of principal Act, s. 47g—
Evidentiary provision.

7. Section 47g of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Without affecting the admissibility of evidence that might be given otherwise than in pursuance of this section, evidence may be given in any proceedings for an offence against this Act of the concentration of alcohol indicated as being present in the blood of the defendant by a breath analysing instrument operated by a person authorized to operate the instrument by the Commissioner of Police and, where the provisions of subsection (2) of this section have been complied with, it shall be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the defendant at the time of the analysis, and throughout the period of two hours immediately preceding the analysis.;

(b) by striking out from subsection (3) the passage “shall be *prima facie* evidence of the facts contained therein” and inserting in lieu thereof the passage “shall be proof, in the absence of proof to the contrary, of matters so certified”;

(c) by inserting after subsection (3) the following subsection:—

(3a) A certificate purporting to be under the hand of a member of the police force and to certify that an apparatus referred to in the certificate is or was of a kind approved under this Act for the purpose of performing alcotests shall, in the absence of proof to the contrary, be proof of the matter so certified.;

(d) by striking out from subsection (4) the passage “shall be *prima facie* evidence” and inserting in lieu thereof the passage “shall, in the absence of proof to the contrary, be proof”;

and

- (e) by striking out from subsection (5) the passage "shall be *prima facie* evidence" and inserting in lieu thereof the passage "shall, in the absence of proof to the contrary, be proof".

8. Section 47h of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 47h of
principal Act
and enactment
of section in
its place—

47h. (1) The Governor may, by notice published in the *Gazette*—

Approval of
apparatus for
the purpose of
breath analysis
and alcotests.

(a) approve apparatus of a specified kind as breath analysing instruments;

or

(b) approve apparatus of a specified kind for the purpose of conducting alcotests.

(2) The Governor may by subsequent notice vary or revoke any such notice.

(3) Any notice approving any apparatus as a breath analysing instrument and in force immediately before the commencement of the Road Traffic Act Amendment Act (No. 2), 1972, shall be deemed to be a notice under this section.

9. The following section is enacted and inserted in the principal Act immediately after section 47h thereof:—

Enactment of
s. 47i of
principal Act—

47i. (1) Where a motor vehicle is involved in any accident, and within eight hours after the accident a person, apparently of or above the age of fourteen years, who suffered injury in accident attends at, or is admitted into, a hospital for the purpose of receiving treatment for that injury, it shall, subject to this section, be the duty of any legally qualified medical practitioner by whom that patient it attended, to take as soon as practicable a sample of that patient's blood (notwithstanding that the patient may be unconscious) in accordance with this section.

Compulsory
blood tests.

(2) A medical practitioner shall not take a sample of blood under this section where, in his opinion, it would be injurious to the medical condition of his patient to do so.

(3) A medical practitioner shall not be obliged to take a sample of blood under this section where the patient objects to the taking of the sample of blood and persists in that objection after the medical practitioner has informed him that unless his objection is made upon genuine medical grounds, it may constitute an offence against this section.

(4) Where a motor vehicle is involved in any accident, and a person, apparently of or above the age of fourteen years, who suffered injury in the accident, is dead on arrival at the hospital or dies before a sample of blood has been taken in accordance with this section and within eight hours after admission to the hospital, it shall be the duty of a medical practitioner who certifies the cause of death, or reports the death to a coroner—

(a) to take a sample of blood from the body of the deceased in accordance with this section;

or

(b) to notify a coroner as soon as practicable that, in view of the circumstances in which the death of the deceased occurred, a sample of blood should be taken from his body under this section.

(5) Where a coroner receives a notification under subsection (4) of this section, he may authorize and direct a pathologist to take a sample of blood from the body of the deceased in accordance with this section.

(6) A medical practitioner shall not be obliged to take a sample of blood under this section—

(a) where a sample of blood has been taken in accordance with this section by any other medical practitioner;

or

(b) where the patient has, since the time of the accident, submitted to an analysis of his breath by a breath analysing instrument.

(7) A medical practitioner by whom a sample of blood is taken under this section shall place it, in approximately equal proportions, in two separate containers, shall seal the containers and—

(a) shall make available one of those containers, clearly identified as containing the blood of that patient, by notice signed by the medical practitioner and attached to the container, to a member of the police force;

and

(b) shall cause the other container to be delivered to, or retained on behalf of, the person from whom the sample of blood was taken, or if he is dead, a relative or personal representative of the deceased.

(8) Each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made on any concentration of alcohol present in the blood and the sample of blood taken by the medical practitioner must be such as to furnish two such quantities of blood.

(9) It shall be the duty of the medical practitioner by whom the sample of blood is taken to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol present in the blood of the person from whom the sample was taken.

(10) The notice referred to in paragraph (a) of subsection (7) of this section must be in the prescribed form and—

(a) must be signed by the medical practitioner by whom the sample of blood was taken and endorsed by him with the following information:—

(i) the name and address of the person from whom the blood was taken;

(ii) the name of the medical practitioner by whom the sample of blood was taken;

and

(iii) the time at which the sample of blood was taken,

and, after analysis of the blood—

(b) must be signed by the person by whom the blood is analysed and endorsed by him with the following information:—

(i) the name and professional qualifications of the analyst;

(ii) the day on which, or the period over which, the analysis was carried out;

(iii) the concentration of alcohol or other drug found to be present in the blood;

and

(iv) any factors relating to the blood sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis.

(11) Upon completion of the analysis of the blood, the completed notice must be sent to the Minister who shall send copies of the notice personally or by post—

(a) to the Commissioner of Police;

(b) to the medical practitioner by whom the sample of blood was taken;

and

(c) to the person from whom the sample of blood was taken, or if he is dead, a relative or personal representative of the deceased.

(12) If—

(a) the whereabouts of the person from whom the sample of blood was taken is unknown to the Minister;

or

(b) that person is dead and the identity or whereabouts of a relative or personal representative of the deceased is unknown to the Minister,

the Minister shall not be required to comply with paragraph (c) of subsection (11) of this section but shall, at any time within three years after his receipt of the notice, provide a copy of the notice to any person who satisfies the Minister that he is a person to whom a copy of the notice should, but for this subsection, have been sent.

(13) An apparently genuine document purporting to be a notice or a copy of a notice under this section shall (subject to the discretion of a court to exclude the document from evidence on the ground that it is not relevant to the proceedings or that its probative value is slight and outweighed by the prejudice that it would cause to the defendant) be admissible in proceedings before a court as evidence of any fact stated in the notice.

(14) Any person who, upon being requested to submit to the taking of a sample of blood under this section, refuses or fails to comply with that request and who—

(a) fails to assign any reason based upon genuine medical grounds for that refusal or failure;

(b) assigns a reason for that refusal or failure that is false or misleading;

or

(c) makes any other false or misleading statement in response to the request,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(15) Where a medical practitioner fails, without reasonable excuse, to comply with a provision of this section, or to perform any duty arising thereunder, he shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

(16) No proceedings shall be commenced against a medical practitioner for an offence against subsection (15) of this section unless those proceedings have been authorized by the Attorney-General.

(17) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize proceedings against a medical practitioner for an offence under subsection (15) of this section shall, in the absence of evidence to the contrary, be accepted by any court as proof that those proceedings have been authorized by the Attorney-General.

(18) No proceedings shall lie against a medical practitioner in respect of anything done by him in good faith and in compliance, or purported compliance, with the provisions of this section.

(19) In this section—

“accident” includes a collision caused either intentionally or unintentionally:

“hospital” means any institution, at which medical care or attention is provided for injured persons, declared by regulation to be a hospital for the purposes of this section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor