
**ROAD SAFETY (ALCOHOL AND DRUGS)
(No. 2) ACT 1975**

ANALYSIS

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ROAD SAFETY (ALCOHOL AND DRUGS) (No. 2)

No. 94 of 1975

AN ACT to amend the Road Safety (Alcohol and Drugs) Act 1970 and the Road Safety (Alcohol and Drugs) Act 1974 and to repeal the Road Safety (Alcohol and Drugs) Act 1975.

[17 December 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Road Safety (Alcohol and Drugs) Act (No. 2) 1975*.

Short title, citation, and commencement.

(2) The *Road Safety (Alcohol and Drugs) Act 1970*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Each of the provisions of this Act commences on such date as may be fixed by proclamation in relation to that provision.

Interpretation.

2 Section 2 of the Principal Act is amended—

- (a) by omitting from the definition of “breath analysis” in subsection (1) the word “test” and substituting therefor the word “procedure”;
- (b) by omitting from that subsection the definition of “first-year driver”;
- (c) by omitting from that subsection the definition of “learner’s licence”; and
- (d) by omitting from that subsection the definition of “qualified nurse” and substituting therefor the following definition:—

“‘qualified nurse’ means a person who is registered as a general nurse under the *Nurses’ Registration Act 1952*.”

Qualified nurses.

3 Section 3 of the Principal Act is amended by omitting subsection (7).

Powers of arrest, &c.

4 Section 5 of the Principal Act is amended by omitting subsection (1B) and substituting therefor the following subsection:—

“(1B) Where a police officer has taken charge of a motor vehicle under this section it shall be delivered to any person who has a right to its possession, unless a police officer notifies the person claiming it that he has reasonable grounds for believing that, if that person then drove that motor vehicle on a public street, he would be committing an offence.”

Driving with excessive concentration of blood alcohol.

5 Section 6 of the Principal Act is amended by omitting subsection (2) and substituting therefor the following subsections:—

“(2) A person to whom, by virtue of subsection (3), this subsection applies who drives a motor vehicle while alcohol is present in his body is guilty of an offence.

“(3) Subsection (2) applies to any person who holds a learner’s licence, or who—

- (a) has never held a driver’s licence, other than a provisional licence or a learner’s licence; or
- (b) has not, for a period that exceeds, or any periods that in the aggregate exceed, 12 months, held any licence or other authority, whether issued or granted in this State or elsewhere, authorizing him to drive motor vehicles on public streets.

“(4) In subsection (3), a ‘learner’s licence’ means any licence of a kind prescribed as a licence issued for the purpose of enabling the holder thereof to learn to drive a motor vehicle.”.

6 Section 7 of the Principal Act is amended by omitting from subsection (4) the words “and liable to a penalty of one hundred dollars”.

Consumption,
&c., of
intoxicating
liquor in
motor vehicles.

7 Section 8 of the Principal Act is amended—

Liability for
breath analysis
as result of
conduct.

(a) by omitting from subsection (2) all the words after the word “analysis”;

(b) by inserting after that subsection the following subsection:—

“(2A) In relation to the liability under subsection (2), for the purposes of—

(a) paragraph (a) of that subsection, the time of the relevant occurrence is the time of the commission of the offence; and

(b) paragraph (b) of that subsection, the time of the relevant occurrence is—

(i) where the person concerned was first found by a police officer, after the accident, at or near the place of the accident or at, or being conveyed to, a place for the purpose of receiving medical treatment, the time at which he is so found; or

(ii) in any other case, the time of the accident.”; and

(c) by omitting from subsection (5) the words “first-year driver” and substituting therefor the words “person mentioned in section 6 (3)”.

8 Section 10 of the Principal Act is amended—

Enforcement
of obligation
to submit to
breath analysis
or medical
examination.

(a) by inserting after subsection (4) the following subsection:—

“(4A) If a person refuses to submit to a breath analysis when he is directed to do so by a police officer pursuant to subsection (4), the police officer shall inform the person that he may elect to submit to the taking of a sample of his blood for analysis instead of the breath analysis if the taking of the sample can be commenced within 3 hours of the relevant occurrence.”; and

(b) by omitting from subsection (8) the words “, in the prescribed manner,”.

Rights and obligations on completion of breath analysis.

9 Section 11 of the Principal Act is amended—

- (a) by omitting from subsection (3) the words “first-year driver” and substituting therefor the words “person mentioned in section 6 (3)”; and
- (b) by omitting from that subsection the words “that sample to be taken within three hours of the time of the relevant occurrence by a medical practitioner or a qualified nurse” and substituting therefor the words “a medical practitioner or a qualified nurse to take the sample and to commence the taking thereof within 3 hours of the relevant occurrence”.

Duties of medical practitioners and nurses in relation to taking of blood samples, &c.

10 Section 13 of the Principal Act is amended—

- (a) by omitting subsection (5) and substituting therefor the following subsections:—

“(5) The sample of blood or urine shall be divided into three parts, each part being enclosed either—

- (a) in a container issued for that purpose by an approved analyst holding office in the Public Service; or
- (b) in the case of a sample of blood, in a container forming part of a blood sampling kit of a type approved by the Governor by notice in the *Gazette*.

“(5A) Each container into which a part of the sample of blood or urine is placed shall be labelled in such manner as may be prescribed.

“(5B) One of the containers containing a part of the sample of the blood or urine shall, as soon as practicable after it has been taken, be tendered to the person from whom it was taken, unless he is in custody, and, if he is in custody, shall forthwith be delivered to a police officer.

“(5C) The containers containing the other two parts of the sample of blood or urine shall, as soon as practicable, be delivered to an approved analyst.”; and

- (b) by omitting subsections (7), (8), and (9).

11 After section 13 of the Principal Act the following sections are inserted:—

Retention of blood sample during detention in custody.

“13A—(1) Where a container containing part of a sample of blood is delivered to a police officer as mentioned in section 13 (5B), it shall be kept in such manner as may be prescribed.

“(2) If the person from whom the sample was taken is released from custody within 24 hours from the time at which the sample was taken, the container shall be tendered to him on his release from custody.

“(3) If the container is not tendered as mentioned in subsection (2), it shall, on a written request made by or on behalf of the person from whom the sample was taken, be delivered to him, or to such other person at such place within the State as may be specified in the request.

“(4) A request referred to in subsection (3) shall be made to such person or at such place as may be prescribed.

“(5) Where for the purposes of subsection (3) a request in writing is made to any person purporting to be signed by a solicitor acting for the person from whom the sample was taken, the person to whom the request is made is entitled to assume that the request is made on behalf of the person from whom the sample was taken.

“13B—(1) Where the two containers containing parts of the sample of blood or urine are delivered to an approved analyst, the part of the sample contained in one of those containers may be analysed by an approved analyst and the part contained in any other of those containers may not, except as a court may otherwise direct, be so analysed or otherwise dealt with except on a request in writing made by or on behalf of the person from whom the sample was taken and a legal practitioner acting on behalf of the Crown.

Analysis of blood and urine samples by approved analysts.

“(2) Where pursuant to subsection (1) a part of the sample of the blood or urine taken from a person has been analysed by an approved analyst, he shall cause copies of the report of his analysis to be delivered without unreasonable delay to that person and—

(a) if the analysis was made on such a request as is referred to in that subsection, to such person as that practitioner may specify; and

(b) in any other case, to such police officer as may be prescribed.

“(3) The report referred to in subsection (2) made in respect of a sample of blood shall state the concentration of alcohol in the part of the sample analysed, expressed in grams of alcohol in 100 millilitres of blood, as determined by that analysis, unless the sample was taken pursuant to an obligation arising under section 9.”

12 Section 14 of the Principal Act is amended—

(a) by inserting after subsection (2) the following subsection:—

“(2A) It is a defence in any proceedings for an offence under subsection (2) for the defendant to show—

Offences under Part II of the Principal Act.

(a) that he elected to submit to the taking of a sample of his blood for analysis instead of a breath analysis; and

(b) that the taking of that sample was carried out, or could have been carried out, within 3 hours of the relevant occurrence.”; and

(b) by inserting in subsection (7), after the word “blood” (first occurring), the words “or urine”.

13 Section 16 of the Principal Act is repealed and the following section is substituted therefor:—

Proceedings
before
magistrate.

“16. Proceedings for an offence under this Act shall be heard by a magistrate sitting alone.”.

14 Sections 17 and 18 of the Principal Act are repealed and the following section is substituted therefor:—

Penalties, &c.

“17—(1) A person who is guilty of an offence under this Act is liable to a penalty of \$500 or 6 months’ imprisonment, or both, and, on conviction of such an offence, the court may order him to be disqualified from holding or obtaining a driver’s licence for a period not exceeding 3 years.

“(2) Notwithstanding anything in subsection (1), where a person is convicted of an offence under section 4 or section 6, having previously been convicted of an offence under either of those sections or under section 41 or section 41B of the *Traffic Act* 1925, he is liable to a penalty of \$1000 or 12 months’ imprisonment or both, and the court may order him to be disqualified for holding or obtaining a driver’s licence for a period not exceeding 6 years.

“(3) Section 30 of the *Alcohol and Drug Dependency Act* 1968 applies in respect of an offence committed by any person under this Act, whether or not the court is of the opinion that that offence was committed as mentioned in paragraph (a) or paragraph (b) of subsection (1) of that section.”.

15 Section 19 of the Principal Act is repealed and the following sections are substituted therefor:—

Special hardship
orders.

“19—(1) Subject to this section, section 36AAA of the *Traffic Act* 1925 applies to the conviction of a person for an offence under this Act as it would apply if that offence were an offence under that Act, but no order shall be made under that section (other than an order revoking or varying such an order) in respect of a conviction

for an offence under this Act if the person convicted has, within the ~~3~~ years immediately preceding the conviction, been convicted of an offence under section 4 or section 6.

“(2) Without prejudice to the generality of the provisions of section 36AAA (1) (c) of the *Traffic Act 1925*, it shall be deemed to be contrary to the public interest to make a special hardship order in respect of a person suffering from alcohol dependency within the meaning of the *Alcohol and Drug Dependency Act 1968*, and the court may refuse to make such an order in respect of a person who is disqualified from holding or obtaining a driver’s licence as a consequence of a conviction of an offence under this Act or section 41 or section 41B of the *Traffic Act 1925* unless the court is satisfied on the evidence of a medical practitioner approved by the court that that person is not so suffering from alcohol dependency.

“(3) For the purposes of subsection (2), a report in writing purporting to be signed by a medical practitioner may be received in evidence without proof of the signature of the medical practitioner; but the court may in any case require him to be called to give oral evidence.

“(4) Where, in pursuance of the directions of the court, any such report as is referred to in subsection (3) is tendered in evidence, otherwise than by or on behalf of the person on whom it is made, then—

- (a) if that person is represented by counsel, a copy of the report shall be given to his counsel;
- (b) if he is not so represented, the substance of the report shall be disclosed to him; and
- (c) in any case, he, or the person by whom he is represented, may require the medical practitioner by whom the report is signed to be called to give oral evidence.

“(5) The court may order that the person on whom a report is made by a medical practitioner for the purposes of this section shall pay the whole or a portion of the costs of the report and the examination on which it is made, to the extent that those costs exceed such sum as may be prescribed, and shall specify in that order the person to whom those costs are to be paid; and that order has the like effect as if the person on whom the report was made and the person to whom the costs are ordered to be paid were respectively defendant and complainant in proceedings before the court.

Driving while disqualified under this Act.

“19A A person who, except in so far as he is authorized to do so by a licence issued pursuant to an order made under section 36AAA of the *Traffic Act 1925*, drives a motor vehicle while he is disqualified for holding or obtaining a licence is guilty of an offence.

Restriction on grant of driver's licences for certain persons previously disqualified under this Act.

“19B—(1) Subject to subsection (2), where a person is convicted of an offence under section 4 or section 6, having been previously convicted of such an offence or an offence under section 41 or section 41B of the *Traffic Act 1925*, and he is on his conviction disqualified for obtaining or holding a driver's licence, a registering authority shall not thereafter issue a driver's licence to him unless it is satisfied, on the certificate of a medical practitioner approved by the Alcohol and Drug Dependency Board, that he is not suffering from alcohol dependency or drug dependency within the meaning of the *Alcohol and Drug Dependency Act 1968*.

“(2) Subsection (1) does not apply to a driver's licence issued pursuant to section 36AAA of the *Traffic Act 1925*.”.

16 Section 20 of the Principal Act is repealed and the following section is substituted therefor:—

Concurrent offences not treated separately.

“20. Where arising from his driving a vehicle on any particular occasion a person is convicted of two or more offences, being offences under section 4 or section 6 or under section 41 or section 41B of the *Traffic Act 1925*, those convictions shall for the purposes of this Division be treated as one single conviction.”.

Avoidance of certain provisions in contracts of insurance.

17 Section 21 of the Principal Act is amended by omitting all the words after the word “motor” and substituting therefor the following passage:—

“vehicle—

(a) being convicted of an offence under this Act (not being an offence under section 4); or

(b) having more than a specified percentage of alcohol present in his blood as indicated by an analysis of his breath, blood, or urine,

is void.”.

Presumptions with respect to analyses.

18—(1) Section 23 of the Principal Act is amended by omitting subsections (1) and (2) and substituting therefor the following subsections:—

“(1) In any proceedings to which this Division applies, the concentration of alcohol in a sample of blood taken from a person in accordance with this Act shall be deemed to be the actual concen-

tration of alcohol in his blood at the time at which the sample was taken, unless it is shown on the balance of probabilities that the concentration of alcohol in his blood at the time was not greater than the prescribed concentration.

“(2) In any proceedings to which this Division applies, the concentration of alcohol in the blood of a person as determined by a breath analysis that was properly carried out shall be deemed to be the actual concentration of alcohol in the blood of that person at the time at which he submitted to the analysis, unless it is shown on the balance of probabilities that the concentration of alcohol in his blood at the time was not greater than the prescribed concentration.”.

(2) Section 8 of the *Road Safety (Alcohol and Drugs) Act 1974* is repealed.

19 After section 25 of the Principal Act the following section is inserted:—

“25A—(1) Where in any proceedings to which this Division applies evidence is given by any person—

Evidence of matters related to refusal to submit to breath analysis.

- (a) that at a specified time and place the person named therein failed or refused to submit to a breath analysis;
 - (b) that at that time and place a breath analysis could have been properly carried out by the person by whom the certificate purports to be signed by means of a breath analysing instrument that he then had with him;
 - (c) that at that time a breath analysing instrument was in proper working order; and
 - (d) that at that time the person by whom the certificate purports to be signed was an approved operator,
- that evidence is *prima facie* evidence of the facts so stated.

“(2) In any proceedings to which this Division applies a certificate stating—

- (a) that at a particular time and place the person named therein was directed by a named police officer to submit to a breath analysis;
- (b) that the person so named then failed or refused to submit to a breath analysis in accordance with the direction;
- (c) that at that time and place a breath analysis could have been properly carried out by the person by whom the certificate purports to have been signed by means of a breath analysing instrument he then had with him;

(d) that at that time that breath analysing instrument was in proper working order; and

(e) that at that time the person by whom the certificate purports to have been signed was an approved operator,

is *prima facie* evidence of the particulars contained in the certificate.

Certificates in relation to taking, keeping, or delivery of blood or urine samples.

20 Section 27 of the Principal Act is amended by adding at the end thereof the following subsections:—

“(2) In any proceedings to which this Division applies a certificate—

(a) stating that a container containing a part of a sample of blood or urine taken from the person named in the certificate was kept at a particular place during a particular period;

(b) containing particulars of the manner in which it was so kept;

(c) stating that the person from whom the sample was taken was detained in custody during a particular period, and specifying the place at which he was so kept in custody;

(d) stating the time at which the container was delivered to any person and containing particulars of the request pursuant to which it was so delivered; and

(e) stating that the person by whom the certificate purports to be signed was a police officer at the time the container was kept as mentioned in the certificate,

is *prima facie* evidence of the particulars stated in the certificate.

“(3) In any proceedings to which this Division applies a certificate—

(a) stating that at a particular time and place a container containing a part of a sample of blood was delivered by the person by whom the certificate purports to be signed to the person named in the certificate and stated therein to be an approved analyst;

(b) containing particulars with respect to the container or any label or marks thereon;

(c) containing particulars with respect to the manner in which it was kept or otherwise dealt with before being so delivered; and

(d) stating that the person by whom it was so delivered was at that time a police officer,

is *prima facie* evidence of the matters stated in the certificate.

21 Section 28 of the Principal Act is repealed and the following section is substituted therefor:—

“28. In any proceedings to which this Division applies a certificate containing—

Certificates of analysis of blood or urine samples

(a) particulars of the result of an analysis of a sample of blood or urine carried out by the person by whom the certificate is purported to be signed; and

(b) particulars with respect to the container in which the sample was received by him, and any label or markings thereon,

and stating that at the time he carried out the analysis he was an approved analyst, is *prima facie* evidence of the particulars set forth in the certificate.”

22 Section 29 of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsection:—

Limitation on tendering certificates &c., in evidence.

“(1A) Where such a certificate or record as is referred to in subsection (1) is endorsed with a certificate of service purporting to be signed by a person by whom a copy of that certificate or record was served, that certificate of service is *prima facie* evidence of the particulars stated therein.”; and

(b) by omitting subsection (2) and substituting therefor the following subsection:—

“(2) Where a party to any proceedings to which this Division applies is served with a copy of such a certificate or record as is referred to in subsection (1) and, not less than 7 days, or such lesser period as the court may approve, before the hearing, serves notice in writing on the party by or on whose behalf the copy was served requiring the person by whom the certificate or record was signed or made to be called as a witness, that certificate or record shall not be tendered in evidence in those proceedings unless that person appears as a witness.”

Consequential
amendments
and repeal.

23—(1) Section 1 of the *Road Safety (Alcohol and Drugs) Act* 1974 is amended by omitting subsection (3).

(2) The *Road Safety (Alcohol and Drugs) Act* 1975 is repealed.