

ROAD SAFETY (ALCOHOL AND DRUGS) AMENDMENT ACT 1982

No. 91 of 1982

TABLE OF PROVISIONS

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| <ol style="list-style-type: none"> 1. Short title. 2. Principal Act. 3. Amendment of section 2 of Principal Act (Interpretation). 4. Insertion in Principal Act of new section 7A.
 7A—Power of police officer to require driver of motor vehicle to undergo breath test. 5. Substitution of section 8 of Principal Act.
 8—Liability for breath test as a result of conduct. 6. Amendment of section 9 of Principal Act (Liability for medical examination where condition may not be due to alcohol). 7. Amendment of section 10 of Principal Act (Enforcement of obligations to submit to breath analysis or medical examination). 8. Amendment of section 11 of Principal Act (Rights and obligations on completion of breath analysis). | <ol style="list-style-type: none"> 9. Amendment of section 12 of Principal Act (Examination, &c., of persons incapable of consenting). 10. Amendment of section 14 of Principal Act (Offences under Division II of Part II). 11. Amendment of section 19A of Principal Act (Driving while disqualified under the Act). 12. Amendment of section 23 of Principal Act (Statutory presumptions with respect to breath analyses and blood tests, &c.). 13. Amendment of section 24 of Principal Act (Restrictions on admission of evidence of breath test). 14. Amendment of section 25 of Principal Act (Evidence as to carrying out of breath analysis). 15. Amendment of section 29 of Principal Act (Limitation on tendering of certificates, &c., in evidence). 16. Amendments to cease to have effect on and after 1st July 1984. |
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ROAD SAFETY (ALCOHOL AND DRUGS) AMENDMENT
ACT 1982

No. 91 of 1982

AN ACT to amend the Road Safety (Alcohol and Drugs) Act 1970 for the purpose of making further provision with respect to persons who drive vehicles after consuming intoxicating liquor and for incidental purposes.

[Royal Assent 23 December 1982]

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—This Act may be cited as the *Road Safety (Alcohol and Drugs) Amendment Act 1982*. Short title.

2—In this Act, the *Road Safety (Alcohol and Drugs) Act 1970** Principal Act. is referred to as the Principal Act.

* No. 77 of 1970. For this Act, as amended to 1976, see Appendix C to the Annual Volume of Statutes for 1976. Subsequently amended by Nos. 67 and 96 of 1976, No. 51 of 1977, No. 83 of 1978, and No. 15 of 1979.

Amendment of
section 2 of
Principal Act
(Interpreta-
tion).

3—(1) Section 2 (1) of the Principal Act is amended by omitting “0·08 grammes” from the definition of “prescribed concentration” and substituting “0·05 of a gram”.

(2) Section 2 of the Principal Act is further amended by omitting subsection (3) and substituting the following subsections:—

(3) A reference in this Act to the liability of a person to submit to a breath analysis or a medical examination is a reference to such a liability arising under section 7A (4), 8 (1), 8 (2), 8 (3), or 9 (2).

(3A) For the purposes of this Act, a reference to a relevant time is a reference to—

- (a) in relation to a person who becomes liable to submit to a breath analysis by virtue of section 7A (4)—the time of the last act of driving by the person before that person became so liable;
- (b) in relation to a person who becomes liable to submit to a breath analysis under section 8 (1)—the time when the person was first found by the police officer;
- (c) in relation to a person who becomes liable to submit to a breath analysis under section 8 (2)—the time at which the act constituting the offence occurred;
- (d) in relation to a person who becomes liable to submit to a breath analysis under section 8 (3)—
 - (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 that person is so found; or
 - (ii) in any other case—the time of the accident; and
- (e) in relation to a person who becomes liable to submit to a medical examination under section 9 (2)—the time at which the person last drove a motor vehicle before the requirement under section 9 (1) was made.

(3) Section 2 (4) of the Principal Act is amended by omitting “ and exhibiting a manifest intention or disposition to drive or to attempt to drive it ” and substituting “, and a person may, having regard to the particular circumstances of the case, be regarded as driving a motor vehicle for the purposes of this Act notwithstanding that the motor vehicle is stationary or that he may have alighted from the vehicle ”.

4—Before section 8 of the Principal Act, the following section is inserted in Division II of Part II:—

Insertion in Principal Act of new section 7A.

7A—(1) A police officer may require any person who is driving a motor vehicle on a public street to undergo, at or near the place where the requirement is made, a breath test and, for the purpose of enabling him to make such a request, may, if necessary, direct that person, by signal or otherwise, to stop his vehicle.

Power of police officer to require driver of motor vehicle to undergo breath test.

(2) A requirement or direction under subsection (1) may be made by a police officer whether or not he has grounds for suspecting that a person may have consumed intoxicating liquor.

(3) Where under subsection (1) a police officer requires a person to undergo a breath test, that person shall comply with the requirement in the presence of that officer or another police officer and in accordance with such directions as may be given by that officer or that other officer.

(4) Where, after requiring a person to undergo a breath test in accordance with this section, a police officer reasonably believes that alcohol may be present in that person’s blood, whether as a result of such a test or not, that person becomes liable to submit to a breath analysis.

(5) It is the duty of a police officer to ensure that he does not cause a person to be detained for a period longer than is necessary for the proper exercise of the powers conferred by this section.

Substitution of
section 8 of
Principal Act.

5—Section 8 of the Principal Act is repealed and the following section is substituted:—

Liability for
breath test
as a result
of conduct.

8—(1) Where at any time a police officer finds a person in circumstances which give him cause to suspect that alcohol may be present in that person's blood and the police officer reasonably believes that, immediately preceding that time, that person drove a motor vehicle on a public street while that alcohol was so present, that person becomes liable to submit to a breath analysis.

(2) Where a police officer reasonably believes that, while a motor vehicle was in motion, an offence under section 167A of the *Criminal Code* or under the *Traffic Act* 1925 was committed, the person (if any) who was driving the vehicle when it was in motion becomes liable to submit to a breath analysis.

(3) Where a police officer reasonably believes that, while a motor vehicle was in motion, the vehicle became involved in an accident, the person (if any) who was driving the vehicle at the time of the accident becomes liable to submit to a breath analysis.

(4) Without affecting the generality of subsection (1), a police officer may, for the purpose of forming the suspicion referred to in that subsection, deduce from the manner in which the person concerned was behaving at the time when the police officer found him that that person may have had alcohol in his body at that time.

(5) Where a motor vehicle continues in motion after the commission of an offence referred to in subsection (2) or after the occurrence of an accident referred to in subsection (3), the police officer concerned may, if necessary, direct the person who is driving the vehicle, by signal or otherwise, to stop his vehicle.

(6) Where a person has become liable to undergo a breath analysis by virtue of subsection (1), (2), or (3), a police officer may first require that person to undergo a breath test at or near the place where the requirement was made.

(7) Where under subsection (6) a police officer requires a person to undergo a breath test, that person shall comply with that requirement in the presence of that officer or another police officer and in accordance with such directions as may be given by that officer or that other officer.

(8) Where a person who has become liable under this section to submit to a breath analysis undergoes a breath test in accordance with the directions of a police officer, that person ceases to be so liable, unless the result of the breath test indicates that alcohol may be present in that person's blood.

6—(1) Section 9 (1) of the Principal Act is amended by omitting “ he may request that person to submit to a medical examination.” and substituting “, the police officer may require that person to undergo a medical examination, and, for the purpose of enabling him to make such a requirement, the police officer may direct that person, by signal or otherwise, to stop his vehicle.”.

Amendment of section 9 of Principal Act (Liability for medical examination where condition may not be due to alcohol).

(2) Section 9 of the Principal Act is further amended by omitting subsection (2) and substituting the following subsection:—

(2) Where a requirement is made of a person under subsection (1), that person becomes liable to submit to a medical examination.

7—(1) Section 10 (1) of the Principal Act is amended by omitting “ request ” and substituting “ require ”.

Amendment of section 10 of Principal Act (Enforcement of obligation to submit to breath analysis or medical examination).

(2) Section 10 (2) of the Principal Act is amended by omitting “ request ”, where twice occurring, and substituting “ requirement ”.

(3) Section 10 (3) of the Principal Act is amended by omitting “ three hours of the time of the relevant occurrence ” and substituting “ 3 hours after the relevant time ”.

(4) Section 10 of the Principal Act is further amended by omitting subsection (4A) and substituting the following subsections:—

(4A) Where a person who is liable to submit to a breath analysis is at a place where that analysis can be carried out forthwith and that person fails or refuses to comply with a direction given to him in accordance with subsection (4), the approved operator of the breath analysing instrument at that place shall inform that person that he may elect to submit to the taking of a sample of his blood for analysis instead of submitting to a breath analysis, but only if the taking of that sample can be begun within 3 hours after the relevant time.

(4B) Where a person who has been informed in accordance with subsection (4A) elects to submit to the taking of a sample of blood, the approved operator concerned shall forthwith cause arrangements to be made for such a sample to be taken by a medical practitioner or qualified nurse.

(5) Section 10 (7) of the Principal Act is amended by omitting “three hours from the time of the relevant occurrence” and substituting “3 hours after the relevant time”.

Amendment of section 11 of Principal Act (Rights and obligations on completion of breath analysis).

8—(1) Section 11 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

(3) Where an approved operator hands a statement to a person in accordance with subsection (1), that person may immediately request the operator to make arrangements for a sample of that person’s blood to be taken for analysis, and, on such a request being made, it is the duty of the operator to comply with the request by making arrangements for the taking of such a sample to be begun by a medical practitioner or by a qualified nurse within 3 hours after the relevant time.

(2) Section 11 of the Principal Act is further amended by omitting subsection (4) and substituting the following subsection:—

(4) A person who makes an election under section 10 (4A) or a request under subsection (3) of this section is not liable for the cost incurred in making or carrying out arrangements for taking a sample of blood in consequence of that person’s election or request.

Amendment of section 12 of Principal Act (Examination, &c., of persons incapable of consenting).

9—Section 12 (4) of the Principal Act is amended—

- (a) by omitting “from the time of the relevant occurrence” and substituting “after the relevant time”; and
- (b) by omitting “of the time of the relevant occurrence” and substituting “after the relevant time”.

Amendment of section 14 of Principal Act (Offences under Division II of Part II).

10—(1) Section 14 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:—

(1) Any person who, without reasonable excuse, fails or refuses—

- (a) to comply with a requirement made to him by a police officer under section 7A (1) or 8 (6);
- (b) to comply with a direction made to him by a police officer under section 7A (1), 8 (5), or 9 (1); or
- (c) to comply with section 7A (3) or 8 (7),

is guilty of an offence.

(1A) Any person who, without reasonable excuse, fails or refuses to comply with a requirement made to him by a police officer under section 10 (1) is guilty of an offence.

(1B) Any person who, having been taken into custody under section 10 (2), escapes or attempts to escape from that custody is guilty of an offence.

(1C) Any person who, having been taken into custody under subsection (2) of section 10, obstructs or hinders his conveyance to a place referred to in that subsection is guilty of an offence.

(2) Section 14 (2A) (b) of the Principal Act is amended by omitting “ of the relevant occurrence ” and substituting “ after the relevant time ”.

(3) Section 14 of the Principal Act is further amended by omitting subsection (3) and substituting the following subsection:—

(3) Any person who—

(a) having been informed as referred to in section 9 (4), fails or refuses without reasonable excuse to submit to the taking of a sample of his blood or to provide a sample of his urine; or

(b) having been directed under section 10 (4) to submit to a medical examination, fails or refuses, without reasonable excuse, to submit to that examination or any part of it,

is guilty of an offence.

(4) Section 14 (6) of the Principal Act is further amended by omitting “ section 8 (4) ” and substituting “ section 7A (1) or section 8 (6) ”.

11—(1) Section 19A (1) of the Principal Act is amended by omitting “ for ” and substituting “ from ”.

(2) Section 19A (2) of the Principal Act is amended by inserting “ motor ” before “ vehicle ”, where firstly occurring.

Amendment of section 19A of Principal Act (Driving while disqualified under the Act).

Amendment of section 23 of Principal Act (Statutory presumptions with respect to breath analyses and blood tests, &c).

12—(1) Section 23 (4) of the Principal Act is amended as follows:—

- (a) by omitting “ after the time of the relevant occurrence ” and substituting “ after the relevant time ”;
- (b) by omitting “ relevant occurrence ”, where secondly occurring, and substituting “ relevant act of driving ”;
- (c) by omitting “ that time ” and substituting “ the time of that act of driving ”.

(2) Section 23 (5) of the Principal Act is amended as follows:—

- (a) by omitting “ after the time of the relevant occurrence ” and substituting “ after the relevant time ”;
- (b) by omitting “ relevant occurrence ”, where secondly occurring, and substituting “ relevant act of driving ”.

(3) Section 23 (6) is amended as follows:—

- (a) by omitting “ after the time of the relevant occurrence ” and substituting “ after the relevant time ”;
- (b) by omitting “ relevant occurrence ”, where secondly occurring, and substituting “ relevant act of driving ”.

(4) Section 23 of the Principal Act is further amended by inserting the following subsection after subsection (7):—

(8) For the purposes of this section, “ relevant act of driving ”, in relation to a person against whom proceedings to which this Division applies are brought, means the act of driving alleged to be an ingredient of the crime or offence with which the person is charged in those proceedings.

Amendment of section 24 of Principal Act (Restrictions on admission of evidence of breath test).

13—Section 24 (1) (b) (i) of the Principal Act is amended by omitting “ three hours of the time of the relevant occurrence ” and substituting “ 3 hours after the relevant time ”.

Amendment of section 25 of Principal Act (Evidence as to carrying out of breath analysis).

14—(1) Section 25 (1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

- (c) that at that time the instrument was in proper working order; and

(2) Section 25 (2) of the Principal Act is amended as follows:—

- (a) by omitting “ that he was satisfied ” from paragraph (c) and substituting “ and that that instrument ”;
- (b) by omitting “ grammes ” from paragraph (f) and substituting “ grams ”.

15—Section 29 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

Amendment to section 29 of Principal Act (Limitation on tendering of certificates, &c., in evidence).

(2) Subject to this section, a certificate or record referred to in subsection (1) may be tendered in evidence in proceedings to which this Division applies whether or not the person by whom the certificate or record was signed or made is called as a witness in those proceedings.

(2A) Where a person by whom a certificate or record referred to in subsection (1) was signed or made is called by the defendant as a witness in proceedings to which this Division applies, that person may be cross-examined by the defendant as to the facts or matters set out in that certificate or record.

16—On and from 1st July 1984, the amendments to the Principal Act made by section 3, section 4, and section 8 of this Act shall cease to have effect and the Principal Act shall, on and from that date, be construed as if those amendments had never been enacted.

Amendments to cease to have effect on and after 1st July 1984.

