

# NORTHERN TERRITORY OF AUSTRALIA

## ALCOHOL REFORM (PREVENTION OF ALCOHOL-RELATED CRIME AND SUBSTANCE MISUSE) ACT 2011

As in force at 2 July 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 2 July 2011. Any amendments that commence after that date are not included.

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## ALCOHOL REFORM (PREVENTION OF ALCOHOL-RELATED CRIME AND SUBSTANCE MISUSE) ACT 2011

**An Act to prevent the commission of alcohol-related offences, to reduce excessive alcohol consumption, to benefit people who are misusing alcohol or drugs by facilitating the clinical assessment and appropriate treatment of those people, to reduce the harm caused by the misuse of alcohol or drugs, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011*.

#### **2 Commencement**

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### **3 Objects**

- (1) The objects of this Act are to support family and social welfare and improve the health and wellbeing of people in the Territory by providing a legislative framework for:
- (a) the prevention of the commission of alcohol-related offences; and
  - (b) the prevention of misuse of alcohol or drugs; and
  - (c) the protection of people who are misusing alcohol or drugs from severe or serious harm because of the misuse; and
  - (d) the protection of people, particularly children, from harm or nuisance resulting from the misuse of alcohol or drugs by others.

- (2) To achieve the objects, this Act establishes a tribunal with the power to make orders beneficial to people who are misusing alcohol or drugs.
- (3) This Act also facilitates:
  - (a) measures for preventing the commission of alcohol-related offences, including:
    - (i) prohibitions on access to, and consumption of, alcohol by people who are misusing alcohol; and
    - (ii) increased availability of intervention aiming to reduce the misuse; and
  - (b) compulsory assessment of people reasonably believed to be misusing alcohol or drugs; and
  - (c) compulsory treatment for the recovery and rehabilitation of people with dependency on alcohol or drugs; and
  - (d) appropriate intervention for people who are misusing alcohol or drugs; and
  - (e) referral for income management of people who are misusing alcohol or drugs.

## 4 Definitions

In this Act:

**advocate**, see section 61(2).

**alcohol intervention certificate**, see section 21(2).

**alcohol intervention provider** means an entity, or a person who is a member of a class of persons, approved under section 20(b).

**alcohol misuse intervention**, means alcohol misuse intervention approved under section 20(a).

**alcohol-related infringement notice**, see section 9(4).

**alcohol-related offence**, see section 9(4).

**alcohol-related protective custody**, see section 9(3).

**application for assessment** means an application made under section 16(2) or 22(1) or (2) for the referral of a person for an assessment.

**approved form** means a form approved under section 57(1).

**assessment** means a clinical assessment of a person by a clinician to assess whether the person is misusing a substance.

**assessment report** means a report mentioned in section 25(1)(b).

**authorised applicant**, see section 5.

**BADT order**, see section 31.

**banned person** means a person who is subject to a BAT notice, GAP order or BADT order.

**BAT notice**, see section 8(1).

**Chairperson** means the Chairperson of the Tribunal.

**clinician** means a person holding an appointment as a clinician under section 75(1).

**Deputy Chairperson** means the Deputy Chairperson of the Tribunal.

**Director of Licensing** means the person holding or occupying the office of Director of Licensing under the *Northern Territory Licensing Commission Act*.

**first BAT notice**, see section 8(2).

**GAP order**, see section 26(2).

**identification system** means the identification system established under section 31A(2) of the *Liquor Act*.

**information notice**, for a Tribunal decision, means a notice stating:

- (a) the decision made and the reasons for the decision; and
- (b) the right of a person to appeal to the Local Court against the decision; and
- (c) the matters mentioned in section 68(2) to (6).

**member of the family**, of a person, see section 6.

**misuse**, of a substance, includes dependency on the substance.

**person** means an individual who is at least 18 years old.

**person at risk**, for:

- (a) Part 3, Divisions 3 and 4, see section 31(1)(a); or
- (b) Part 4, Division 2, means any of the following:
  - (i) a person at risk mentioned in paragraph (a);
  - (ii) a voluntary applicant;
  - (iii) a banned person.

**police DVO**, see section 41(1) of the *Domestic and Family Violence Act*.

**proceeding** means any process of the Tribunal relating to:

- (a) the consideration of, or decision about, an application made to the Tribunal; or
- (b) a BAT notice, GAP order or BADT order.

**reasonably believes** means believes on reasonable grounds.

**second BAT notice**, see section 8(3).

**substance** means alcohol or a drug, but does not include a volatile substance as defined in section 4 of the *Volatile Substance Abuse Prevention Act*.

**third BAT notice**, see section 8(4).

**treatment provider** means a person or entity providing treatment, counselling or other intervention under a BADT order.

**Tribunal** means:

- (a) generally – the Alcohol and Drugs Tribunal established by section 46; or
- (b) in relation to a particular proceeding – the Tribunal as constituted under section 53.

**voluntary applicant**, for a BADT order, see section 32(1).

## **5 Authorised applicant**

- (1) An **authorised applicant** for an application for assessment mentioned in section 16(2) is the police officer making the application.



(2) An **authorised applicant** for an application for assessment mentioned in section 22(2) is any of the following:

- (a) a police officer;
- (b) an authorised health practitioner;
- (c) a person authorised by the Minister administering Part 2.1 of the *Care and Protection of Children Act* to make the application;
- (d) an adult member of the family of the person to whom the application relates (**the relevant person**);
- (e) a responsible adult for the child of the relevant person if it appears to the responsible adult that the child is adversely affected by the behaviour of the relevant person because of the relevant person's misuse of a substance;
- (f) another person prescribed by regulation.

(3) For subsection (2)(b), an authorised health practitioner is one of the following:

- (a) a medical practitioner;
- (b) a person registered under the Health Practitioner Regulation National Law to practise (other than as a student):
  - (i) in the psychology profession; or
  - (ii) in the nursing and midwifery profession as a nurse;
- (c) a person who has a right of practice under the *Health Practitioners Act* in the category of health care practice of Aboriginal health work;
- (d) a professional social worker or professional counsellor.

(4) In this section:

**child** means a person who is less than 18 years of age.

**responsible adult**, for a child, means an adult responsible for the care of the child.

## **6 Member of family**

(1) A **member of the family**, of a person, is:

- (a) the spouse or de facto partner of the person; or

- (b) any other relative of the person.
- (2) A relative of the person includes someone who, according to Aboriginal tradition or contemporary social practice, is a relative of the person.

*Notes for section 6*

- 1 A relative of a person may include (for example) a parent, step-parent, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.
- 2 Section 19A of the Interpretation Act contains definitions of certain domestic relationships, including "spouse" and "de facto partner".

## 7            **Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 7*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2            BAT notices and alcohol misuse interventions**

### **Division 1        BAT notice**

#### **8            BAT notice for alcohol-related matters**

- (1) A **BAT notice** is a Banning Alcohol and Treatment notice, in the form approved by the Commissioner of Police, that states the following:
  - (a) the name of the person to whom the notice is given;
  - (b) the person is prohibited from purchasing, possessing or consuming alcohol during the period for which the notice is in force;
  - (c) the reason why the person has been given the notice;
  - (d) if relevant – the grounds for the belief that the person was affected by alcohol at the relevant time;
  - (e) the name, rank and place of duty of the police officer who gives the notice, and the date and time the notice is given;

- (f) the notice comes into force when the identity of the person is entered on the identification system, regardless of whether the person actually receives the notice;
  - (g) the period for which the notice remains in force under section 11, 12 or 13 (as relevant);
  - (h) if the notice is given under section 9(1) – the person may apply to a court for an order under section 14;
  - (i) if the notice is given under section 9(2) – the person may apply to the Tribunal under section 17 for a review of the notice;
  - (j) if the notice is given under section 9(2)(a) – the alcohol misuse intervention the person may participate in during the period the notice remains in force;
  - (k) the consequences of a contravention of the notice.
- (2) A **first BAT notice** is a BAT notice given to a person who has not been given any BAT notices within the previous 12 months.
- (3) A **second BAT notice** is a BAT notice given to a person who:
- (a) has been given a first BAT notice within the previous 12 months; or
  - (b) is reasonably believed to have contravened a first BAT notice, as mentioned in section 15(1).
- (4) A **third BAT notice** is a BAT notice given to a person who:
- (a) has been given both a first BAT notice and a second BAT notice within the previous 12 months; or
  - (b) is reasonably believed to have contravened a second BAT notice, as mentioned in section 15(2).

## 9 Giving BAT notice

- (1) A police officer may give a BAT notice to a person:
- (a) who has been summonsed or charged in relation to an alcohol-related offence; or
  - (b) who is the defendant named in a police DVO if the police officer who makes the DVO reasonably believes the defendant was affected by alcohol at the time of committing the conduct to which the DVO relates.

- (2) A police officer must give a BAT notice to a person:
- (a) who:
- (i) within the previous 3 months has been held in alcohol-related protective custody at least 3 times; or
  - (ii) within the previous 12 months has been given 3 alcohol-related infringement notices; or
  - (iii) within the previous 3 years has been given 2 infringement notices in relation to an offence against section 23(1) of the *Traffic Act*; or
- (b) who is reasonably believed by the police officer to have contravened section 72(1).
- (3) For subsection (2)(a)(i), a person is held in **alcohol-related protective custody** if the person is held in custody under Part VII, Division 4 of the *Police Administration Act* because of apparent intoxication by alcohol.
- (4) In this section:

**alcohol-related infringement notice** means an infringement notice in relation to an offence against:

- (a) section 75(1) or (1B), 101AE(1), 101L(1), 120N, 120P(3), 120T, 120U(3), 121(2) or 121A of the *Liquor Act*; or
- (b) section 25(3) or 26(1) of the *Traffic Act*; or
- (c) section 45EA(2) of the *Summary Offences Act*; or
- (d) if the police officer giving the infringement notice reasonably believes that the alleged offender is, at that time, affected by alcohol – section 47(a) to (f) or 53(1)(a)(i) or (7) of the *Summary Offences Act*.

**alcohol-related offence** means one of the following offences:

- (a) an immediate suspension offence as defined in section 19(1) of the *Traffic Act*;
- (b) any offence (except under the *Traffic Act*) if the police officer making the arrest reasonably believes the alleged offender was affected by alcohol during the commission of the offence;
- (c) an offence that involves alcohol (for example, stealing alcohol);

- (d) another offence prescribed by regulation.

**10            Recording BAT notice on identification system**

- (1) A BAT notice given to a person is recorded on the identification system.
- (2) The BAT notice comes into force when the identity of the person given the notice, and other relevant details, are entered on the identification system.
- (3) Subsection (2) applies regardless of whether the person receives the notice.

**11            Duration of BAT notice given under section 9(1)**

A BAT notice given under section 9(1) remains in force until the record of the notice is removed from the identification system:

- (a) as soon as practicable after the court has made an order under section 14 in relation to the banned person; or
- (b) otherwise – at the end of 3 months.

**12            Duration of BAT notice given under section 9(2)(a)**

- (1) A BAT notice given under section 9(2)(a) remains in force until the record of the notice is removed from the identification system at the end of the following period:
  - (a) for a first BAT notice – 3 months;
  - (b) for second BAT notice – 6 months;
  - (c) for a third BAT notice – 12 months.
- (2) However, if the Registrar is given a copy of an alcohol intervention certificate for the banned person, the BAT notice remains in force until the record of the notice is removed from the identification system after the following period:
  - (a) for a first BAT notice – 1 month;
  - (b) for a second BAT notice – 2 months;
  - (c) for a third BAT notice – 4 months.

**13 Duration of BAT notice given under section 9(2)(b)**

A BAT notice given under section 9(2)(b) remains in force until the record of the notice is removed from the identification system at the end of the following period:

- (a) for a first BAT notice – 3 months;
- (b) for second BAT notice – 6 months;
- (c) for a third BAT notice – 12 months.

**14 Court orders relating to BAT notice**

- (1) A court may make the orders it considers appropriate in relation to a BAT notice in force for a banned person appearing in the court.
- (2) Without limiting subsection (1), the orders may include any of the following:
  - (a) the BAT notice continues in force for a stated period;
  - (b) the BAT notice is varied as stated;
  - (c) the BAT notice is revoked and the person given the notice is subject to conditions relating to:
    - (i) the person's purchase, possession or consumption of alcohol, as stated by the court; and
    - (ii) any other matter the court considers appropriate for the person (for example, the assessment or treatment of the person for substance misuse).

**15 Consequence of contravention of first or second BAT notice**

- (1) If a police officer reasonably believes a banned person has contravened a first BAT notice:
  - (a) the police officer may give the person a second BAT notice under the relevant provision for the first BAT notice; and
  - (b) the first BAT notice ceases to be in force.
- (2) If a police officer reasonably believes a banned person has contravened a second BAT notice:
  - (a) the police officer may give the person a third BAT notice under the relevant provision for the second BAT notice; and
  - (b) the second BAT notice ceases to be in force.

(3) In this section:

***relevant provision***, for a first BAT notice or second BAT notice, means the provision under which that BAT notice was given.

## **16            Application for assessment**

(1) This section applies if:

- (a) a police officer reasonably believes a banned person has contravened a third BAT notice; or
- (b) within 12 months after a person is given a third BAT notice under section 9(2)(a), the person:
  - (i) is given an alcohol-related infringement notice; or
  - (ii) is held in alcohol-related protective custody.

(2) A police officer must apply to the Tribunal in accordance with section 22(4) for a referral of the person for an assessment.

(3) A reference to a banned person in subsection (1)(a) does not include a person given a third BAT notice for a contravention of section 72(1).

## **Division 2            Review of BAT notice**

### **17            Application for review of particular BAT notice**

(1) A banned person given a BAT notice under section 9(2) may apply to the Tribunal for a review of the notice if the person believes the police officer made an error of fact or law in giving the notice.

(2) The banned person must:

- (a) make the application, in the approved form, within 30 days after the date on which the BAT notice comes into force; and
- (b) state in the application the reasons for the belief that the police officer made an error of fact or law in giving the notice; and
- (c) give all the information and evidence available to the applicant to support the belief.

*Note for subsection (2)(a)*

*See section 10(2) for the date on which the BAT notice comes into force.*

- (3) Before deciding under section 53 who will constitute the Tribunal to make a decision about the application, the Chairperson must decide whether the Tribunal must:
  - (a) conduct a hearing of the application; or
  - (b) decide the application on the information and evidence given in the application.
- (4) The Tribunal must:
  - (a) give the Commissioner of Police a copy of the application; and
  - (b) if the Tribunal is to conduct a hearing of the application – give the banned person and Commissioner of Police a notice stating:
    - (i) the date, time and place fixed for the hearing; and
    - (ii) the persons who are required to attend as mentioned in section 18(1).

## **18 Attendance and representation at hearing**

- (1) The following persons are required to attend the hearing of the application:
  - (a) the banned person;
  - (b) a representative of the Commissioner of Police.
- (2) If the application involves a question of law, a party to the application may be legally represented.

## **19 Deciding application**

- (1) In deciding the application, the Tribunal must decide to make an order that the BAT notice:
  - (a) remains in force; or
  - (b) is revoked.
- (2) The Tribunal must give the applicant and Commissioner of Police an information notice for the decision.
- (3) The reasons for the Tribunal's decision stated in the information notice must include any relevant findings of fact.



## **Division 3                      Alcohol misuse interventions**

### **20                      Approval of alcohol misuse interventions and alcohol intervention providers**

The Minister must, by *Gazette* notice, approve:

- (a) alcohol misuse interventions that may be provided to persons given BAT notices under section 9(2)(a); and
- (b) entities or classes of persons who may provide those alcohol misuse interventions.

### **21                      Alcohol intervention certificate**

- (1) An alcohol intervention provider must give a banned person an alcohol intervention certificate when the provider is satisfied the person has participated sufficiently in all of the alcohol misuse intervention mentioned in the BAT notice given to the person.
- (2) An ***alcohol intervention certificate*** is a certificate, in the form approved by the Chief Executive Officer, that includes the following information:
  - (a) the name and address of the alcohol intervention provider;
  - (b) the name and address of the banned person;
  - (c) a statement that the banned person has participated sufficiently in all of the alcohol misuse intervention mentioned in the BAT notice given to the person;
  - (d) information relevant to subsection (3);
  - (e) other information prescribed by regulation.
- (3) To enable the record of the BAT notice to be removed from the identification system as mentioned in section 12(2), the banned person or alcohol intervention provider may give the Registrar a copy of the alcohol intervention certificate.

## **Part 3                      Referrals for assessment, GAP orders and BADT orders**

### **Division 1              Referral for assessment**

#### **22                      Application for assessment**

- (1) A person who reasonably believes he or she is misusing a substance and may benefit from a BADT order may apply to the Tribunal for a referral for an assessment.
- (2) An authorised applicant who reasonably believes a person may be misusing a substance may apply to the Tribunal for a referral of the person for an assessment.
- (3) Without limiting subsection (2), an authorised applicant may form a reasonable belief that a person may be misusing a substance if, because of the person's consumption or use of a substance, the person:
  - (a) is affecting the safety, health or welfare of the person or any other person; or
  - (b) is, or may be, a risk to public safety or wellbeing; or
  - (c) is regularly causing a public nuisance.
- (4) An application for assessment must be in the approved form and include sufficient information to enable the Tribunal to:
  - (a) decide whether to request a clinician to make an assessment of the person for whom the assessment is sought; and
  - (b) identify and contact the person.
- (5) An authorised applicant who acts in good faith in making an application for referral is not civilly or criminally liable, or in breach of any professional code of conduct:
  - (a) for making the application; or
  - (b) for disclosing any information in the application.

#### **23                      Decision about referral**

- (1) After receiving an application for assessment, the Tribunal must:
  - (a) consider the application; and

- (b) decide whether to request a clinician to make an assessment of the person named in the application.
- (2) The decision may be made on the basis of:
  - (a) the information included in the application; and
  - (b) any further information obtained by the Tribunal.

## **24 Giving notice of decision about referral**

- (1) If the Tribunal decides to request a clinician to make an assessment of a person, the Tribunal must in writing inform the following of the decision:
  - (a) a clinician;
  - (b) the person to be assessed;
  - (c) if the application is made by an authorised applicant – the applicant.
- (2) The Tribunal must also:
  - (a) give the clinician the information necessary to arrange the assessment; and
  - (b) if the application for assessment was made by an authorised applicant – give the person to be assessed information about:
    - (i) the reason for the referral for assessment; and
    - (ii) the consequences of non-attendance for assessment.
- (3) In giving the person to be assessed the reason for the referral for assessment, the Tribunal must not disclose the name or personal details of the authorised applicant.
- (4) However, the Tribunal may give the person a general description of the authorised applicant (for example, a description of the applicant as a police officer).

## **25 Assessment**

- (1) If the Tribunal requests a clinician to make an assessment of a person:
  - (a) a clinician must take all reasonable steps to do so; and

- (b) if the clinician makes the assessment – give the Tribunal a written report that states whether or not the person is assessed to be misusing a substance; and
  - (c) if the clinician is unable to make an assessment of the person within a reasonable time after receiving the request – give the Tribunal a written notice of that fact and the reasons why the assessment could not be made.
- (2) If the person is assessed to be misusing a substance, the clinician must include in the assessment report:
  - (a) the level or nature of the misuse and whether the person has a substance dependency; and
  - (b) the diagnostic criteria on which the assessment is made; and
  - (c) the details of the treatment or other intervention recommended as appropriate for the person.
- (3) The clinician may also include in the assessment report the types of prohibitions, requirements or conditions the Tribunal may consider for inclusion in a BADT order for the person.

## **Division 2      GAP order**

### **26      GAP order if person does not attend for assessment**

- (1) If the Tribunal is given a notice under section 25(1)(c) about a person, the Tribunal may make a GAP order for the person.
- (2) A **GAP order** is a General Alcohol Prohibition order stating that, for the period the order is in force, the person named in the order is prohibited from purchasing, possessing or consuming alcohol.

### **27      Recording GAP order on identification system**

- (1) A GAP order is recorded on the identification system.
- (2) The GAP order comes into force when the identity of the person given the order, and other relevant details, are entered on the identification system.
- (3) Subsection (2) applies regardless of whether the person receives the order.

## **28 Duration of GAP order**

- (1) A GAP order remains in force until the record of the order is removed from the identification system:
  - (a) if the banned person is assessed by a clinician within 3 months after the order comes into force – as soon as practicable after the Tribunal has considered the assessment report; or
  - (b) at the end of 3 months.
- (2) The order must state:
  - (a) the period the order remains in force; and
  - (b) the relevant details to enable the banned person to arrange an assessment; and
  - (c) any other matter the Tribunal considers appropriate.

## **29 Persons to be given GAP order**

- (1) The Registrar must give:
  - (a) the GAP order to the banned person; and
  - (b) a copy of the order to a clinician.
- (2) The Tribunal may direct that the order must be given personally to the banned person if satisfied personal service is appropriate.

## **30 Effect of non-attendance for assessment**

If the banned person does not attend for an assessment during the 3 months the GAP order is in force, the Tribunal may make a further GAP order.

## **Division 3 Making BADT order**

### **31 BADT order**

- (1) A **BADT order** is a Banning Alcohol and Drugs and Treatment order that states prohibitions or requirements (or both) in relation to:
  - (a) a person assessed to be misusing a substance (a **person at risk**); or
  - (b) a voluntary applicant.

- (2) The purpose of a BADT order for a person at risk is to achieve one or more of the following objectives:
  - (a) a reduction of the person's access to, and consumption or use of, a substance;
  - (b) the person's increased access to counselling or intervention for misuse of a substance;
  - (c) a reduction of risks or harm to others, particularly children, associated with the person's misuse of a substance;
  - (d) enhanced public safety or wellbeing.
- (3) The purpose of a BADT order for a voluntary applicant is to achieve one or more of the following objectives:
  - (a) a reduction of the person's access to, and consumption or use of, a substance;
  - (b) a reduction of risks or harm to others, particularly children, associated with the person's ability to access or consume a substance;
  - (c) enhanced public safety or wellbeing.
- (4) A BADT order must state that the banned person is prohibited from purchasing, possessing, consuming or using the substance stated in the order.
- (5) A BADT order for a person at risk may also state other prohibitions, requirements or conditions the Tribunal considers appropriate for the person, including (for example) the following:
  - (a) the person must undergo treatment, counselling or other intervention as stated in the order;
  - (b) the person is referred to a stated entity for assessment for income management.

## **32 Application for BADT order**

- (1) A person may apply to the Tribunal for a BADT order for himself or herself (a ***voluntary applicant***).
- (2) The application must:
  - (a) be in the approved form; and
  - (b) state the reasons for the application; and

- (c) include all the information necessary to support the application.

*Example for subsection (2)(b)*

*The person is repeatedly asked by others to purchase alcohol on their behalf.*

- (3) This section does not apply to a person mentioned in section 22(1).

### **33 Giving notice of hearing**

- (1) The Tribunal must conduct a hearing to decide whether to make a BADT order for a person at risk or a voluntary applicant.
- (2) The Tribunal must give written notice to the person who is required by section 34 to attend the hearing.
- (3) The notice must state:
  - (a) the date, time and place fixed for the hearing; and
  - (b) the persons required to attend.
- (4) If the hearing relates to a person at risk, the notice must be accompanied by a copy of the assessment report unless the Tribunal considers that a person's access to the report may cause serious harm to the health of the person at risk or put at risk the safety of other people.

### **34 Attendance at hearing**

- (1) For a hearing relating to a BADT order for a person at risk who made an application for assessment under section 22(1):
  - (a) the person at risk is required to attend; and
  - (b) only with the consent of the person at risk – members of the family of the person may attend.
- (2) For a hearing relating to a BADT order for a person at risk who was the subject of an application for assessment made under section 16(2) or 22(2):
  - (a) the person at risk is required to attend; and
  - (b) the following persons may attend:
    - (i) a clinician;
    - (ii) only with the consent of the person at risk – members of the family of the person.

- (3) For a hearing relating to a BADT order for a voluntary applicant:
  - (a) the applicant is required to attend; and
  - (b) only with the consent of the applicant – members of the applicant's family may attend.

### **35 Matters to be considered by Tribunal**

- (1) In deciding whether to make a BADT order for a person at risk, the Tribunal must have regard to:
  - (a) the assessment report about the person; and
  - (b) the current circumstances of the person; and
  - (c) whether a BADT order will achieve one or more of the objectives mentioned in section 31(2).
- (2) In deciding whether to make a BADT order for a voluntary applicant, the Tribunal must have regard to:
  - (a) the reasons why the applicant seeks the order; and
  - (b) the current circumstances of the applicant; and
  - (c) whether a BADT order will achieve one or more of the objectives mentioned in section 31(3).

### **36 Making BADT order**

- (1) The Tribunal must make a BADT order for a person at risk if satisfied that making the order will achieve at least one of the objectives mentioned in section 31(2).
- (2) The Tribunal must make a BADT order for a voluntary applicant if satisfied that making the order will achieve at least one of the objectives mentioned in section 31(3).
- (3) The Tribunal must give the BADT order to the banned person.
- (4) If the banned person is a person at risk, the Tribunal must also give the person an information notice for the decision.
- (5) The Tribunal may direct the Registrar that the BADT order and (if applicable) the information notice must be given personally to the banned person if the person did not attend the hearing.
- (6) The Tribunal may also give a copy of the BADT order to a person or entity the Tribunal considers should be given a copy (for example, a treatment provider).



**37 Recording BADT order on identification system**

- (1) A BADT order is recorded on the identification system.
- (2) The BADT order comes into force when the identity of the person given the order, and other relevant details, are entered on the identification system.
- (3) Subsection (2) applies regardless of whether the person receives the order.

**38 Duration of BADT order**

- (1) A BADT order remains in force until the record of the order is removed from the identification system as soon as practicable after:
  - (a) the end of the period stated in the order or as extended under section 44; or
  - (b) the revocation of the order under section 44.
- (2) The period stated in the BADT order must not exceed 2 years.

**39 Refusal to make BADT order**

- (1) If the Tribunal refuses to make a BADT order for a person at risk who was the subject of an application for assessment made under section 16(2) or 22(2), the Tribunal must:
  - (a) give the person at risk a notice stating the Tribunal's decision and the reasons for the decision; and
  - (b) give the applicant for the referral for assessment a notice stating only the Tribunal's decision.
- (2) However, if the applicant was a police officer, the Tribunal must give the notice of the decision to the Commissioner of Police.
- (3) If the Tribunal refuses to make a BADT order for a person at risk who made an application for assessment under section 22(1), or for a voluntary applicant, the Tribunal must give the person or applicant an information notice for the decision.

## **Division 4      Reviewing BADT order**

### **40      Review without application**

- (1) If a BADT order is in force for more than 12 months and no review has been conducted on application under section 41 during that time, the Tribunal:
  - (a) must review the order after 12 months; and
  - (b) if the Tribunal considers it appropriate – may make an order under section 44.
- (2) The Tribunal may conduct a hearing for the review or inform itself in any other way it considers appropriate.
- (3) If the Tribunal conducts a hearing, it must give a notice of the hearing to the persons it requires to attend, stating:
  - (a) the reason for the hearing; and
  - (b) the date, time and place fixed for the hearing; and
  - (c) the persons who are required to attend.

### **41      Review on application for variation, extension or revocation**

- (1) Any of the following persons may apply to the Tribunal for a variation, extension or revocation of a BADT order:
  - (a) the banned person;
  - (b) a police officer;
  - (c) if the variation relates to the treatment, counselling or other intervention being provided under the order – the treatment provider.
- (2) The application must:
  - (a) be in the approved form; and
  - (b) state whether it is for a variation, extension or revocation of the BADT order; and
  - (c) state the reasons for the application; and
  - (d) include all the information necessary to support the application.

- (3) The Tribunal must conduct a hearing of the application and give notice to the applicant and any other persons required by section 43 to attend, stating:
  - (a) the date, time and place fixed for the hearing; and
  - (b) the persons who are required to attend.
- (4) The Tribunal must give each person required to attend the hearing (except the applicant) a copy of the application.

#### **42 Application for contravention of BADT order**

If a banned person contravenes a BADT order, a police officer may apply under section 41 for a variation or extension of the order.

#### **43 Attendance at hearing of application**

- (1) An applicant under section 41 is required to attend the hearing of the application.
- (2) If the applicant is not the banned person, the banned person is required to attend.
- (3) Members of the family of the banned person may attend if the banned person consents to the attendance.
- (4) If the application relates to treatment, counselling or other intervention being provided under the BADT order, and the treatment provider is not the applicant, the treatment provider may attend.
- (5) The Tribunal must give a notice of the hearing of the application to the persons required to attend and give those persons (except the applicant) a copy of the application.

#### **44 Orders following review**

- (1) After completing a review of a BADT order under section 40 or 41, the Tribunal may do any of the following:
  - (a) vary the order;
  - (b) extend the duration of the order;
  - (c) revoke the order;
  - (d) if the review was under section 40 – make no change to the order;

- (f) if the review was under section 41 – refuse the application and make no change to the order.
- (2) The Tribunal must not vary the BADT order or extend the duration unless satisfied the variation or extension will be in the best interests of the banned person and will not put at risk the safety of other people.
- (3) If the banned person is a person at risk, the duration of a period of extension must not exceed the period first stated in the BADT order unless:
  - (a) there is a further assessment of the person; and
  - (b) taking the assessment report into account – the Tribunal considers it appropriate.
- (4) Also, if the banned person is a person at risk and the Tribunal extends the duration of the BADT order, the Tribunal must order a further assessment of the person at intervals not exceeding 2 years.
- (5) In addition, if the banned person is a person at risk, the Tribunal must not revoke the BADT order unless satisfied:
  - (a) the person is no longer misusing the substance to which the order relates; and
  - (b) the order is no longer required to protect the person or others from harm.
- (6) If the Tribunal refuses an application to revoke a BADT order, it may instead vary the order.

#### **45 Giving information notice**

- (1) If the Tribunal makes a decision under section 44(1) after a review under section 40, it must give an information notice for the decision to:
  - (a) the banned person; and
  - (b) any other person or any entity affected by the decision (for example, a treatment provider).
- (2) If the Tribunal makes a decision under section 44(1) after a review under section 41, it must give an information notice for the decision to:
  - (a) the banned person; and

- (b) if the application for review was made by a police officer or treatment provider – the applicant; and
- (c) any other person or any entity affected by the decision (for example, a treatment provider who was not the applicant).

## **Part 4            Tribunal**

### **Division 1       Establishment of Tribunal and related matters**

#### **46            Establishment of Tribunal**

The Alcohol and Drugs Tribunal (the ***Tribunal***) is established.

#### **47            Membership**

- (1) The Tribunal is constituted of the following members appointed by the Administrator:
  - (a) a Chairperson and a Deputy Chairperson, each of whom must have been admitted as a legal practitioner in Australia for at least 5 years;
  - (b) at least 4 other persons, each of whom has qualifications or experience relating to the functions of the Tribunal;
  - (c) any other persons the Administrator considers suitable for appointment, each of whom represents the interests of a community or an area of the Territory.
- (2) Without limiting subsection (1)(b), a person has qualifications or experience relating to the functions of the Tribunal if the person:
  - (a) is, or has been, a legal practitioner; or
  - (b) has a special interest or expertise in the general care, health care, rehabilitation or treatment of persons who are misusing alcohol or drugs; or
  - (c) has qualifications or experience prescribed by regulation.
- (3) As far as practicable, the Tribunal is to be constituted of members of both sexes and from diverse backgrounds, including members who are Aboriginal or Torres Strait Islanders or who demonstrate an understanding of Aboriginal or Torres Strait Islander culture.

**48                      Presiding member**

- (1) The Chairperson or Deputy Chairperson may be the presiding member of a Tribunal constituted under section 53.
- (2) The Administrator may also appoint another member of the Tribunal to be the presiding member of a Tribunal constituted under section 53 if satisfied the member has the appropriate qualifications or experience for the position.
- (3) Without limiting subsection (2), a member of the Tribunal may have appropriate qualifications or experience if the member:
  - (a) is, or has been, a legal practitioner; or
  - (b) has extensive experience in the rehabilitation or treatment of persons who are misusing alcohol or drugs; or
  - (c) has qualifications or experience prescribed by regulation.

**49                      When Deputy Chairperson may exercise powers of Chairperson**

The Deputy Chairperson may exercise the powers and perform the functions of the Chairperson if the Chairperson:

- (a) vacates office; or
- (b) is absent from the Territory; or
- (c) is unable for another reason to exercise the powers or perform the functions of the Chairperson.

**50                      Duration of appointment**

- (1) A member holds office for 3 years or the lesser period stated in the appointment.
- (2) A member is eligible for reappointment.

**51                      Resignation and removal**

- (1) A member may resign office by written notice given to the Administrator.
- (2) The Administrator may terminate the appointment of a person as a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

- (3) The Administrator must terminate the appointment of a person as a member if the person:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

## **52                      Functions and powers**

- (1) The Tribunal has the following functions:
  - (a) to consider and decide applications made to it;
  - (b) to request clinicians to make assessments;
  - (c) to make GAP orders, BADT orders and other orders in relation to its decisions;
  - (d) to make inquiries in relation to proceedings, as appropriate;
  - (e) to perform other functions conferred on it under this or another Act.
- (2) The Tribunal has the powers necessary to perform its functions.

## **53                      Constitution for proceeding**

- (1) The Chairperson must decide which member or members (including the Chairperson) will constitute the Tribunal for a proceeding.
- (2) A presiding member alone must consider an application for assessment and decide whether to request a clinician to make an assessment of the person for whom the assessment is sought.
- (3) In any other proceeding, a presiding member alone may constitute the Tribunal unless the Chairperson decides it is desirable for an additional one or 2 members to conduct the proceeding.
- (4) The presiding member for an application for the review of a BAT notice must be:
  - (a) the Chairperson; or
  - (b) the Deputy Chairperson; or
  - (c) a member mentioned in section 48(3)(a).

**54                      Change in constitution**

- (1) This section applies if:
  - (a) a proceeding is being conducted by the Tribunal; and
  - (b) the member, or one of the members, constituting the Tribunal (the ***original Tribunal***) vacates office or becomes incapable of continuing to conduct the proceeding.
- (2) The Chairperson must decide under section 53 which member is to constitute the Tribunal (the ***new Tribunal***) to continue conducting the proceeding.
- (3) In continuing to conduct the proceeding, the new Tribunal must have regard to the record of the original Tribunal.

**55                      Registrar**

- (1) The Chief Executive Officer must appoint a public sector employee to be the Registrar of the Tribunal.
- (2) The Registrar has the following functions:
  - (a) to receive applications and other documents required or permitted to be made or given to the Tribunal under this or another Act;
  - (b) to maintain a record of applications and other documents made or given to the Tribunal and orders made by the Tribunal;
  - (c) to maintain records relating to BAT notices and alcohol intervention certificates;
  - (d) to give the Director of Licensing information about the following in connection with the identification system:
    - (i) BAT notices;
    - (ii) alcohol intervention certificates;
    - (iii) GAP orders;
    - (iv) BADT orders relating to alcohol;
  - (e) any other functions conferred on the Registrar by the Tribunal or under this or another Act.



**56                      Deputy Registrar**

The Chief Executive Officer may appoint a public sector employee to be a Deputy Registrar of the Tribunal to assist the Registrar in the performance of the Registrar's functions.

**Division 2                      General provisions for proceedings**

**57                      Form and lodgment of applications**

- (1) The Chairperson may approve forms for use under this Act (except a BAT notice or an alcohol intervention certificate).
- (2) If the Chairperson has approved a form for an application, the applicant must use the approved form and include in the form the information it requires.
- (3) An application or other document made or given to the Tribunal must be lodged with the Registrar.

**58                      Refusal to consider application**

The Tribunal may refuse to consider an application it considers to be:

- (a) an abuse of the process of the Tribunal; or
- (b) made for a wrongful purpose; or
- (c) made without reasonable ground.

**59                      Conduct of proceeding generally**

- (1) In a proceeding, the Tribunal is bound by the rules of natural justice.
- (2) The presiding member must decide all questions of law arising in a proceeding.
- (3) The Tribunal may make an order in a proceeding in the absence of the person at risk.
- (4) The Tribunal must keep a record of:
  - (a) its proceedings, including a record of evidence given to the Tribunal; and
  - (b) its decisions and reasons for the decisions.
- (5) The record may be kept in any way the Tribunal considers suitable.

- (6) The Chairperson may issue practice directions relating to the practice and procedure of the Tribunal.
- (7) Subject to this Act and practice directions issued by the Chairperson, the practice and procedure of the Tribunal is to be as decided by the Tribunal.

## **60        Conduct of hearing**

- (1) The hearing of an application must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the proceeding permits.
- (2) The Tribunal may adjourn a hearing of an application.
- (3) A Tribunal order in force at the adjournment of a hearing, remains in force during the adjournment even if an earlier expiry had been stated by the Tribunal.

## **61        Appointment and functions of advocate**

- (1) The Chairperson may, for a proceeding relating to a BADT order, appoint an advocate before a hearing is to be held in relation to:
  - (a) a decision about whether to make the order; or
  - (b) a review of the order.
- (2) An **advocate** is a person, approved by the CEO, who has expertise in general care, health care rehabilitation or treatment of persons misusing a substance.
- (3) The functions of an advocate are:
  - (a) to represent the best interests of, and assist, the person at risk in a proceeding; and
  - (b) any other functions conferred on the advocate by the Tribunal or under this or another Act.

## **62        Hearing not in public**

- (1) The hearing of a proceeding must not be open to the public unless the Tribunal orders otherwise.
- (2) The order may be made on the Tribunal's own initiative or on application.
- (3) However, the Tribunal must not make the order unless satisfied:
  - (a) consent has been obtained from the person at risk; and

- (b) the person's privacy will not be adversely affected; and
- (c) the public hearing will not result in serious harm to the person's health or put at risk the safety of other people.

**63            Approval of elder or respected person to assist**

- (1) If the person at risk is an Aboriginal person or Torres Strait Islander, the Tribunal may, on application by the person or advocate, approve an elder or other respected person to assist the Tribunal in deciding the appropriate orders to make.
- (2) For subsection (1), a respected person is a person from:
  - (a) the extended family of the person at risk; or
  - (b) the same language group or same cultural group as the person at risk; or
  - (c) another family, language group or cultural group, as considered appropriate by the person at risk.

**64            Interpreter**

- (1) If the person at risk does not speak English to a level that enables the person to understand the proceedings, the Tribunal must, so far as is reasonably practicable, permit the person to have access to an interpreter to assist the person:
  - (a) to prepare for the hearing; and
  - (b) when appearing at the hearing.
- (2) The interpreter must be provided at no cost to the person.

**65            Evidence**

- (1) The Tribunal is not bound by the rules of evidence but may inform itself of a matter relevant to a proceeding in the way it considers appropriate.
- (2) Evidence in a proceeding may be given orally or in writing.
- (3) However, the Tribunal may require evidence to be given on oath.
- (4) The Tribunal may require a person to appear before it to do one or both of the following:
  - (a) answer a question relevant to the proceeding;
  - (b) produce a document relevant to the proceeding.

- (5) If appropriate, in deciding whether or not to require an answer to a question or the production of a document, the Tribunal must take into account the cultural and customary concerns of Aboriginal or Torres Strait Islander peoples.
- (6) Evidence given to the Tribunal cannot be used in civil or criminal proceedings.

**66            Access to medical and other records**

- (1) The person at risk or the advocate may apply for the person at risk to have access to the following:
  - (a) medical records relevant to the application;
  - (b) any other records relevant to the person's circumstances.
- (2) The Tribunal may refuse the application if satisfied that to give the person access to the records may cause serious harm to the person's health or put at risk the safety of other people.

**67            Reports of reasons for decisions**

- (1) The Chairperson may prepare and publish reports of the reasons for the Tribunal's decisions.
- (2) However, the reports must not include the name of the person at risk or any other material that may disclose the person's identity.

**68            Appeals to Local Court**

- (1) A person who is entitled to be given an information notice may appeal to the Local Court against the decision stated in the notice.
- (2) The appeal must:
  - (a) be started within 30 days after:
    - (i) if the person receives an information notice for the decision – the day the person receives the notice; or
    - (i) otherwise – the day the person becomes aware of the decision; and
  - (b) state fully the grounds on which it is made.
- (3) The decision remains in force until the Local Court decides the appeal.

- (4) The appeal is to be a rehearing of the evidence given to the Tribunal.
- (5) However, the Local Court may admit evidence that was not given to the Tribunal if the Court is satisfied there were special reasons that prevented the evidence being given.
- (6) In deciding the appeal, the Local Court may:
  - (a) confirm the Tribunal's decision;
  - (b) vary the Tribunal's decision; or
  - (c) set aside the Tribunal's decision and substitute another decision that the Tribunal could have made.

### **Division 3            Other matters**

#### **69            Contempt**

A person must not engage in any of the following conduct:

- (a) threatening, intimidating or insulting the Tribunal, or a member, in relation to the performance of the functions or the exercise of the powers of the Tribunal by the Tribunal or member;
- (b) interrupting, obstructing or hindering a proceeding of the Tribunal;
- (c) creating a disturbance, or taking part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Fault element:            The person intentionally engages in the conduct.

Maximum penalty:        200 penalty units or imprisonment for 12 months.

#### **70            Offence to publish or broadcast name or report**

- (1) A person must not publish or broadcast the name of a person at risk.

Fault elements:

The person:

- (a) intentionally publishes or broadcasts the protected person's name; and

- (b) is reckless as to whether the person whose name is published or broadcast is a person at risk.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

- (2) A person must not publish or broadcast a report (other than an official report) of a hearing that identifies or may identify a person at risk.

Fault elements:

The person:

- (a) intentionally publishes or broadcasts the report; and
- (b) is reckless as to the identification of the person at risk.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

- (3) Subsection (1) or (2) does not apply if the publication or broadcast is approved by the Tribunal and the person at risk.
- (4) Also, subsection (1) or (2) does not apply to an individual:
  - (a) who, in the course of carrying out the individual's functions under this or another Act in connection with a person at risk, gives information to a person relevant to the person at risk; or
  - (b) who reasonably believes it is his or her duty to give the information to another person (for example, to inform the other person that someone is a banned person for whom alcohol should not be purchased).

- (5) In this section:

**person** includes a body corporate.

## **71      Annual report**

- (1) The Chairperson must give the Minister a report on the Tribunal's operations during each financial year within 3 months after the end of the financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

## Part 5                      Miscellaneous provisions

### 72                      Prohibition on supply of alcohol to particular individuals

- (1) A person must not supply alcohol to an individual if the person knows a GAP order, BADT order relating to alcohol or BAT notice is in force for the individual.
- (2) However, a person who contravenes subsection (1) does not commit an offence but may be given a BAT notice under section 9(2)(b).
- (3) Subsection (1) does not apply to an authorised seller mentioned in section 31A(5)(d) of the *Liquor Act*.

*Note for subsection (3)*

*Section 31A(6) of the Liquor Act creates the relevant offence.*

### 73                      Police power to require breath test

- (1) A police officer may require a banned person who is subject to an alcohol-related notice or order to submit to a breath test to determine whether there is alcohol in the person's blood.
- (2) The requirement may be made only if:
  - (a) the person is in a public place; and
  - (b) the police officer reasonably believes the person has been consuming alcohol in contravention of the notice or order.
- (3) In this section:

***alcohol-related notice or order*** means one of the following:

- (a) a BAT notice;
- (b) a GAP order;
- (c) a BADT order that relates to the misuse of alcohol.

***breath test***, see section 3(1) of the *Traffic Act*.

**74 Misleading information**

- (1) A person must not give misleading information to a person acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the information to the other person; and
- (b) knows the information is misleading; and
- (c) knows the other person is acting in an official capacity.

Maximum penalty: 250 penalty units or imprisonment for 2 years.

- (2) A person must not give a document containing misleading information to a person acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the document to the other person; and
- (b) knows the document contains misleading information; and
- (c) knows the other person is acting in an official capacity.

Maximum penalty: 250 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the other person's attention; and
- (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

***acting in an official capacity***, in relation to a person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.



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***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **75 Clinicians**

- (1) The Chief Executive Officer may appoint a person to be a clinician.
- (2) The person must be:
  - (a) a medical practitioner; or
  - (b) a person who, in the Chief Executive Officer's opinion, holds a qualification and has experience appropriate for the assessment of persons for misuse of a substance.
- (3) A clinician has the functions imposed on the clinician by this or another Act and the powers necessary or convenient for performing those functions.
- (4) The Chief Executive Officer may issue guidelines for clinicians relating to the exercise of their powers and performance of their functions.

## **76 Delegations**

- (1) The Minister may delegate any of his or her powers and functions under this Act to a person.
- (2) The Commissioner of Police may delegate any of his or her powers and functions under this Act to a person.
- (3) The Chief Executive Officer may delegate any of his or her powers and functions under this Act to a public sector employee.

## **77 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) an advocate;
  - (b) a clinician;
  - (c) an alcohol intervention provider or treatment provider.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

***exercise***, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

## **78 Regulations**

The Administrator may make regulations under this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

### 2 LIST OF LEGISLATION

***Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011***  
**(Act No. 18, 2011)**

Assent date	20 May 2011
Commenced	s 16 and Pt 3: nc; rem: 1 July 2011 ( <i>Gaz</i> G23, 8 June 2011, p 6)

### 3 LIST OF AMENDMENTS

pt 6 hdg	exp No. 18, 2011, s 87
pt 6	
div 1 hdg	exp No. 18, 2011, s 87
ss 79 – 80	exp No. 18, 2011, s 87
pt 6	
div 2 hdg	exp No. 18, 2011, s 87
ss 81 – 87	exp No. 18, 2011, s 87