

NORTHERN TERRITORY OF AUSTRALIA

ALCOHOL PROTECTION ORDERS ACT 2013

As in force at 20 December 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 December 2013

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## ALCOHOL PROTECTION ORDERS ACT 2013

An Act to provide for alcohol protection orders

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Alcohol Protection Orders Act 2013*.

#### 2 Commencement

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

#### 3 Interpretation

(1) In this Act:

***alcohol*** means a liquid that contains more than 1.15% by volume of ethyl alcohol.

***alcohol protection order***, see section 5(1).

***information sharing authority*** means:

- (a) a person who, as the Chief Executive Officer of an Agency or a public sector employee, is acting under a law of the Territory in relation to an adult who is subject to an alcohol protection order; or
- (b) a licensee as defined in section 4(1) of the *Liquor Act*; or
- (c) a person in charge of an organisation that receives funding from the Territory under an agreement to provide drug or alcohol treatment; or
- (d) a person employed or engaged (for a fee) by an organisation mentioned in paragraph (c) in relation to performing the function mentioned in that paragraph; or

- (e) a legal representative of an adult who is subject to an alcohol protection order.

*licensed premises*, see section 4(1) of the *Liquor Act*.

*officer* means a police officer who is of or above the rank of sergeant.

*possession*, see section 1 of the Criminal Code.

*qualifying offence* means:

- (a) an offence against section 23; or  
(b) an offence that is committed, or allegedly committed, after this section commences and is punishable by imprisonment for 6 months or more.

*senior officer* means a police officer who is of or above the rank of Superintendent.

- (2) A person is *subject to an alcohol protection order* at a particular time if, at that time, an alcohol protection order has been issued to the person and it is in force.

#### 4 Application of Criminal Code

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

*Note for section 4*

*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 Alcohol protection orders

### Division 1 Alcohol protection orders generally

#### 5 Effect of alcohol protection order

- (1) An *alcohol protection order* is an order issued in writing to an adult that prohibits the adult, during the period that it is in force, from doing any of the following:
- (a) possessing alcohol;  
(b) consuming alcohol;

- (c) subject to subsection (2), entering or being in licensed premises.
- (2) An adult who is subject to an alcohol protection order may enter and remain in licensed premises:
  - (a) if the adult lives at the licensed premises concerned; or
  - (b) for any period during which entering and remaining in the licensed premises concerned is required for the purposes of the adult's employment.
- (3) If an adult to whom an alcohol protection order is issued is the holder of a permit as defined in section 4(1) of the *Liquor Act*, the permit is suspended during the period that the order is in force.

## **Division 2            Issue of alcohol protection order**

### **6                    Grounds for issue of alcohol protection order**

An officer may issue, or if it is not practicable for the officer to do so, the officer may authorise a police officer to issue, an alcohol protection order to an adult if:

- (a) the adult has been arrested, summonsed or served with a notice to appear in court in respect of an alleged qualifying offence; and
- (b) the officer believes that the adult was affected by alcohol when the adult did the thing that caused the arrest of the adult, or the service of the summons or the giving of the notice to appear to the adult.

### **7                    Period alcohol protection order in force**

- (1) Subject to subsection (2), an alcohol protection order issued to an adult under section 6 is in force:
  - (a) if it is a first alcohol protection order issued to the adult under section 6 – for a period of 3 months on and from the date on which it is issued; or
  - (b) if it is a second alcohol protection order issued to the adult under section 6 – for a period of 6 months on and from the date on which it is issued; or
  - (c) if it is a later alcohol protection order issued to the adult under section 6 – for a period of 12 months on and from the later of:
    - (i) the date on which it is issued; and

- (ii) the date on which the latest of the previous alcohol protection orders issued to the adult ceases to be in force.
- (2) If a first alcohol protection order issued to an adult is in force when a second alcohol protection order is issued to the adult, the first alcohol protection order ceases to be in force immediately after the second alcohol protection order is issued.
- (3) In this section:

*first alcohol protection order*, in relation to an adult at a particular time, means an alcohol protection order issued to the adult when:

- (a) there has never been an alcohol protection order issued to the adult under section 6; or
- (b) all such alcohol protection orders issued to the adult ceased to be in force more than 12 months before the time.

*later alcohol protection order*, in relation to an adult at a particular time, means an alcohol protection order issued to the adult when:

- (a) an alcohol protection order, other than a first alcohol protection order, issued to the adult under section 6 is in force; or
- (b) an alcohol protection order, other than a first alcohol protection order, issued to the adult under section 6 ceased to be in force not more than 12 months before the time.

*second alcohol protection order*, in relation to an adult at a particular time, means an alcohol protection order issued to the adult when:

- (a) a first alcohol protection order issued to the adult is in force; or
- (b) a first alcohol protection order issued to the adult ceased to be in force not more than 12 months before the time.

## **8            When alcohol protection order ceases to be in force**

- (1) An alcohol protection order issued under section 6 ceases to be in force as soon as the adult to whom it was issued is no longer considered to have allegedly committed the qualifying offence in respect of which it was issued.

- (2) As soon as practicable after an adult is no longer considered to have allegedly committed the qualifying offence in respect of which the alcohol protection order was issued, an officer must give the adult, or a person who the officer reasonably believes to be the adult's legal representative, a notice in writing to that effect.
- (3) For subsections (1) and (2), an adult is no longer considered to have allegedly committed a qualifying offence if:
  - (a) there is a trial in respect of the qualifying offence and the adult is found not guilty; or
  - (b) the charges in respect of the qualifying offence are withdrawn or dismissed; or
  - (c) for another reason, the adult is not liable to be punished in respect of the qualifying offence.

## **9            Application for reconsideration of issue of alcohol protection order**

- (1) An adult to whom an alcohol protection order has been issued under section 6 may apply for a reconsideration of the decision to issue the alcohol protection order, in accordance with this section.
- (2) The application must:
  - (a) be made in writing; and
  - (b) state the reason why the adult believes that the decision to issue the alcohol protection order should not have been made; and
  - (c) be lodged at a police station not later than 3 days after the date on which the order was issued.
- (3) The making of the application does not affect the validity or effect of the alcohol protection order.

## **10           Reconsideration by senior officer**

- (1) Within 3 days after an application is lodged under section 9 in respect of an alcohol protection order, a senior officer must reconsider the decision to issue the order and give the adult, or a person who the senior officer reasonably believes to be the adult's legal representative, a notice in writing about the senior officer's decision.
- (2) The senior officer may reconsider the original decision in any way the senior officer considers appropriate.

- (3) If the senior officer's decision is to revoke the alcohol protection order, then the order immediately ceases to be in force.
- (4) The notice about the senior officer's decision must include the following:
  - (a) whether the decision is to confirm the issue of the alcohol protection order or to revoke the order;
  - (b) that the adult may apply to the Local Court for a review of the merits of the senior officer's decision;
  - (c) the period allowed for applying for a review of the senior officer's decision;
  - (d) how to apply for the review.
- (5) The senior officer must record in a document the reasons for the decision but may inform the adult orally of the reasons.

## **11            Application for review of senior officer's decision**

- (1) An adult whose alcohol protection order has been confirmed by a senior officer may apply to the Local Court for a review of the merits of the senior officer's decision.
- (2) The application must be made within 7 days of the notice about the decision being given under section 10(1).
- (3) The making of the application does not affect the validity or effect of the alcohol protection order.

## **12            Hearing procedure**

- (1) In hearing the application, the Local Court must review the merits of the senior officer's decision.
- (2) The Local Court is not bound by anything considered by the senior officer in making his or her decision.
- (3) Without limiting subsection (2), the Local Court may:
  - (a) admit evidence that was not considered by the senior officer in making his or her decision; or
  - (b) refuse to admit evidence that was considered by the senior officer in making his or her decision.



**13 Decision on review of senior officer's decision**

- (1) In deciding the application, the Local Court may either:
  - (a) confirm the senior officer's decision; or
  - (b) set aside the senior officer's decision.
- (2) If the Local Court confirms the senior officer's decision, the alcohol protection order continues to be in force in accordance with its terms.
- (3) If the Local Court sets aside the senior officer's decision, the alcohol protection order immediately ceases to be in force.

**Division 3 Application for alcohol protection order**

**14 Application for issue of alcohol protection order**

- (1) Subject to this section, an adult may apply to have an alcohol protection order issued to him or her.
- (2) An adult may not apply to have an alcohol protection order issued to him or her if at the time of the application the adult is already subject to an alcohol protection order.
- (3) The application:
  - (a) must be lodged at a police station; and
  - (b) may contain a request that the alcohol protection order be in force for a period of 3, 6 or 12 months.

**15 Consideration of application**

- (1) Within 2 days after an application is lodged under section 14, an officer must consider the application and make a decision as to whether or not to issue an alcohol protection order to the adult.
- (2) The officer may issue the alcohol protection order if satisfied that the adult:
  - (a) is capable of making the application; and
  - (b) is capable of consenting to the terms of the order; and
  - (c) understands the penalty for contravening the order.

**16 Period alcohol protection order in force**

When issuing an alcohol protection order under section 15(2), the officer must:

- (a) take into account any request under section 14(3)(b); and
- (b) decide whether the order will be in force for a period of 3, 6 or 12 months on and from the date on which it is issued; and
- (c) issue the order accordingly.

**17 Revocation of alcohol protection order**

- (1) An adult to whom an alcohol protection order has been issued under section 15(2) may, while it is in force, request that the order be revoked.
- (2) The request must be made at a police station and may be made:
  - (a) in writing, by the adult lodging it with an officer at the police station; or
  - (b) orally, by the adult attending the police station and making the request in person to an officer.
- (3) As soon as practicable after receiving the request, the officer, or another officer, must revoke the alcohol protection order and give the adult a notice in writing confirming that it has been revoked.
- (4) The alcohol protection order immediately ceases to be in force when it is revoked.

**Part 3 Powers of police****18 Breath testing**

- (1) A police officer who reasonably believes that an adult is subject to an alcohol protection order and has recently consumed alcohol may do any of the following:
  - (a) direct the adult to submit to a breath test to determine whether there is alcohol in the adult's breath;
  - (b) direct the adult to provide a sample of the adult's breath for a breath analysis;
  - (c) take and record the adult's name and other information relevant to the adult's identification, including photographs, fingerprints and other biometric identifiers.

- (2) If a police officer directs an adult to submit to a breath test under subsection (1) and the adult fails to provide a sufficient sample of breath for the completion of the test, the police officer or another police officer may arrest the adult without warrant and detain the adult for the purpose of carrying out a breath analysis.
- (3) A breath analysis must be carried out:
  - (a) by an authorised officer; and
  - (b) using a prescribed breath analysis instrument.
- (4) A certificate signed by the authorised officer who carried out a breath test or breath analysis on an adult is evidence that there was present in the adult's breath the concentration of alcohol stated in the certificate.
- (5) A certificate signed by a police officer who records information about an adult's identity is evidence of the matters stated in the certificate.
- (6) In this section:

*authorised officer* means a person authorised to carry out a breath analysis under the *Traffic Act*.

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

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

*prescribed breath analysis instrument*, see section 3(1) of the *Traffic Act*.

## 19 Seizure of alcohol

- (1) A police officer who reasonably believes that an adult is subject to an alcohol protection order and that the adult may be in possession of alcohol may, without warrant:
  - (a) search the adult; and
  - (b) seize any container in the possession of the adult that the police officer reasonably believes contains alcohol.
- (2) A police officer carrying out a search or seizure under subsection (1) may do so with the assistance, and using the force, that is necessary and reasonable in the circumstances.

- (3) A search of an adult under subsection (1)(a) must, if practicable, be carried out by a police officer who is of the same gender as the adult.
- (4) A police officer who seizes a container under subsection (1)(b) may immediately:
  - (a) empty the container if it is open; or
  - (b) destroy the container (including the alcohol in it) if it is not open.
- (5) The police officer must ensure that any containers mentioned in subsection (4)(a) that are not emptied, and any containers mentioned in subsection (4)(b) that are not destroyed, are taken to a police station, where they must be destroyed.
- (6) The fact that no alcohol is found after a search under this section does not affect the power of a police officer to exercise powers under section 18 in relation to the adult.

## **Part 4 Information sharing**

### **20 Sharing information**

- (1) A police officer may give any information about an alcohol protection order that is in force to an information sharing authority.
- (2) The police officer may do so only if:
  - (a) the police officer specifies the alcohol protection order when giving the information; and
  - (b) the police officer reasonably believes that the information would:
    - (i) assist the information sharing authority to provide a service to, or perform a function relating to, the adult to whom the alcohol protection order has been issued; and
    - (ii) ensure the effective and efficient enforcement of the alcohol protection order.

### **21 Restriction on use or disclosure of information**

- (1) An information sharing authority given information under this Part must not use or disclose the information for any purpose other than the one for which it was given.

- (2) Subsection (1) has effect except as otherwise provided by another law in force in the Territory.

## **22 Interactions with other laws**

This Part has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information.

## **Part 5 Offences**

### **23 Offence by adult subject to alcohol protection order**

- (1) An adult who is subject to an alcohol protection order commits an offence if:
- (a) the adult intentionally engages in conduct; and
  - (b) the conduct results in the contravention of the alcohol protection order.

Maximum penalty:

- (a) if the alcohol protection order was issued under section 15(2) – 5 penalty units; or
  - (b) if the alcohol protection order was issued under section 6 – 25 penalty units or imprisonment for 3 months.
- (2) An adult who is subject to an alcohol protection order commits an offence if:
- (a) the adult intentionally engages in conduct; and
  - (b) the conduct results in the contravention of a direction given to the adult under section 18(1).

Maximum penalty:

- (a) if the alcohol protection order was issued under section 15(2) – 5 penalty units; or
  - (b) if the alcohol protection order was issued under section 6 – 25 penalty units or imprisonment for 3 months.
- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

**24 Offence to permit contravention of alcohol protection order**

A person commits an offence if the person:

- (a) intentionally supplies alcohol to an adult; and
- (b) knows that the adult is subject to an alcohol protection order.

Maximum penalty: 25 penalty units or imprisonment for 3 months.

**Part 6 Miscellaneous matters****25 Averments**

In any proceedings for an offence against section 23 or 24 an averment by the prosecutor in a complaint or information that:

- (a) specified premises were, at a specified time, licensed premises; or
- (b) a specified liquid is alcohol; or
- (c) an alcohol protection order was issued to the adult on a particular date;

is evidence of the facts averred.

**26 Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

## 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 Protection Orders Act 2013 (Act No. 31, 2013)*

Assent date	18 December 2013
Commenced	20 December 2013 ( <i>Gaz</i> S68, 19 December 2013)