

NORTHERN TERRITORY OF AUSTRALIA

TRANSPORT LEGISLATION (DRUG DRIVING) AMENDMENT ACT 2008

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Act No. 7 of 2008

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 7 of 2008

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An Act to amend legislation administered by the  
Minister for Infrastructure and Transport

[Assented to 11 March 2008]  
[Second reading 28 November 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

## **Part 1                      Preliminary matters**

### **1                      Short title**

This Act may be cited as the *Transport Legislation (Drug Driving) Amendment Act 2008*.

### **2                      Commencement**

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

## **Part 2                      Amendment of Traffic Act**

### **3                      Act amended**

This Part amends the *Traffic Act*.

**4 Amendment of section 3 (Interpretation)**

(1) Section 3(1), definition ***prescribed breath analysis instrument***

*omit*

section 29

*substitute*

section 29AAW

(2) Section 3(4)

*omit*

**5 Repeal and substitution of Part V**

Part V

*repeal, substitute*

**Part V Driving with alcohol or drug in blood****Division 1 Preliminary matters****19 Interpretation**

(1) In this Part:

***commercial passenger vehicle***, see section 3(1) of the *Commercial Passenger (Road) Transport Act*.

***Crash***, see *Australian Road Rules* – dictionary.

***driving instructor*** means a person approved under section 25B of the *Motor Vehicles Act*.

***drug*** means a substance (other than alcohol):

- (a) prescribed by the Regulations under section 28; or
- (b) that, when consumed, ingested or used by a person deprives the person, temporarily or permanently, of the person's normal mental or physical faculties.

***GVM***, see *Australian Road Rules* – dictionary.

**high range blood alcohol content** means a blood alcohol content of 0.15% or greater.

*Note*

*The table in regulation 58 of the Traffic Regulations provides a conversion from blood alcohol level expressed as a percentage to a level expressed by grams per volume of blood.*

**immediate suspension offence** means an offence that attracts a notice of immediate suspension under section 29AAN.

**low range blood alcohol content** means a blood alcohol content of 0.05% or greater, but less than 0.08%.

**medium range blood alcohol content** means a blood alcohol content of 0.08% or greater, but less than 0.15%.

**road**, see *Australian Road Rules* – dictionary.

**road-related area**, see *Australian Road Rules* – dictionary.

(2) In this Part:

**drive:**

- (a) means the act of driving a motor vehicle; and
- (b) includes starting the engine of a motor vehicle; and
- (c) also includes putting a vehicle in motion; and
- (d) includes attempting to do any of those things;

on a road, road-related area or public place.

(3) In this Part, a police officer directs a person to **pull over** (or pulls a driver over) when the officer signals to the person to bring the motor vehicle the person is driving to a stop near where the signal is made.

(4) In this Part, a reference to a failure to:

- (a) submit to a breath test or breath analysis; or
- (b) submit to a saliva test; or
- (c) provide a sample of blood for analysis;

is taken to be a reference to:

- (d) a refusal or failure to submit to a breath test or breath

analysis, or to provide a sufficient sample of breath for a breath test or breath analysis; or

- (e) a refusal or failure to submit to a saliva test or provide a sufficient sample of saliva; or
- (f) a refusal or failure to submit to the taking of a sample of blood; respectively.

- (5) In this Part, a reference to driving under the influence of alcohol or a drug is taken to be a reference to driving a motor vehicle under the influence of alcohol or a drug, or any combination of alcohol and a drug or drugs, to such an extent as to be incapable of having proper control of the vehicle.

## **Division 2            Offence of driving with alcohol in blood**

### **20            Impairment not necessary**

It is not necessary to show that a person's ability to drive a motor vehicle is impaired in order to establish an offence under this Division.

### **21            High range blood alcohol content**

- (1) A person who drives a motor vehicle with a high range blood alcohol content commits an offence.

Maximum penalty:            For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence –  
20 penalty units or imprisonment for  
12 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content;
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;

- (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).
- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
- (a) for a first offence – for a minimum period of 12 months; or
  - (b) for a second or subsequent offence – for a minimum period of 18 months.
- (4) However, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:
- (a) driving with a high range blood alcohol content;
  - (b) failing to provide a sufficient sample of breath for a breath analysis;
  - (c) failing to provide a sample of blood for analysis;
- the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence for a minimum period of 5 years.
- (5) Also, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:
- (a) driving with a medium range blood alcohol content;
  - (b) driving under the influence of alcohol or a drug;
  - (c) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

and the person has also been previously found guilty at any time of committing any of the following offences:

- (d) driving with:
  - (i) a high range blood alcohol content; or

- (ii) a medium range blood alcohol content;
- (e) driving under the influence of alcohol or a drug;
- (f) failing to provide a sufficient sample of breath for a breath analysis;
- (g) failing to provide a sample of blood for analysis;
- (h) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence for a minimum period of 5 years.

- (6) A relevant offence is an immediate suspension offence.

## **22 Medium range blood alcohol content**

- (1) A person who drives a motor vehicle with a medium range blood alcohol content commits an offence.

Maximum penalty: For a first offence – 7.5 penalty units or imprisonment for 6 months.

For a second or subsequent offence –  
20 penalty units or imprisonment for  
12 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:

- (a) driving with:
  - (i) a high range blood alcohol content; or
  - (ii) a medium range blood alcohol content;
- (b) driving under the influence of alcohol or a drug;
- (c) failing to provide a sufficient sample of breath for a breath analysis;
- (d) failing to give a sample of blood for analysis;
- (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).



- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
  - (a) for a first offence – for a minimum period of 6 months; or
  - (b) for a second or subsequent offence – for a minimum period of 12 months.
- (4) A relevant offence that is a second or subsequent offence is an immediate suspension offence.

## **23 Low range blood alcohol content**

- (1) A person who drives a motor vehicle with a low range blood alcohol content commits an offence.

Maximum penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence – 7.5 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content; or
    - (iii) a low range blood alcohol content (only if the previous offence was committed after 1 July 2007 and only if the previous offence was committed within 3 years before committing the relevant offence);
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis.
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).

- (3) For subsection (2)(a)(iii), an offence for which an infringement

notice was issued and not withdrawn is taken to be a previous finding of guilt for the offence.

- (4) If a court finds a person guilty of a relevant offence that is a second or subsequent offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
  - (a) for a second offence – for a minimum period of 3 months; or
  - (b) for a subsequent offence – for a minimum period of 6 months.
- (5) A relevant offence that is a second or subsequent offence is an immediate suspension offence.
- (6) The Regulations may prescribe persons to whom, or circumstances in which, this section does not apply.

## **24 Some drivers to be zero alcohol**

- (1) This section applies to the following persons:
  - (a) a person who has not reached the age of 18 years;
  - (b) the holder of a learner licence when driving a vehicle of the class to which the learner licence relates;
  - (c) the holder of a licence that is provisional under section 42 or section 10A of the *Motor Vehicles Act*;
  - (d) a person who is not licensed to drive a motor vehicle (other than through failure to renew a licence);
  - (e) a person who is not a resident of the Territory who does not have a right under section 32(1) to drive in the Territory.
- (2) The person must not drive a motor vehicle if the person's blood contains alcohol.

Maximum penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence –  
7.5 penalty units or imprisonment for  
6 months.

- (3) An offence against subsection (2) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving with:

- (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content; or
    - (iii) a low range blood alcohol content (only if the previous offence was committed after 1 July 2007 and only if the previous offence was committed within 3 years before committing the relevant offence);
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in subsection (1));
  - (f) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 25(1) or (2) and only if the previous offence was committed within 3 years before committing the relevant offence).
- (4) For subsection (3)(a)(iii), (e) and (f), an offence for which an infringement notice was issued and not withdrawn is taken to be a previous finding of guilt for the offence.
- (5) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
- (a) for a first offence – for a minimum period of 3 months; or
  - (b) for a second or subsequent offence – for a minimum period of 6 months.
- (6) A relevant offence that is a second or subsequent offence is an immediate suspension offence.

## **25 Driver of certain vehicles to be zero alcohol**

- (1) Subject to the Regulations, this section applies to the following persons:
- (a) the driver of a vehicle having a GVM of more than 15 t;
  - (b) the driver of a vehicle carrying dangerous goods within the

meaning of the *Dangerous Goods Act*,

- (c) the driver of a commercial passenger vehicle within the meaning of the *Commercial Passenger (Road) Transport Act*,
- (d) the driver of a vehicle capable of seating more than 12 persons (including the driver);
- (e) the driver of a vehicle carrying more than 12 persons (including the driver);
- (f) the driver of a vehicle that has a space designed primarily for the carriage of goods when a person is travelling in that space.

(2) This section also applies to a person who:

- (a) is under the age of 25 years; and
- (b) has not held, in the Territory or elsewhere, a licence to drive a motor vehicle for a continuous period of 3 years;

but does not apply if section 24 applies to the person.

(3) The person must not drive a motor vehicle if the person's blood contains alcohol.

Maximum penalty:      For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence –  
7.5 penalty units or imprisonment for  
6 months.

(4) An offence against subsection (3) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:

- (a) driving with:
  - (i) a high range blood alcohol content; or
  - (ii) a medium range blood alcohol content; or
  - (iii) a low range blood alcohol content (only if the previous offence was committed after 1 July 2007 and only if the previous offence was committed within 3 years before committing the relevant offence);
- (b) driving under the influence of alcohol or a drug;

- (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));
  - (f) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in subsection (1) or (2) and only if the previous offence was committed within 3 years before committing the relevant offence).
- (5) For subsection (4)(a)(iii) and (f), an offence for which an infringement notice was issued and not withdrawn is taken to be a previous finding of guilt for the offence.
- (6) If a court finds a person guilty of a relevant offence that is a second or subsequent offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
- (a) for a second offence – for a minimum period of 3 months; or
  - (b) for a subsequent offence – for a minimum period of 6 months.
- (7) A relevant offence that is a second or subsequent offence is an immediate suspension offence.
- (8) The Regulations may prescribe persons to whom, or circumstances in which, this section does not apply.

## **26 Driving instructor**

- (1) A driving instructor, when instructing another person how to drive a motor vehicle, must not:
- (a) drive a motor vehicle; or
  - (b) permit a person to drive a motor vehicle if the instructor is occupying a passenger seat in the vehicle for the purpose of instructing the person to drive the vehicle;

if the instructor's blood contains alcohol.

Maximum penalty: For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence –

7.5 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
- (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content; or
    - (iii) a low range blood alcohol content (only if the previous offence was committed after 1 July 2007 and only if the previous offence was committed within 3 years before committing the relevant offence);
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));
  - (f) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 25(1) or (2) and only if the previous offence was committed within 3 years before committing the relevant offence);
  - (g) a relevant offence (a **previous relevant offence**) only if the previous relevant offence was committed within 3 years before committing the relevant offence;
  - (h) an offence (a **previous offence**) committed before the commencement of this section that would, if committed after the commencement of this section, be a relevant offence (only if the previous offence was committed after 1 July 2007 and only if the previous offence was committed within 3 years before committing the relevant offence).
- (3) For subsection (2)(a)(iii), (f), (g) and (h) an offence for which an infringement notice was issued and not withdrawn is taken to be a previous finding of guilt for the offence.

- (4) If a court finds a person guilty of a relevant offence that is a second or subsequent offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
  - (a) for a second offence – for a minimum period of 3 months; or
  - (b) for a subsequent offence – for a minimum period of 6 months.
- (5) A relevant offence that is a second or subsequent offence is an immediate suspension offence.

### **Division 3      Offence of driving with drug in blood**

#### **27      Impairment not necessary**

It is not necessary to show that a person's ability to drive a motor vehicle is impaired in order to establish an offence under this Division.

#### **28      Driving with certain drugs in the blood**

- (1) A person commits an offence if, while there is in the person's blood a prohibited drug, the person:
  - (a) drives a motor vehicle; or
  - (b) is a driving instructor occupying a passenger seat in a vehicle for the purpose of instructing another person to drive the vehicle.

Maximum penalty:      For a first offence – 5 penalty units or imprisonment for 3 months.

For a second or subsequent offence –  
7.5 penalty units or imprisonment for  
6 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving under the influence of alcohol or a drug;
  - (b) driving with a prohibited drug in the blood.
- (3) For subsection (2)(b), an offence for which an infringement notice was issued and not withdrawn is taken to be a previous finding of guilt for the offence.
- (4) If a court finds a person guilty of a relevant offence that is a second

or subsequent offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:

- (a) for a second offence – for a minimum period of 3 months; or
  - (b) for a subsequent offence – for a minimum period of 6 months.
- (5) A relevant offence that is a second or subsequent offence is an immediate suspension offence.
- (6) For subsection (1), a **prohibited drug** means a drug prescribed by the Regulations as either of the following:
- (a) drugs that are strictly prohibited for subsection (1);
  - (b) drugs that are prohibited for subsection (1) but to which the defence under section 29 applies.

## **29 Defence for certain drugs**

- (1) It is a defence to a prosecution for an offence against section 28(1) if:
- (a) analysis of a blood sample taken under this Part:
    - (i) gives no indication of any drug prescribed under section 28(6)(a); but
    - (ii) does indicate the presence of a drug (or drugs) prescribed under section 28(6)(b); and
  - (b) the defendant satisfies the court as to the matters mentioned in subsection (2).
- (2) The defendant must satisfy the court that:
- (a) the defendant was, at the time of the alleged offence, under treatment by a medical practitioner and had taken the drug as part of that treatment; and
  - (b) the defendant had taken the drug in accordance with the directions of the medical practitioner.

## **Division 4 Offence of driving under influence of alcohol or drug**

### **29AAA Driving under influence**

- (1) A person commits an offence if, while under the influence of alcohol or a drug to such an extent as to be incapable of having proper



control of the vehicle, the person:

- (a) drives a motor vehicle; or
- (b) is a driving instructor occupying a passenger seat in a vehicle for the purpose of instructing another person to drive the vehicle.

Maximum penalty: For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence – 20 penalty units or imprisonment for 12 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content;
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class of person mentioned in section 24(1)).
- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
  - (a) for a first offence – for a minimum period of 6 months; or
  - (b) for a second or subsequent offence – for a minimum period of 12 months.
- (4) A relevant offence that is a second or subsequent offence is an immediate suspension offence.
- (5) Evidence other than the result of a breath analysis or blood test may be given in a court to show the concentration of alcohol in a person's blood or to show that a person was or was not under the

influence of alcohol or a drug.

- (6) A court may find that a person was, at the relevant time, under the influence of alcohol or a drug:
  - (a) without there being evidence of the concentration of alcohol or a prohibited drug in the person's blood; or
  - (b) even though the evidence showed there was present in the person's blood a concentration of alcohol less than 0.05%.
- (7) For this section, a person is taken to be under the influence of alcohol or a drug even though the effect on the person's ability to have proper control of a vehicle arises from a combination of alcohol and a drug or a combination of drugs.

## **Division 5      Taking of samples**

### **29AAB    When police can pull driver over at random**

- (1) A police officer may direct the driver of a motor vehicle to pull over, without reasonable suspicion the driver has committed an offence, for one or both of the following purposes:
  - (a) to require the driver to submit to a breath test to determine whether there is alcohol in the driver's blood;
  - (b) to require the driver of a vehicle with a GVM of 4.5 t or greater to submit to a saliva test to determine whether there is a prohibited drug in the driver's blood.
- (2) The person must comply with the direction.

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

### **29AAC    Breath test and breath analysis**

- (1) A police officer may, in the following circumstances, require a person to submit to a breath test or a breath analysis (or both) to determine if the person's blood contains alcohol:
  - (a) the person is a driver directed to pull over under section 29AAB(1)(a);
  - (b) the officer has reasonable cause to suspect the person:
    - (i) has committed an offence against Division 2 or 4; or
    - (ii) was the driver of a motor vehicle that was involved in a

crash on a road, road-related area or public place; or

- (iii) was involved in a crash on a road, road-related area or public place and the person has, or had at the time of the crash, alcohol in the person's blood.

- (2) The officer may only require the person to submit to a breath test or breath analysis if not more than 4 hours has expired since the driver was pulled over or the offence, or crash, mentioned in subsection (1) occurred.
- (3) If a police officer requires a person to submit to a breath test, the person must comply with the directions given by the officer or another police officer.
- (4) If a police officer requires a person to submit to a breath test and:
  - (a) the person fails to provide a sufficient sample of breath for the completion of the test; or
  - (b) the officer reasonably believes (whether as a result of the test or otherwise) that the person may have committed an offence under Division 2;

the officer or another police officer may arrest the person without warrant and detain the person for the purpose of carrying out a breath analysis.

- (5) A police officer may require the arrested person to submit to a breath analysis.
- (6) A police officer must not require a person to submit to a breath test or breath analysis under this section if it appears to the officer that the person:
  - (a) is injured, and the officer is satisfied it may be detrimental to the person's medical condition for the person to submit to the breath test or breath analysis within the time mentioned in subsection (2); or
  - (b) has a physical disability that prevents the person from providing a sufficient sample of breath for the completion of a breath test or breath analysis.

## **29AAD Further breath analyses**

- (1) A person who has provided a sufficient sample of breath for a breath analysis may be required by a police officer to submit to one more breath analysis on the same occasion and the person must provide a sufficient sample of breath for that analysis.

- (2) A person who has submitted to a breath analysis may, after receiving the result of the initial analysis, request that a further analysis be carried out on one other sample of the person's breath, and the police officer who carried out the initial analysis (or another officer) must carry out an analysis on one further sample of the person's breath provided the sample of breath is sufficient.
- (3) A request under subsection (2) must be made without undue delay after the person receives the result of the initial analysis.

### **29AAE Offence of failing to submit to breath analysis**

- (1) A person who is required under section 29AAC or 29AAD to submit to a breath analysis must not fail to provide a sample of breath sufficient for the analysis to be carried out.

Maximum penalty:      For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence –  
20 penalty units or imprisonment for  
12 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
  - (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content;
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).
- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
  - (a) for a first offence – for a minimum period of 12 months; or

(b) for a second or subsequent offence – for a minimum period of 18 months.

(4) However, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:

- (a) driving with a high range blood alcohol content;
- (b) failing to provide a sufficient sample of breath for a breath analysis;
- (c) failing to provide a sample of blood for analysis;

the minimum period for which the person is disqualified from obtaining a licence is 5 years.

(5) Also, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:

- (a) driving with a medium range blood alcohol content;
- (b) driving under the influence of alcohol or a drug;
- (c) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

and the person has also been previously found guilty at any time of committing any of the following offences:

- (d) driving with:
  - (i) a high range blood alcohol content; or
  - (ii) a medium range blood alcohol content;
- (e) driving under the influence of alcohol or a drug;
- (f) failing to provide a sufficient sample of breath for a breath analysis;
- (g) failing to provide a sample of blood for analysis;
- (h) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

the minimum period for which the person is disqualified from obtaining a licence is 5 years.

- (6) A relevant offence is an immediate suspension offence.
- (7) A person is taken to have failed to provide a sufficient sample of breath for a breath analysis if the person's actions (or inactions) in any way prevent a police officer from requiring the person to submit to a breath analysis.
- (8) It is a defence to a prosecution for a relevant offence if the defendant satisfies the court:
  - (a) it would have been detrimental to the defendant's medical condition to have submitted to a breath analysis at the time the person was required to do so; or
  - (b) the defendant had other reasonable grounds for failing to submit to a breath analysis.
- (9) It is not reasonable grounds for failing to submit to a breath analysis that the defendant had consumed alcohol after the defendant ceased to drive a motor vehicle.

#### **29AAF Requirement for saliva test**

- (1) A police officer may, in the following circumstances, require a person to submit to a saliva test to determine if the person's blood may contain a prohibited drug:
  - (a) the person is a driver required to pull over under section 29AAB(1)(b);
  - (b) the officer has reasonable cause to suspect the person:
    - (i) has committed an offence against Division 3 or 4; or
    - (ii) was the driver of a motor vehicle that was involved in a crash on a road, road-related area or public place.
- (2) The officer may only require the person to submit to a saliva test if not more than 4 hours has expired since the driver was pulled over or the offence, or crash, mentioned in subsection (1) occurred.
- (3) If a police officer requires a person to submit to a saliva test, the person must comply with the directions given by the officer or another police officer.
- (4) If a police officer requires a person to submit to a saliva test and:

- (a) the person fails to provide a sufficient sample of saliva for the completion of the test; or
- (b) the officer reasonably believes (whether as a result of the test or otherwise) that the person's blood may contain a prohibited drug;

the officer or another police officer may arrest the person without warrant and detain the person for the purpose of having a sample of blood taken for analysis.

- (5) A police officer must not require a person to submit to a saliva test under this section if it appears to the officer that the person:
  - (a) is injured, and the officer is satisfied it may be detrimental to the person's medical condition for the person to submit to the saliva test within the time mentioned in subsection (2); or
  - (b) has a physical disability that prevents the person from providing a sufficient sample of saliva for the completion of a saliva test.

#### **29AAG Requirement to give blood sample**

- (1) Subsection (2) applies if a police officer:
  - (a) does not require a person to submit to a breath test or breath analysis for a reason mentioned in section 29AAC(6) and the officer reasonably believes that the concentration of alcohol in the person's blood is such that the person has committed an offence against this Act; or
  - (b) the officer has reasonable cause (whether or not as a result of a positive indication from a saliva test) to suspect the person's blood contains a prohibited drug.
- (2) The officer may require the person to give a sample of blood for the purpose of analysis by an authorised analyst to determine if the person's blood contains:
  - (a) alcohol in a concentration that constitutes the person having committed an offence against Division 2 or 4; or
  - (b) a prohibited drug.
- (3) If a person is required under this section to give a sample of blood, a police officer must make arrangements for the person to be taken to a hospital or health centre for a sample of the person's blood to be taken.

- (4) If the person is to be taken to a health centre, the police officer making the arrangements must ensure there is a medical practitioner, a registered nurse or a qualified person at the health centre who is available and willing to take the sample.

### **29AAH Offence of failing to provide blood sample**

- (1) A person who is required to give a sample of blood for this Part must not fail to:
- (a) comply with an arrangement for taking the person to a hospital or health centre for the taking of a sample of the person's blood; or
  - (b) give, in accordance with the directions of the person taking the blood sample, a sample of blood sufficient for analysis.

Maximum penalty: For a first offence – 10 penalty units or imprisonment for 12 months.

For a second or subsequent offence –  
20 penalty units or imprisonment for  
12 months.

- (2) An offence against subsection (1) (a **relevant offence**) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
- (a) driving with:
    - (i) a high range blood alcohol content; or
    - (ii) a medium range blood alcohol content;
  - (b) driving under the influence of alcohol or a drug;
  - (c) failing to provide a sufficient sample of breath for a breath analysis;
  - (d) failing to give a sample of blood for analysis;
  - (e) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).
- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence:
- (a) for a first offence – for a minimum period of 12 months; or



(b) for a second or subsequent offence – for a minimum period of 18 months.

(4) However, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:

- (a) driving with a high range blood alcohol content;
- (b) failing to provide a sufficient sample of breath for a breath analysis;
- (c) failing to provide a sample of blood for analysis;

the minimum period for which the person is disqualified from obtaining a licence is 5 years.

(5) Also, if a court finds a person guilty of a relevant offence and the person has previously been found guilty of any of the following offences, committed within 3 years before committing the relevant offence:

- (a) driving with a medium range blood alcohol content;
- (b) driving under the influence of alcohol or a drug;
- (c) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

and the person has also been previously found guilty at any time of committing any of the following offences:

- (d) driving with:
  - (i) a high range blood alcohol content; or
  - (ii) a medium range blood alcohol content;
- (e) driving under the influence of alcohol or a drug;
- (f) failing to provide a sufficient sample of breath for a breath analysis;
- (g) failing to provide a sample of blood for analysis;
- (h) driving with alcohol in the blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1));

the minimum period for which the person is disqualified from obtaining a licence is 5 years.

- (6) A relevant offence is an immediate suspension offence.
- (7) It is a defence to a prosecution for a relevant offence if the defendant satisfies the court:
  - (a) it would have been detrimental to the defendant's medical condition to have given the sample of blood at the time the person was required to do so; or
  - (b) the defendant had other reasonable grounds for failing to give the sample.
- (8) It is not reasonable grounds for failing to give a blood sample that the defendant had consumed alcohol or another substance after the defendant ceased to drive a motor vehicle.

#### **29AAJ Failure to give sample of blood in certain circumstances**

- (1) This section applies if a person is found guilty of an offence against section 29AAH(1) and the court is satisfied that:
  - (a) the person was required to give the blood sample because the person entered a hospital for examination or treatment of injuries; and
  - (b) the person's injuries did not arise from a crash in which the person was driving a motor vehicle.
- (2) The court must not sentence the person to a term of imprisonment, cancel the person's licence or impose a fine greater than 1 penalty unit.
- (3) The person's licence is not cancelled by force of the finding of guilt despite section 29AAH(3).
- (4) The offence is not taken into account as a second or subsequent offence, or for determining whether another offence is a second or subsequent offence, in accordance with section 21(2)(d), 22(2)(d), 24(3)(d), 29AAA(2)(d), 29AAE(2)(d) or 29AAH(2)(d).

#### **29AAK Taking of sample of blood**

- (1) A sample of blood may be taken for this Act, from a person taken to a hospital or a health centre under section 29AAG, or from a person who has apparently attained the age of 15 years and who enters a hospital or health centre for examination or treatment of injuries which may have been received in a crash:

- (a) at a hospital – by a medical practitioner, a registered nurse or a member of the staff of the hospital who is under the direct supervision of a medical practitioner or registered nurse; and
  - (b) at a health centre – by a medical practitioner, a registered nurse or a qualified person.
- (2) If a person is taken to a hospital under section 29AAG, the person in charge of the hospital must ensure a sample of the person's blood is taken as soon as practicable.
- (3) The Minister responsible for administering hospitals in the Territory must ensure that, for the purpose of analysis by an authorised analyst, a sample of blood is taken as soon as practicable from each person who has apparently attained the age of 15 years who enters a hospital for examination or treatment of injuries which may have been received in a crash.
- (4) For subsection (3), a medical practitioner, registered nurse or a member of the staff of a hospital who is under the direct supervision of a medical practitioner or registered nurse may:
  - (a) take a sample of blood from a person who is unconscious or apparently incapable of consenting to the taking of the sample; or
  - (b) require a person to give a sample of blood.
- (5) However, a member of the staff of a hospital or a health centre is not required to take a sample of the person's blood if the member of staff believes on reasonable grounds that:
  - (a) the concentration of alcohol in the person's blood is already known; or
  - (b) the taking of the sample would be detrimental to the person's medical condition; or
  - (c) the injuries of the person were not received in a motor vehicle accident or the motor vehicle accident happened more than 12 hours before the person entered the hospital or health centre; or
  - (d) a period of more than 4 hours has elapsed since the person entered the hospital or health centre.
- (6) A blood sample taken under this section is the property of the Commissioner.
- (7) However, the person who takes the sample may make

approximately half of the sample available to the person from whom it was taken.

- (8) No action or proceedings for assault, whether in or outside the Territory, lie against a person who takes a blood sample for this Act.
- (9) This section does not obligate any person to take a sample of blood at a health centre.

### **29AAL Right to communicate with medical practitioner**

- (1) A person who is in custody after undergoing a breath analysis or after giving a sample of blood under this Act may ask to communicate with a medical practitioner for the purpose of requesting the medical practitioner to do any of the following:
  - (a) examine the person;
  - (b) take a sample of the person's blood;
  - (c) arrange for a sample of the person's blood to be taken by another medical practitioner, a registered nurse or a qualified person.
- (2) If a request is made under subsection (1), a police officer must make arrangements that are reasonable in the circumstances for the person to communicate with a medical practitioner.

## **Division 6 Immediate licence suspension**

### **29AAM Licence suspension for up to 24 hours**

- (1) Subject to the Regulations, if a person is:
  - (a) arrested under section 29AAF(4); or
  - (b) taken to a hospital or a health centre under section 29AAG;for the purpose of having a sample of blood taken for analysis to determine if the person's blood contains a prohibited drug, a police officer may, before the person is released from custody or departs the hospital or health centre, give the person a notice under this section.
- (2) The notice must be in an approved form and:
  - (a) has the effect that the person's licence is suspended immediately the person is given the notice; and

- (b) must inform the person that he or she is disqualified from driving;

for the period, not exceeding 24 hours, specified in the notice.

- (3) A notice under this section cannot be challenged or reviewed in any court.
- (4) A police officer who gives a person a notice under this section must provide details of the notice, and the person to whom it was given, to the Registrar without delay.

### **29AAN Notice of immediate licence suspension and disqualification from driving**

- (1) If a person is charged with an immediate suspension offence, a police officer may give the person a notice under this section.
- (2) For subsection (1), a person is charged with the offence when given a copy of the charge, signed by a police officer.
- (3) The notice must be in an approved form and:
  - (a) has the effect that the person's licence is suspended immediately the person is given the notice; and
  - (b) must inform the person that he or she is disqualified from driving until the charge is determined by a court; and
  - (c) must require the person to surrender to police any licence document the person holds; and
  - (d) must include a statement of the person's right to appeal to the Local Court against the suspension and disqualification.
- (4) A police officer who gives a person a notice under this section must provide details of the notice, and the person to whom it was given, to the Registrar without delay.

### **29AAP Offences**

- (1) A person who is given a notice under section 29AAN must not, without reasonable excuse, refuse or fail to surrender any licence document held by the person.

Maximum penalty: 20 penalty units or imprisonment for 12 months.

#### *Note*

*The onus is on the person to establish there was reasonable excuse for a failure to surrender a licence document.*

- (2) A person who is given a notice under section 29AAN must not, while disqualified from driving, apply for a licence in the Territory or elsewhere.

Maximum penalty: 20 penalty units or imprisonment for 12 months.

### **29AAQ Appeal against immediate suspension notice**

- (1) A person given a notice under section 29AAN may appeal to the Local Court against the licence suspension and disqualification from driving as a result of the notice.
- (2) The appellant:
- (a) must give 14 days written notice of the appeal to the Registrar and to the Local Court; and
  - (b) must set out particulars of exceptional circumstances the appellant relies upon to justify the setting aside of the notice.
- (3) In determining the appeal, the Local Court must hear:
- (a) any evidence tendered by the appellant; and
  - (b) any evidence tendered by or on behalf of the Registrar; and
  - (c) any evidence required by the Court from a medical practitioner.
- (4) The Court may, by order:
- (a) uphold the notice; or
  - (b) if satisfied of exceptional circumstances that justify it – set aside the notice.
- (5) An order under subsection (4) is final and cannot be appealed against or reviewed by the Court or any other court.

## **Division 7 Licence cancellation on finding of guilt**

### **29AAR Further disqualification for certain drivers**

- (1) This section applies if:
- (a) a court finds a person guilty of any of the following offences:
    - (i) driving under the influence of alcohol or a drug;
    - (ii) driving with a high range blood alcohol content;

- (iii) driving with a medium range blood alcohol content;
    - (iv) refusing or failing to provide a sufficient sample of breath for a breath analysis;
    - (v) refusing or failing to provide a sample of blood; and
  - (b) at the time of committing the offence the person was driving:
    - (i) a vehicle with a GVM of 15 t or more; or
    - (ii) a commercial passenger vehicle.
- (2) The person is disqualified from obtaining a licence to drive a vehicle with a GVM of 15 t or more or a commercial passenger vehicle for a minimum period of 5 years.

*Note*

*The person's licence to drive a motor vehicle is cancelled, and the person is also disqualified from obtaining a licence to drive any vehicle, for the period specified in the relevant section.*

## **29AAS When court finds person guilty**

- (1) If a court finds a person guilty of an offence under this Part, the person's licence is cancelled and the person is disqualified from obtaining another licence for the minimum period specified in relation to the offence, taking into account whether the offence is a first, second or subsequent offence.
- (2) For subsection (1), a court which finds a person guilty of an offence under this Part must specifically find whether the offence is the person's first, second or subsequent offence.
- (3) The cancellation and disqualification occur automatically by operation of this Part, but take effect from the date of the finding of guilt.
- (4) The court may order that the person be disqualified from obtaining a licence for a period longer than any minimum period specified in this Part, as the court considers fit.
- (5) The period of disqualification is reduced by any period of licence suspension imposed under section 29AAN in relation to the same offence.

## **Division 8      Court and evidentiary matters**

### **29AAT    Use of indicated blood alcohol content in court proceedings**

- (1) This section applies:
  - (a) in any proceedings in a court; and
  - (b) even if evidence is given that the person consumed alcohol after the time of the alleged commission of the offence (the **relevant time**) and before the breath analysis was carried out or the sample of blood was taken.
- (2) If a breath analysis is carried out on a person in accordance with section 29AAC or 29AAD, the blood alcohol content indicated by the analysis is taken to be the blood alcohol content of the person at the relevant time.
- (3) If more than one breath analysis was carried out, the lower of the blood alcohol contents indicated is taken to be the blood alcohol content of the person at the relevant time.
- (4) If a sample of a person's blood is taken in accordance with section 29AAK:
  - (a) the blood alcohol content indicated by analysis of the sample is taken to be the blood alcohol content of the person at the relevant time; and
  - (b) any prohibited drug detected in the person's blood is taken to have been present in the person's blood at the relevant time.
- (5) If the person's blood is analysed because the person was taken to a hospital or health centre with injuries that may have been caused in a crash:
  - (a) the indicated blood alcohol content mentioned in subsection (2) or (4) is taken to be the blood alcohol content of the person at the time of the crash; and
  - (b) any prohibited drug detected in the person's blood is taken to have been present in the person's blood at the time of the crash.

### **29AAU    Evidence by certificate**

- (1) In any proceedings in a court, a certificate in the relevant prescribed form purporting to be signed by:
  - (a) a person authorised by the Commissioner under this Act to



use a prescribed breath analysis instrument for this Act; or

- (b) a member of the staff of a hospital or health centre; or
- (c) an authorised analyst or a person employed by an organisation authorised as an analyst;

is prima facie evidence of the matters stated in the certificate and the facts on which they are based.

- (2) For subsection (1), the Regulations may prescribe forms of certificate to be used by different persons on different occasions.
- (3) If the Regulations do not prescribe a form for a specific situation, the Registrar may approve a form for use in that situation.

#### **29AAV If witness to be called**

In any proceedings in a court, if a party intends to call as a witness a person whose evidence may be received by way of certificate under section 29AAU, that party must:

- (a) give not less than 14 days notice in writing of that intention to the other party; and
- (b) call the person in accordance with the procedures of the relevant court to give the person's evidence.

#### **29AAW Breath analysis instrument**

- (1) The Regulations may provide:
  - (a) that a device for the carrying out of a breath analysis is a prescribed breath analysis instrument; and
  - (b) for the proper use of a prescribed breath analysis instrument; for this Act.
- (2) A court must not receive evidence that a prescribed breath analysis instrument, when it is in good working order and used in accordance with the Regulations relating to its use, does not give a true and correct assessment of the concentration of alcohol in a person's blood.

#### **29AAX Limitation on use of certain evidence**

The fact that a sample of a person's blood, when analysed for this Act, indicated the presence of a prohibited drug cannot be used in evidence in any proceedings in a court under the *Misuse of Drugs Act*.

**29AAY References to court and proceedings**

In this Part:

- (a) a reference to proceedings in a court includes a reference to a preliminary examination under Part V of the *Justices Act*, and
- (b) a reference to a court includes a reference to a Justice conducting a preliminary examination under Part V of the *Justices Act*.

**6 Repeal of sections 39, 49 and 50**

Sections 39, 49 and 50

*repeal*

**7 Repeal of Schedule 1**

Schedule 1

*repeal*

**Part 3 Amendment of Traffic Regulations****8 Subordinate legislation amended**

This Part amends the *Traffic Regulations*.

**9 Amendment of Part 4 heading**

Part 4, heading

*omit*

**alcohol**

*substitute*

**alcohol or drug**

**10 Repeal and substitution of regulation 55**

Regulation 55

*repeal, substitute*

**55 Application of section 25 of Act**

- (1) Section 25(3) of the Act does not apply to the driver of a vehicle of

a type mentioned in section 25(2)(a) to (f) of the Act if the person is any of the following:

- (a) a police officer;
- (b) a member, as defined in the *Fire and Emergency Act*, of the Northern Territory Fire and Rescue Service;
- (c) a member, within the meaning of the *Disasters Act*, of the Northern Territory Emergency Service;
- (d) a protective service officer as defined in the *Australian Federal Police Act 1979* (Cth);

and is driving the vehicle in the course of the person's duties as such a member or officer.

- (2) Section 25(3) of the Act does not apply to the driver of a vehicle of a type mentioned in section 25(2)(a) to (f) of the Act if the person is driving the vehicle:

- (a) to a place at which the vehicle is to be used in, or the occupants of the vehicle are to take part in; or
- (b) at a place at which the vehicle is being used in, or the occupants of the vehicle are taking part in; or
- (c) from a place at which the vehicle was used in, or the occupants of the vehicle took part in;

a fire management operation within the meaning of the *Motor Vehicles Act* or an operation relating to the control of a bushfire at that place.

- (3) Section 25(3) of the Act does not apply to the driver of a vehicle of a type mentioned in section 25(2)(d) of the Act if not more than 9 persons (including the driver) are travelling in the vehicle.
- (4) Section 25(3) of the Act does not apply to the driver of a vehicle of a type mentioned in section 25(2)(f) of the Act if the space designed for carrying goods was enclosed at the time of the manufacture of the vehicle.

#### **55A      Drugs prescribed for section 28 of Act**

- (1) The drugs prescribed for section 28(6)(a) are specified in Schedule 1A, Part A.
- (2) The drugs prescribed for section 28(6)(b) are specified in Schedule 1A, Part B.

**55B      Licence suspension for up to 24 hours**

A police officer must not give a person a notice under section 29AAM of the Act if:

- (a) a saliva test gave a positive indication of the presence of morphine (but no other prohibited drug); and
- (b) the person denies having consumed morphine; and
- (c) the person's ability to properly control a motor vehicle was not apparently impaired.

*Note*

*A saliva test may give a false positive indication of the presence of morphine if the person had consumed codeine. A blood test will confirm whether the substance was codeine or morphine, but in the absence of impairment, the person must initially be presumed to have consumed codeine only.*

**11      Amendment of regulation 56 (Prescribed breath analysis instrument – section 29)**

Regulation 56, heading

*omit*

**section 29**

*substitute*

**section 29AAW**

**12      Amendment of regulation 58 (Conduct of breath analysis)**

Regulation 58(4)

*omit*

section 19

*substitute*

Part V

**13      Amendment of regulation 60 (Authorised analysts)**

Regulation 60

*omit*

person

*substitute*

person or organisation

#### **14 Amendment of regulation 61 (Forms)**

Regulation 61

*omit*

section 27

*substitute*

section 29AAW

#### **15 Amendment of Schedule 1**

Schedule 1, item 26

*omit*

Drive with alcohol in blood contrary to section 19(7) or (8)	TA 19(7), 19(8)	200	3
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Drive with alcohol in blood contrary to section 19(6)	TA 19(6)(a), 19(6)(b), 19(6)(c)	200	3
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*substitute*

Drive with alcohol in blood contrary to section 23(1)	TA 23(1)	200	3
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Drive with alcohol in blood contrary to section 25 or 26	TA 25(3), 26(1)(a), 26(1)(b)	200	3
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Drive with prohibited drug in blood contrary to section 28	TA 28(1)	200	
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#### **16 New Schedule 1A**

After Schedule 1

*insert*

**Schedule 1A Drugs prescribed for section 28 of Act**

regulation 55A

**Part A**

The following drugs are prescribed for section 28(6)(a) of the Act:

Delta 9 tetrahydrocannabinol

Methylamphetamine (speed, ice)

3,4-Methylenedioxy-methamphetamine (MDMA, ecstasy)

Methylenedioxyamphetamine (MDA)

Diacetyl morphine (heroin)

Benzoylmethylecgonine (cocaine)

**Part B**

The following drugs are prescribed for section 28(6)(b) of the Act:

Morphine

Methadone

Amphetamine (dextroamphetamine, d-amphetamine)

**17 Amendment of Schedule 2**

- (1) Schedule 2, Form 3, back of Form 3

*omit*

Sections 25 and 26 of the *Traffic Act* read as follows:

*(Copy of sections 25 and 26 of the Traffic Act)*

*substitute*

Sections 29AAG and 29AAK of the *Traffic Act* read as follows:

*(Copy of section 29AAG and section 29AAK of the Traffic Act)*

- (2) Schedule 2, Form 4, paragraph (a)(ii)

*omit*

section 26

*substitute*

section 37

- (3) Schedule 2, Form 4, back of Form 4

*omit*

Sections 25 and 26 of the *Traffic Act* read as follows:

*(Copy of sections 25 and 26 of the Traffic Act)*

*substitute*

Sections 29AAG and 29AAK of the *Traffic Act* read as follows:

*(Copy of section 29AAG and section 29AAK of the Traffic Act)*

## **Part 4 Amendment of Motor Vehicles Act**

### **18 Act amended**

This Part amends the *Motor Vehicles Act*.

### **19 Amendment of section 102AA (Applications made by certain offenders)**

- (1) Section 102AA(1), definition ***subsequent offence***

*omit*

- (2) Section 102AA, Table

*omit, substitute*

TABLE

Item	Column 1 <i>Traffic Act</i>	Column 2 Offence	Column 3 Requirements
1	section 22	A first offence of driving a motor vehicle with a medium range blood alcohol content	
	section 29AAA	A first offence of driving a motor vehicle under the influence of alcohol or a drug	That the applicant has successfully completed an approved course

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2	section 22	A second or subsequent offence of driving a motor vehicle with a medium range blood alcohol content	
	section 29AAA	A second or subsequent offence of driving a motor vehicle under the influence of alcohol or a drug	That the applicant has successfully completed an approved course or undergone an approved treatment, or both, at the discretion of the Registrar
3	section 21	A first offence of driving a motor vehicle with a high range blood alcohol content	That the applicant has successfully completed an approved course or undergone an approved treatment, or both, at the discretion of the Registrar
	section 29AAE	A first offence of failing or refusing to submit to a breath analysis in relation to the driving of a motor vehicle	
4	section 21	A second or subsequent offence of driving a motor vehicle with a high range blood alcohol content committed within 3 years after being convicted of an offence referred to in item 3 or in this item	That the period for which the person was disqualified from obtaining a licence declared or imposed by the Court has elapsed since the making of the order and the approval of the Local Court to make an application for a licence has been obtained
	section 29AAE	A second or subsequent offence of failing or refusing to submit to a breath analysis in relation to the driving of a motor vehicle	



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5	section 22	First or second or subsequent offence of driving a motor vehicle with a medium range blood alcohol content	
	section 29AAA	First or second or subsequent offence of driving a motor vehicle while under the influence of alcohol or a drug	That the period for which the person was disqualified from obtaining a licence declared or imposed by the Court has elapsed since the making of the order and, if the application for a licence relates to a heavy vehicle, or commercial passenger vehicle, the approval of the Local Court to make the application has been obtained
	section 29AAE	First or second or subsequent offence of failing or refusing to submit to a breath analysis in relation to the driving of a motor vehicle	

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