

NORTHERN TERRITORY OF AUSTRALIA

TRAFFIC AND OTHER LEGISLATION AMENDMENT ACT 2015

Act No. 35 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 35 of 2015

An Act to amend the *Traffic Act*, *Motor Vehicles Act* and *Traffic Regulations*

[Assented to 17 December 2015]
[Second reading 17 September 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Traffic and Other Legislation Amendment Act 2015*.

2 Commencement

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

Part 2 Amendment of Motor Vehicles Act

3 Act amended

This Part amends the *Motor Vehicles Act*.

4 Section 5 amended

Section 5(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

5 Section 102AA amended

(1) Section 102AA(1), definition **approved course**

omit

after consuming alcohol:

insert

while affected by alcohol or a drug:

(2) Section 102AA(1), definition **approved treatment**

omit

all words after "intervention"

insert

course, the object of which is to promote responsible driver behaviour and raise awareness of the risks associated with driving while affected by alcohol or a drug:

(a) approved by the Registrar; or

(b) accredited by a person or body approved by the Registrar.

(3) Section 102AA(7)(a)

omit

the consumption of alcohol,

insert

being affected by alcohol or a drug,

6 Part XI inserted

After section 140

insert

Part XI Transitional matter for Traffic and Other Legislation Amendment Act 2015

141 Offences – before and after commencement

- (1) Section 102AA(7)(a), as amended by the *Traffic and Other Legislation Amendment Act 2015*, applies only in relation to offences committed after the commencement of that Act (the **commencement**).
- (2) Section 102AA(7)(a), as in force before the commencement, continues to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Part 3 Amendment of Traffic Act

7 Act amended

This Part amends the *Traffic Act*.

8 Section 3 amended

- (1) Section 3(1)

insert (in alphabetical order)

prohibited drug, for Part V, see section 19A.

saliva test, for Part V, see section 19(1).

- (2) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

9 Section 19 amended

Section 19(1)

insert (in alphabetical order)

prohibited drug, see section 19A.

saliva test means a test of a sample of a person's saliva to ascertain whether a prohibited drug may be present in the person's body.

10 Section 19A inserted

After section 19, in Part V, Division 1

insert

19A Prohibited drug

In this Part, a **prohibited drug** means a drug prescribed by the Regulations as either of the following:

- (a) drugs that are strictly prohibited for section 28(1) and to which the defence under section 29 does not apply;
- (b) drugs that are prohibited for section 28(1) but in relation to which the defence under section 29 may apply.

11 Part V, Division 3 heading amended

Part V, Division 3 heading

omit

blood

insert

body

12 Sections 27A and 27B inserted

After section 27

insert

27A Evidence of drug in body

It is evidence that a drug is in a person's body if the drug is detected by analysis of a sample of the person's saliva or blood.

27B Saliva sampling

- (1) The Commissioner may, by *Gazette* notice, approve a device that may be used to obtain a sample of a person's saliva for analysis by an authorised analyst for the giving of evidence in a court for an offence against this Act.
- (2) The Commissioner may, by *Gazette* notice, authorise a person to use a device approved under subsection (1) for this Act.
- (3) The Regulations may prescribe procedures for the proper use of a device approved under subsection (1).

13 Section 28 amended

- (1) Section 28, heading
omit
the blood
insert
body
- (2) Section 28(1)
omit
blood
insert
body
- (3) Section 28(2)(b)
omit
blood.
insert
body;
(c) failing to submit to a saliva test.
- (4) Section 28(6)
omit

14 Section 29 amended

Section 29(1)(a)

omit, insert

- (a) analysis of a blood sample or saliva sample taken under this Part:
- (i) gives no indication of any drug mentioned in section 19A(a); but
 - (ii) does indicate the presence of a drug (or drugs) mentioned in section 19A(b); and

15 Section 29AAA amended

- (1) After section 29AAA(2)(c)

insert

(ca) failing to submit to a saliva test;

- (2) Section 29AAA(6)(a)

omit

blood;

insert

body;

16 Section 29AAB amended

Section 29AAB(1)(b)

omit, insert

- (b) to require the driver to submit to a saliva test to determine whether there is a prohibited drug in the driver's body.

17 Section 29AAF amended

- (1) Section 29AAF(1)

omit

test to determine if the person's blood may contain a prohibited drug:

insert

test, or more than one saliva test, for the purpose of analysis by an authorised analyst to determine whether there is a prohibited drug in the person's body:

- (2) Section 29AAF(4)(a)

omit

test;

insert

test and any subsequent analysis;

- (3) Section 29AAF(4)(b)

omit

blood

insert

body

- (4) Section 29AAF(4), after "sample of blood"

insert

or saliva

18 Section 29AAFA inserted

After section 29AAF

insert

29AAFA Offence of failing to submit to saliva test

- (1) A person who is required under section 29AAF to submit to a saliva test must not fail to provide a sample of saliva sufficient for the test, and any subsequent analysis, to be carried out.

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 body;
 - (c) failing to submit to a saliva test.
- (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.

19 Section 29AAG amended

- (1) Section 29AAG(1)(b)
- omit*
- blood
- insert*
- body
- (2) Section 29AAG(2)
- omit*
- all words after "determine"
- insert*
- if:
- (a) the person's blood contains alcohol in a concentration that constitutes the person having committed an offence against Division 2 or 4; or

(b) the person's body contains a prohibited drug.

20 Section 29AAH amended

(1) After section 29AAH(2)(c)

insert

(ca) failing to submit to a saliva test;

(2) After section 29AAH(4)(b)

insert

(ba) failing to submit to a saliva test;

(3) After section 29AAH(5)(f)

insert

(fa) failing to submit to a saliva test.

21 Section 29AAK amended

Section 29AAK(7)

omit

approximately half

insert

a portion

22 Section 29AAL amended

Section 29AAL(1)

omit

analysis or after

insert

analysis, saliva test or

23 Section 29AALA inserted

After section 29AAL

insert

29AALA Application for additional analysis of saliva sample

- (1) A person from whom a sample of saliva has been taken under this Part may request the authorised analyst to whom or which the sample has been sent to provide a portion of the sample, at the person's own expense, to a medical practitioner or laboratory nominated by the person.
- (2) A request under subsection (1) must be made within 6 months of the person being served with an infringement notice or a summons for an offence in relation to which the sample was taken.

24 Section 29AAM amended

Section 29AAM(1)

omit, insert

- (1) This section applies if, for the purpose of having a sample of blood or saliva taken for analysis to determine if there is a prohibited drug in a person's body, the person is:
 - (a) arrested under section 29AAF(4); or
 - (b) taken to a hospital or health centre under section 29AAG.
- (1A) Subject to the Regulations, 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.

25 Section 29AAT amended

- (1) Section 29AAT(4)(b)

omit

blood at

insert

body at

(2) Section 29AAT(5)(b)

omit

blood at

insert

body at

26 Section 29AAU amended

After section 29AAU(1)(a)

insert

(aa) a person authorised by the Commissioner under section 27B to use a device for obtaining a sample of saliva for this Act; or

27 Section 29AAX amended

omit

blood,

insert

saliva or blood,

28 Section 53 amended

After section 53(2)(m)

insert

(ma) the authorisation of persons or organisations carrying out saliva analyses;

Part 4 Amendment of Traffic Regulations

29 Regulations amended

This Part amends the Traffic Regulations.

30 Part 4 heading amended

Part 4 heading

omit

in blood

insert

in body

31 Regulation 55A amended

(1) Regulation 55A heading

omit

section 28

insert

section 19A

(2) Regulation 55A(1)

omit

section 28(6)(a)

insert

section 19A(a) of the Act

(3) Regulation 55A(2)

omit

section 28(6)(b)

insert

section 19A(b) of the Act

32 Regulation 55B amended

Regulation 55B, note, after "blood test"

insert

or saliva analysis

33 Schedule 1 amended

Schedule 1, item 26, offence against *Traffic Act* section 28(1)

omit

blood

insert

body

34 Schedule 1A amended

(1) Schedule 1A, heading

omit

section 28

insert

section 19A

(2) Schedule 1A, Part A

omit

section 28(6)(a)

insert

section 19A(a)

(3) Schedule 1A, Part B

omit

section 28(6)(b)

insert

section 19A(b)

Part 5 Expiry of Act**35 Expiry of Act**

This Act expires on the day after it commences.