

THE NORTHERN TERRITORY OF AUSTRALIA

No. 134 of 1979

AN ACT

To amend the Traffic Act

[Assented to 19 October 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. This Act may be cited as the Traffic Act (No. 2) 1979. Short title
- 2.(1) In Part II of this Act, "the Principal Act" means the Traffic Act as in force immediately before Part II comes into operation. Principal Act
- (2) In Part III of this Act, "the Principal Act" means the Traffic Act as in force immediately before Part III comes into operation.
3. The several Parts of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the Gazette. Commencement
4. A prosecution for an offence alleged to have been committed before the commencement of Part II may be commenced or continued as if Part II had not come into operation. Savings

PART II - BREATHALYSER, &c.

5. Section 5(1) of the Principal Act is amended - Interpretation
 - (a) by omitting from the definition of "authorized analyst" the words "section 9B" and substituting "section 8P";
 - (b) by omitting the definitions of "blood test", "breath analysis" and "breath test" and substituting the following definitions:

"blood test" means a test of a sample of a person's blood carried out for the purpose of ascertaining the concentration of alcohol in that person's blood;

Traffic (No. 2)

'breath analysis' means an analysis of a sample of a person's breath carried out for the purpose of assessing the concentration of alcohol in that person's blood;

'breath test' means a test of a sample of a person's breath carried out for the purpose of ascertaining whether that person -

- (a) has alcohol in his blood; or
- (b) may have in his blood a concentration of alcohol equal to or exceeding 80 milligrams of alcohol per 100 millilitres of blood; and
- (c) by inserting after the definition of "powered cycle" the following definition:

"prescribed breath analysis instrument' means a device prescribed in pursuance of section 8L(1) for the carrying out of breath analyses;"

Driving under the influence of intoxicating liquor or of a drug or with high alcohol blood content

6.(1) Section 8(1) of the Principal Act is amended -

- (a) by inserting after "a drug" the words "or psychotropic substance"; and
- (b) by omitting "500 dollars" and substituting "\$1,000".

(2) Section 8(3) of the Principal Act is amended -

- (a) by omitting "200 dollars" and substituting "\$500"; and
- (b) by omitting "500 dollars" and substituting "\$1,000".

7. Sections 8A to 9B inclusive of the Principal Act are repealed and the following sections substituted:

Penalties for refusal

"8A.(1) A person shall not, on being required under this Act to submit to a breath analysis -

- (a) refuse or fail to submit to the breath analysis; or
- (b) refuse or fail to provide, in accordance with the directions of the person carrying out the

Traffic (No. 2)

breath analysis, a sample of his breath sufficient for the completion of the breath analysis.

Penalty: \$1,000 or imprisonment for 12 months.

"(2) It is a defence to a prosecution for an offence against sub-section (1) if the defendant satisfies the court that it would have been detrimental to his medical condition at the time when required so to do for him to have submitted to a breath analysis or that he had other reasonable grounds for refusing or failing to submit to a breath analysis.

"(3) A person shall not, on being required under this Act to give a sample of his blood for the purposes of having a blood test carried out to ascertain the concentration of alcohol in his blood -

- (a) refuse or fail to give the sample;
- (b) refuse or fail to comply with an arrangement made under this Act for the purpose of taking him to a hospital or of taking a sample of his blood; or
- (c) refuse or fail to provide, in accordance with the directions of the person taking the blood sample, a sample of his blood sufficient for the completion of the blood test.

Penalty: \$1,000 or imprisonment for 12 months.

"(4) It is a defence to a prosecution for an offence against sub-section (3) if the defendant satisfies the court that it would have been detrimental to his medical condition at the time when required so to do for him to have given the sample of his blood or that he had other reasonable grounds for refusing or failing to give the sample.

"(5) It is not reasonable grounds for refusing or failing to submit to a breath analysis or give a blood sample that the defendant had consumed liquor after he ceased to drive a motor vehicle.

"(6) Where a person is convicted of an offence against sub-section (3) and the court is satisfied -

- (a) that the person was required to give the blood sample by reason that he entered a hospital for examination or treatment of injuries; and

Traffic (No. 2)

- (b) that at the time of the accident in respect of which he received the injuries he was not driving a motor vehicle,

the court shall not sentence the person to a term of imprisonment and shall not impose a fine in excess of \$20.

Other evidence
may be given

"8B. In any proceedings in a court -

- (a) evidence other than the result of a breath analysis or blood test may be given for the purposes of showing the concentration of alcohol in the blood of a person or showing that a person was or was not under the influence of intoxicating liquor; and
- (b) the court may find that a person was, at the relevant times, under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of a motor vehicle without there being evidence of the concentration of alcohol in his blood as at that time or on evidence that he had at that time a concentration of alcohol in his blood less than 80 milligrams of alcohol per 100 millilitres of blood.

Results of
breath
analysis or
blood test

"8C.(1) Where, in any proceedings in a court, the court is satisfied that one or 2 breath analyses were carried out on a sample or samples, as the case may be, of a person's breath before the expiration of the period of 2 hours after the occurrence of the event referred to in section 8D(1) as a result of which the breath analysis or analyses were carried out, that person shall be deemed to have had, at the time of the occurrence of that event, a concentration of alcohol in his blood not less than the concentration, or the lower concentration, assessed by the analysis or analyses.

"(2) Where, in any proceedings in a court, the court is satisfied that a blood test was carried out on a sample of a person's blood before the expiration of the period of 4 hours after that person entered a hospital after the occurrence of -

- (a) the event referred to in section 8D(1); or
- (b) the motor vehicle accident referred to in section 8G(1),

as a result of which the blood test was carried out, that person shall be deemed to have had, at the time of the occurrence of that event or accident, a

Traffic (No. 2)

concentration of alcohol in his blood not less than the concentration ascertained by the test.

"8D.(1) A member of the Police Force may require a person to submit to a breath test or breath analysis if he has reasonable cause to suspect that -

Requirement
to submit to
breath test
and breath
analysis

- (a) the person has committed an offence against section 8 or an offence of culpable driving;
- (b) the person was the driver of a motor vehicle at the time of the occurrence of an accident on a public street or public place in which the motor vehicle was involved; or
- (c) the person was in an accident upon a public street or public place owing to the presence of a motor vehicle and that person has, or had at the time of the accident, alcohol in his blood.

"(2) Where -

- (a) it appears to a member of the Police Force from the results of a breath test on a sample of the breath of a person that there may be present in that person's blood a concentration of alcohol equal to or exceeding 80 milligrams of alcohol per 100 millilitres of blood; or
- (b) a person, on being required under this section to submit to a breath test -
 - (i) refuses or fails to submit to the breath test; or
 - (ii) refuses or fails to provide, in accordance with the directions of a member of the Police Force carrying out the test a sample of his breath sufficient for the completion of the breath test,

a member of the Police Force may thereupon arrest that person without warrant and take him to a police station or such other place as the member considers desirable and there detain him or cause him to be detained for the purposes of the carrying out of a breath analysis on a sample of that person's breath.

"(3) A member of the Police Force may require a person who has been arrested under sub-section (2) to submit to a breath analysis.

Traffic (No. 2)

"(4) A person who has submitted to a breath analysis of a sample of his breath in respect of the occurrence of an event referred to in sub-section (1), may be required by a member of the Police Force to submit to one other breath analysis of another sample of his breath in respect of the same occurrence.

"(5) As soon as practicable after a breath analysis of a sample of a person's breath has been carried out in pursuance of sub-section (1) or (3), that person may ask a member of the Police Force for one other breath analysis to be carried out on another sample of his breath, and the member of the Police Force shall, subject to this Act, arrange for the breath analysis to be carried out accordingly in pursuance of sub-section (4).

"(6) A member of the Police Force shall not, by reason of the occurrence of an event referred to in sub-section (1), require a person to submit to a breath test or breath analysis -

(a) if it appears to the member of the Police Force that the person has injuries and the member of the Police Force is not satisfied that it would not be detrimental to that person's medical condition for him to submit to the breath test or breath analysis within the period of 2 hours after the occurrence of the event; or

(b) at any time after the expiration of the period of 2 hours after the occurrence of the event.

Conduct of
breath
analysis

"8E.(1) A person who is carrying out a breath analysis shall provide an unused mouthpiece for use in providing each sample of a person's breath in each breath analysis.

"(2) As soon as practicable after completing a breath analysis of a sample of a person's breath, the person carrying out the analysis shall sign and deliver to the person who provided the sample a statement showing the result of the analysis expressed as a percentage of alcohol in blood as shown on the prescribed breath analysis instrument, and the date and time when the analysis was completed.

Right to
medical
examination

"8F.(1) A person who has submitted to a breath analysis or given a sample of his blood may request a medical practitioner -

(a) to examine him; and

Traffic (No. 2)

(b) to take a sample of his blood.

"(2) Where a person who is in custody so requests, a member of the Police Force shall make reasonable arrangements for the person to be taken to, or to communicate with, a medical practitioner for the purposes of making a request under sub-section (1).

"8G.(1) Subject to section 8H, the Minister for Health shall ensure that, for the purpose of having a blood test carried out by an authorized analyst to ascertain the concentration of alcohol in the blood of the person, a sample of blood is taken as soon as practicable from each person apparently over the age of 15 years who enters the hospital for examination or treatment of injuries that could have been received in a motor vehicle accident.

Requirement
to give
blood
sample

"(2) Where a member of the Police Force does not, by reason of section 8D(6)(a), require a person to submit to a breath test or breath analysis, the member of the Police Force may require that person to give a sample of his blood for the purposes of having a blood test carried out by an authorized analyst to ascertain the concentration of alcohol in his blood.

"(3) Where a member of the Police Force, in pursuance of sub-section (2), requires a person to give a sample of his blood -

(a) a member of the Police Force shall make arrangements for the person to be taken to a hospital and for a sample of his blood to be taken; and

(b) subject to section 8H, the Medical Superintendent of the hospital shall ensure that the sample is taken as soon as practicable.

"(4) Subject to sub-section (5), a blood sample that is taken in pursuance of this section is the property of the Commissioner of Police.

"(5) The person who takes a blood sample in pursuance of this section may make half of that sample available to the person from whom it was taken.

"8H.(1) For the purposes of section 8G, a member of the staff of a hospital may -

Right to
take blood

(a) take a sample of the blood of a person who is unconscious or apparently incapable of consenting to the giving of the sample; or

Traffic (No. 2)

- (b) require a person to give a sample of his blood.

"(2) A member of the staff of a hospital shall not be required by virtue of section 8G to take a sample of a person's blood if that member believes on reasonable grounds -

- (a) that the concentration of alcohol in the person's blood is already known;
- (b) that the taking of the sample would be detrimental to the person's medical condition;
- (c) that the injuries were not received in a motor vehicle accident;
- (d) that the person was a pedestrian at the time of the accident and that the sample, if taken, would not be tested; or
- (e) that a period of more than 4 hours has elapsed since the person arrived at the hospital.

"(3) No action or proceedings for assault, whether in or outside the Territory, lies against a person who takes a blood sample for the purposes of this Act.

Evidence by
certificate

"8J.(1) In a prosecution for an offence against section 8 or 8A, a certificate in the relevant prescribed form purporting to be signed by -

- (a) a person authorized by the Commissioner of Police to use a prescribed breath analysis instrument for the purposes of this Act;
- (b) a member of the staff of a hospital; or
- (c) an authorized analyst,

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

"(2) For the purposes of sub-section (1), the regulations may prescribe forms of certificate to be used by different persons and on different occasions.

Calling of
witnesses

"8K. In a prosecution for an offence against section 8(2) or 8A, neither party shall call a person whose evidence was received by way of certificate unless that party has given to the other party 14 days notice, or such less notice as the other party accepts, of his intention to call that witness.

Traffic (No. 2)

"8L.(1) The regulations may provide that a device for the carrying out of breath analyses is a prescribed breath analysis instrument.

Breath
analysis
instrument

"(2) The regulations may include regulations providing for or in relation to the proper use of a prescribed breath analysis instrument for the purposes of this Act.

"(3) A court shall 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.

"8M.(1) The Commissioner of Police may, by notice published in the Gazette, authorize a member of the Police Force who is, in the opinion of the Commissioner -

Authorized
operators

- (a) fully trained in the use of a prescribed breath analysis instrument for the purposes of this Act; and
- (b) capable of using that instrument correctly for the purposes of this Act,

to use that instrument for the purposes of this Act.

"(2) A person shall not carry out a breath analysis for the purposes of this Act unless he -

- (a) is a member of the Police Force;
- (b) uses a prescribed breath analysis instrument;
- (c) is authorized by the Commissioner of Police to use that instrument for the purposes of this Act; and
- (d) complies with and does not contravene the regulations providing for or in relation to the proper use of that instrument for the purposes of this Act.

"8N. The Minister may, by notice in the Gazette, authorize a person to be an analyst for the purposes of this Act."

Authorized
analysts

8.(1) Section 55(2)(a) of the Principal Act is amended by omitting "section 8B" and substituting "section 8A".

Penalties
for offences

Traffic (No. 2)

(2) Section 55(5B) of the Principal Act is amended by omitting "sub-section (1) or (2) of section 8 or sub-section (8) or (9) of section 8B" and substituting "section 8 or 8A".

(3) Section 55(5E) of the Principal Act is amended by omitting "sub-section (1) or (2) of section 8 or sub-section (8) or (9) of section 8B" and substituting "section 8 or 8A".

Special
licences
to drive

9. Section 55B(3) of the Principal Act is amended by omitting "section 8, 8B, 8C or 9" and substituting "section 8 or 8A".

PART III - RANDOM BREATH TESTING

10. Section 5(1) of the Principal Act is amended by inserting after the definition of "breath test" the following definition:

"'breath testing station' means a place that is set up as a breath testing station under section 8MA;"

11. Section 8C(1) and (2)(a) of the Principal Act is amended by inserting "or (1A)" after "section 8D(1)".

12.(1) Section 8D of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) A member of the Police Force may, on or before the second anniversary of the commencement of Part III of the Traffic Act 1979, require a person to submit to a breath test or breath analysis if -

(a) he calls on the person to stop a motor vehicle that is travelling -

(i) on the carriageway on which a breath testing station is set up; and

(ii) in the direction in which the vehicle that is parked at the breath testing station is facing;

(b) the person stops such a motor vehicle; or

(c) it reasonably appears to him that the person may have taken action to avoid being called on to stop such a motor vehicle,

at or near the breath testing station."

Traffic (No. 2)

(2) Section 8D(4) and (6) of the Principal Act is amended by inserting "or (1A)" after "sub-section (1)".

(3) Section 8D(5) of the Principal Act is amended by inserting ", (1A)" after "sub-section (1)".

13. After section 8M of the Principal Act the following section is inserted:

"8MA. A member of the Police Force may set up a breath testing station at a place on a carriageway of a public street by prominently displaying on, above, behind or beside a vehicle that is correctly parked at that place parallel to the flow of traffic a sign containing the words 'Breath Testing Station' in letters that are identifiable to motorists who are passing in the direction in which the vehicle is facing."

14. Section 57 of the Principal Act is amended by inserting after paragraph (g) the following paragraph:

"(ga) the establishment and operation of breath testing stations;".
