

Serial 166
Traffic and Other Legislation Amendment Bill 2011
Mr McCarthy

A Bill for an Act to amend the *Traffic Act* and other legislation in relation to
breath testing for alcohol

NORTHERN TERRITORY OF AUSTRALIA

TRAFFIC AND OTHER LEGISLATION AMENDMENT ACT 2011

Act No. [] of 2011

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1

Part 2 Amendment of Traffic Act

3	Act amended	1
4	Section 3 amended.....	2
5	Part V heading amended.....	2
6	Section 19 amended.....	2
7	Part V, Division 2 heading amended	3
8	Section 21 amended.....	4
9	Section 22 amended.....	4
10	Section 23 amended.....	4
11	Section 24 amended.....	5
12	Section 25 amended.....	5
13	Section 26 amended.....	5
14	Section 29AAA amended.....	5
15	Section 29AAB amended.....	6
16	Section 29AAC amended	6
17	Section 29AAD amended	7
18	Section 29AAE amended.....	7
19	Section 29AAG amended	7
20	Section 29AAH amended	8
21	Section 29AAM amended.....	8
22	Section 29AAN amended	8
23	Section 29AAR amended	8
24	Section 29AAT amended.....	8
25	Section 29AAU amended	9
26	Section 29AAW amended.....	10
27	Section 48 amended.....	10
28	Section 53 amended.....	10
29	Part IX inserted.....	11

Part IX Transitional matters for Traffic and Other
Legislation Amendment Act 2011

58	Purpose of Part
59	Results of analysis
60	Person charged before commencement day
61	Transitional regulations
62	Transitional regulations under other Act

Part 3 Amendment of Traffic Regulations

30	Regulations amended.....	14
31	Part 4 heading amended	14
32	Regulation 58 amended	14
33	Regulation 60 amended	14
34	Regulation 61 amended	15

Part 4 Amendment of other legislation

Division 1 Motor Accidents (Compensation) Act

35	Act amended	15
36	Section 9 amended.....	16
37	Section 20A amended	16
38	Section 38 amended.....	16

Division 2 Personal Injuries (Liabilities and Damages) Act

39	Act amended	17
40	Section 16 amended.....	17

Division 3 Workers Rehabilitation and Compensation Act

41	Act amended	17
42	Section 60 amended.....	17

Division 4 Motor Vehicles Regulations

43	Regulations amended.....	18
44	Regulation 7A amended	18

Division 5 Rail Safety Regulations

45	Regulations amended.....	18
46	Regulation 8 amended	18
47	Regulation 71 amended	19

Division 6 Other laws amended

48	Other laws amended	19
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Schedule	Other laws amended
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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Traffic Act* and other legislation in relation to breath testing for alcohol

[Assented to [] 2011]
[Second reading [] 2011]

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 2011*.

2 Commencement

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

Part 2 Amendment of Traffic Act

3 Act amended

This Part amends the *Traffic Act*.

4 Section 3 amended

- (1) Section 3(1), definition *authorized analyst*

omit, insert

authorised analyst means a person or organisation authorised under this Act to be an analyst.

- (2) Section 3(1), definition *breath analysis*

omit

blood

insert

breath

- (3) Section 3(1), definition *breath test*

omit

all words after "person's breath"

insert

to assess:

- (a) whether there is alcohol present in the person's breath; and
- (b) if alcohol is present, the concentration of alcohol in the person's breath.

5 Part V heading amended

Part V heading, after "alcohol"

insert

in breath or blood

6 Section 19 amended

- (1) Section 19(1), definitions *high range blood alcohol content*, *low range blood alcohol content* and *medium range blood alcohol content*

omit

(2) Section 19(1)

insert (in alphabetical order)

BAC means blood alcohol content.

BrAC means breath alcohol content.

high range breath or blood alcohol content means:

- (a) a BrAC of 0.15 grams or more of alcohol per 210 litres of exhaled breath; or
- (b) a BAC of 0.15 grams or more of alcohol per 100 millilitres of blood.

low range breath or blood alcohol content means:

- (a) a BrAC of 0.05 grams or more, but less than 0.08 grams, of alcohol per 210 litres of exhaled breath; or
- (b) a BAC of 0.05 grams or more, but less than 0.08 grams, of alcohol per 100 millilitres of blood.

medium range breath or blood alcohol content means:

- (a) a BrAC of 0.08 grams or more, but less than 0.15 grams, of alcohol per 210 litres of exhaled breath; or
- (b) a BAC of 0.08 grams or more, but less than 0.15 grams, of alcohol per 100 millilitres of blood.

(3) Section 19(1), definition **AIL**, paragraph (b)

omit

all words after "has a"

insert

BrAC of less than 0.02 grams per 210 litres of exhaled breath.

7 Part V, Division 2 heading amended

Part V, Division 2, heading, after "in"

insert

breath or

8 Section 21 amended

- (1) Section 21 heading, after "**range**"

insert

breath or

- (2) Section 21(1), (2)(a)(i) and (ii) and (e), (4)(a) and (5)(a), (c), (d)(i) and (ii) and (h)

omit

blood

insert

breath or blood

9 Section 22 amended

- (1) Section 22 heading, after "**range**"

insert

breath or

- (2) Section 22(1) and (2)(a)(i) and (ii) and (e)

omit

blood

insert

breath or blood

10 Section 23 amended

- (1) Section 23 heading, after "**range**"

insert

breath or

- (2) Section 23(1) and (2)(a)(i), (ii) and (iii) and (e)

omit

blood

insert

breath or blood

11 Section 24 amended

Section 24(2) and (3)(a)(i), (ii) and (iii), (e) and (f)

omit

blood

insert

breath or blood

12 Section 25 amended

Section 25(3) and (4)(a)(i), (ii) and (iii), (e) and (f)

omit

blood

insert

breath or blood

13 Section 26 amended

Section 26(1) and (2)(a)(i), (ii) and (iii), (e) and (f)

omit

blood

insert

breath or blood

14 Section 29AAA amended

(1) Section 29AAA(2)(a)(i) and (ii) and (e)

omit

blood

insert

breath or blood

- (2) Section 29AAA(5), after "person's"

insert

breath or

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

omit

alcohol or

insert

alcohol in the person's breath or blood or of

- (4) Section 29AAA(6)(b)

omit

all words after "showed"

insert

the person had:

- (i) a BrAC of less than 0.05 grams of alcohol per 210 litres of exhaled breath; or
- (ii) a BAC of less than 0.05 grams of alcohol per 100 millilitres of blood.

15 Section 29AAB amended

Section 29AAB(1)(a)

omit

blood

insert

breath

16 Section 29AAC amended

- (1) Section 29AAC(1)

omit

blood contains

insert

breath contains

(2) Section 29AAC(1)(b)(iii), after "person's"

insert

breath or

17 Section 29AAD amended

Section 29AAD(1)

omit

all words from "provided" to "more"

insert

submitted to a breath analysis (whether or not the sample provided was sufficient) may be required by a police officer to submit to another

18 Section 29AAE amended

Section 29AAE(2)(a)(i) and (ii) and (e), (4)(a) and (5)(a), (c), (d)(i) and (ii) and (h)

omit

blood

insert

breath or blood

19 Section 29AAG amended

Section 29AAG(1)(a), after "person's"

insert

breath or

20 Section 29AAH amended

Section 29AAH(2)(a)(i) and (ii) and (e), (4)(a) and (5)(a), (c), (d)(i) and (ii) and (h)

omit

blood

insert

breath or blood

21 Section 29AAM amended

Section 29AAM(2)

omit

an approved form

insert

a form approved by the Commissioner

22 Section 29AAN amended

Section 29AAN(3)

omit

an approved form

insert

a form approved by the Commissioner

23 Section 29AAR amended

Section 29AAR(1)(a)(ii) and (iii), after "range"

insert

breath or

24 Section 29AAT amended

(1) Section 29AAT, heading

omit

blood alcohol content

insert

BrAC or BAC

- (2) Section 29AAT(2) and (3)

omit (all references)

blood alcohol content

insert

BrAC

- (3) Section 29AAT(3)

omit

of the blood alcohol contents

insert

BrAC

- (4) Section 29AAT(4)(a)

omit (all references)

blood alcohol content

insert

BAC

- (5) Section 29AAT(5)(a)

omit

indicated blood alcohol content mentioned in subsection (2) or (4) is taken to be the blood alcohol content

insert

BAC indicated by the analysis is taken to be the BAC

25 Section 29AAU amended

- (1) Section 29AAU(1)(c)

omit

an organisation authorised as an

insert

an authorised

(2) After section 29AAU(1)

insert

(1A) If evidence is given by a certificate as mentioned in subsection (1), it is not necessary to prove:

- (a) the signature of the person who signed the certificate; or
- (b) the person holds the capacity in which the person purported to act in signing the certificate.

26 Section 29AAW amended

Section 29AAW(2)

omit

blood

insert

breath

27 Section 48 amended

Section 48(1)

omit

section 19 (other than subsection (1)) or 20

insert

Part V (other than section 29AAA(1))

28 Section 53 amended

(1) Section 53(2)

omit

provide for:

insert

provide for any of the following:

- (2) Section 53(2)(a)
omit, insert
- (a) an exemption from the application of all or part of the Regulations of:
- (i) certain persons or classes of persons; or
 - (ii) persons in respect of a specified class of motor vehicle;
- (3) Section 53(2)(c)(i) to (v), at the end
insert
- and
- (4) Section 53(2)(m)
omit, insert
- (m) the authorisation of persons carrying out breath analyses, or of persons or organisations carrying out blood tests;
- (5) Section 53(2)(y)
omit
- and
- (6) Section 53(3)(a), at the end
insert
- or

29 Part IX inserted

After section 56

insert

Part IX Transitional matters for Traffic and Other Legislation Amendment Act 2011

57 Definitions

In this Part:

amendment Act means the *Traffic and Other Legislation*

Amendment Act 2011.

commencement day means the day on which this section commences.

pre-commencement Act means the Act as in force immediately before the commencement day.

58 Purpose of Part

The purpose of this Part is to provide for the transition over time from prescribed breath analysis instruments which express the result of a breath analysis in terms of BAC to the same or similar instruments which express the same result in terms of BrAC in accordance with the *National Measurement Regulations 2009* (Cth).

59 Results of analysis

- (1) On and after the commencement day:
 - (a) the result of a breath analysis is expressed as BrAC; and
 - (b) the result of a blood test is expressed as BAC.
- (2) However, if a prescribed breath analysis instrument gives a result expressed as BAC, or as a percentage, the result is taken to be expressed as BrAC of the same numerical value as the result expressed as BAC, or percentage, as shown by the examples in the following table:

Table

Column 1 Grams per 210 litres of exhaled breath (BrAC)	Column 2 Grams per 100ml of blood (BAC)	Column 3 Analysis result expressed as %
0.05	0.05	0.05%
0.08	0.08	0.08%
0.15	0.15	0.15%

Note for subsection (2) table

The results indicated in Column 1 are identical to the results indicated opposite in Columns 2 and 3. The only difference is the unit of measurement by which the result is expressed.

60 Person charged before commencement day

- (1) This section applies if, before the commencement day, a person has been charged with an offence of driving with alcohol in the blood, or of driving with a blood alcohol content expressed as a percent.
- (2) The pre-commencement Act continues to apply to the person in all proceedings in relation to the offence.

Examples for subsection (2)

- 1 *Interlocutory proceedings.*
- 2 *A Magistrate conducting a preliminary examination under the Justices Act.*
- 3 *An appeal to the Supreme Court.*

61 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of the amendment Act; or
 - (b) to otherwise allow or facilitate the transition from the operation of the pre-commencement Act to the Act as amended by the amendment Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expires 1 year after the commencement day.

62 Transitional regulations under other Act

- (1) This section applies if, under another Act, provision is made for breath testing or breath analysis, and the amendment Act does not make provision, or sufficient provision, for the transition from the result of a breath test or breath analysis for the other Act expressed as blood alcohol content, or percentage, to a result expressed as breath alcohol content.

- (2) The power under the other Act to make regulations is taken to include the power to make a regulation of a transitional nature to facilitate the transition as mentioned in subsection (1).
- (3) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing a new liability on the person.
- (5) The regulation must declare it is for the transition as mentioned in subsection (1).
- (6) This section, and each regulation made because of this section, expires 1 year after the commencement day.

Part 3 Amendment of Traffic Regulations

30 Regulations amended

This Part amends the *Traffic Regulations*.

31 Part 4 heading amended

Part 4 heading, after "alcohol"

insert

in breath or blood

32 Regulation 58 amended

Regulation 58(4)

omit

33 Regulation 60 amended

(1) Regulation 60

omit

all words from "The" to "*Gazette*,"

insert

- (1) The Commissioner may, by *Gazette* notice,
(2) After regulation 60(1)

insert

- (2) In this regulation:

organisation includes:

- (a) an Agency or an administrative unit within an Agency; and
(b) if outside the Territory – an entity in another jurisdiction similar to an Agency or an administrative unit in an Agency.

Example for subregulation (2)(b)

The forensic laboratory of the police force of a State or another Territory.

34 Regulation 61 amended

- (1) Regulation 61(1)

omit

- (1) For

insert

For

- (2) Regulation 61(2)

omit

Part 4 Amendment of other legislation

Division 1 Motor Accidents (Compensation) Act

35 Act amended

This Division amends the *Motor Accidents (Compensation) Act*.

36 Section 9 amended

Section 9(2)(a)

omit, insert

- (a) it is shown that, within 2 hours of the time of the motor accident, the injured person had a concentration of alcohol:
- (i) in the breath of 0.08 grams or more per 210 litres of exhaled breath; or
 - (ii) in the blood of 0.08 grams or more per 100 millilitres of blood; or

37 Section 20A amended

Section 20A(2)

omit, insert

- (2) The Office is to presume that the influence of alcohol contributed to the accident, unless the contrary is established, if the qualifying person is shown to have had a concentration of alcohol:
- (a) in the breath of 0.08 grams or more per 210 litres of exhaled breath; or
 - (b) in the blood of 0.08 grams or more per 100 millilitres of blood.

38 Section 38 amended

Section 38(3)(d)(iii)

omit

all words after "concentration of"

insert

alcohol:

- (A) in the breath of 0.08 grams or more per 210 litres of exhaled breath; or
- (B) in the blood of 0.08 grams or more per 100 millilitres of blood; or

Division 2 Personal Injuries (Liabilities and Damages) Act

39 Act amended

This Division amends the *Personal Injuries (Liabilities and Damages) Act*.

40 Section 16 amended

Section 16

omit

all words from "If" to "finding"

insert

If a Court finds that at or about the time of an incident a person had:

- (a) in his or her breath a concentration of 0.08 or more grams of alcohol in 210 litres of exhaled breath; or
- (b) in his or her blood a concentration of 0.08 or more grams of alcohol in 100 millilitres of blood;

that finding

Division 3 Workers Rehabilitation and Compensation Act

41 Act amended

This Division amends the *Workers Rehabilitation and Compensation Act*.

42 Section 60 amended

Section 60(2)

omit, insert

- (2) It is to be presumed that the consumption of the alcoholic liquor materially contributed to the accident giving rise to the injury, unless the contrary is proved, if the worker had at the time of the accident a concentration of alcohol:
 - (a) in the breath of 0.08 grams or more per 210 litres of exhaled breath; or
 - (b) in the blood of 0.08 grams or more per 100 millilitres of blood.

Division 4 Motor Vehicles Regulations

43 Regulations amended

This Division amends the *Motor Vehicles Regulations*.

44 Regulation 7A amended

(1) Regulation 7A(c), after "licensee's"

insert

breath or

(2) Regulation 7A(d)

omit

all words after "vehicle if the licensee"

insert

has:

- (i) a breath alcohol content equal to or exceeding 0.02 grams of alcohol per 210 litres of exhaled breath; or
- (ii) a blood alcohol content equal to or exceeding 0.02 grams of alcohol per 100 millilitres of blood;

Division 5 Rail Safety Regulations

45 Regulations amended

This Division amends the *Rail Safety Regulations*.

46 Regulation 8 amended

(1) Regulation 8(1)

omit

all words after "Act,"

insert

the prescribed level is:

- (a) a breath alcohol content (**BrAC**) of 0.02 grams of alcohol per 210 litres of exhaled breath; or

(b) a blood alcohol content (**BAC**) of 0.02 grams of alcohol per 100 millilitres of blood.

(2) Regulation 8(2) and (3)

omit, insert

(2) If a person submits to a breath analysis and the breath analysis instrument gives a result expressed as BAC, or as a percentage, that result is taken to be expressed as BrAC of the same numerical value as the result expressed as BAC, or percentage, as shown by the examples in the following table:

Table

Column 1 Grams per 210 litres of exhaled breath (BrAC)	Column 2 Grams per 100ml of blood (BAC)	Column 3 Analysis result expressed as %
0.05	0.05	0.05%
0.08	0.08	0.08%
0.15	0.15	0.15%

Note for subregulation (2) table

The results indicated in Column 1 are identical to the results indicated opposite in Columns 2 and 3. The only difference is the unit of measurement by which the result is expressed.

47 Regulation 71 amended

Regulation 71(1)(c)(v)

omit

all words from "grams" to "blood"

insert

grams per 210 litres of exhaled breath was indicated by the breath analysis instrument as being present in the breath

Division 6 Other laws amended

48 Other laws amended

The Schedule amends the laws mentioned in it.

Schedule Other laws amended

section 48

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011</i>		
section 73(1)	blood	breath
<i>Liquor Act</i>		
section 124B	blood	breath
<i>Motor Vehicles Act</i>		
section 102AA, Table, items 1 to 5 in column 1	range	range breath or
<i>Police Administration Act</i>		
section 130A(1)(a)	blood	breath
section 130A(4)	body	breath
<i>Prisons (Correctional Services) Act</i>		
section 94B(4)	blood	breath, blood
<i>Rail Safety Regulations</i>		
regulation 32(2)	alcohol in his or her blood, or a prohibited drug	alcohol, or a prohibited drug,
regulation 55, definitions <i>breath analysis</i> and <i>breath test</i>	blood	breath

regulations 57(1) and (2)(a) and (b)(i), and 58(1)(b)	blood	body
regulation 62(1)	blood	breath
regulation 63(3)	blood and	body and
regulation 70(2) and (3)	blood <i>(all references)</i>	breath
