

Serial 138  
Traffic and Other Legislation Amendment Bill 2015  
Mr Chandler

A Bill for an Act to amend the *Traffic Act*, *Motor Vehicles Act* and  
*Traffic Regulations*





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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2015

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

[Assented to [ ] 2015]  
[Second reading [ ] 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.*

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**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

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**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*



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**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.