



TASMANIA

**ROAD SAFETY (ALCOHOL AND DRUGS) AMENDMENT ACT
1991**

No. 44 of 1991

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**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT ACT 1991**

No. 44 of 1991

AN ACT to amend the *Road Safety (Alcohol and Drugs) Act 1970*

[Royal Assent 12 December 1991]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Road Safety (Alcohol and Drugs) Amendment Act 1991*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Road Safety (Alcohol and Drugs) Act 1970** is referred to as the Principal Act.

PART 2**AMENDMENTS OF THE ROAD SAFETY (ALCOHOL AND DRUGS)
ACT 1970****Section 2 amended (Interpretation)**

4—Section 2 of the Principal Act is amended as follows:—

- (a) by inserting after “driver’s licence,” in subsection (2) “learner’s licence,”;
- (b) by inserting after subsection (2) the following subsection:—

(2A) In this Act, “public vehicle” means—

- (a) a vehicle that is required to be licensed under Part III of the *Traffic Act 1925*; and
- (b) any other vehicle constructed primarily for the carriage of passengers exceeding 11 in number exclusive of the driver; and
- (c) a vehicle not constructed for the carriage of passengers with a gross vehicle mass exceeding 4.5 tonnes or a gross combination mass exceeding 7.5 tonnes.

* No. 77 of 1970. For this Act as amended to 1 July 1986 see the continuing Reprint of Statutes. Subsequently amended by No. 13 of 1987.

Section 5 amended (Powers of arrest, &c.)

5—Section 5 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

(1AA) A police officer may—

- (a) arrest without warrant a person who, without reasonable excuse, fails or refuses to comply with a requirement or direction, as the case may be, made to that person by the police officer under section 10 (4) or 10A (1); and
- (b) take charge of any vehicle in the charge of that person and remove it to a convenient place for safe-keeping.

Section 6 amended (Driving with excessive concentration of blood alcohol)

6—Section 6 of the Principal Act is amended as follows:—

(a) by omitting subsection (3) and substituting the following subsection:—

(3) Subsection (2) applies to a person—

- (a) who does not hold an authority to drive a motor vehicle; or
- (b) who is driving a public vehicle; or
- (c) who has, after the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 1991*, been convicted of—
 - (i) the crime of manslaughter arising out of the driving of a motor vehicle; or
 - (ii) the crime of causing death by dangerous driving—

if, as a result of the course of conduct giving rise to that crime, that person was also convicted of an offence under section 4 of this Act or this section; or

- (d) who has been convicted of 3 or more offences under this Act arising from at least 3 separate incidents where at least one of those offences was committed after the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 1991*.

(b) by omitting subsection (3A) and substituting the following subsection:—

(3A) For the purposes of subsection (3), a person is to be taken not to hold an authority to drive a motor vehicle unless the person—

(a) holds a licence or other authority (not being a provisional licence or a learner's licence) issued or granted in this State or elsewhere, authorizing the person to drive on a public street a class of motor vehicles that includes that motor vehicle; or

(b) satisfies the court that he or she would, but for an unintentional failure to comply with an administrative requirement, be the holder of such a licence or other authority.

Section 10A inserted

7—After section 10 of the Principal Act, the following section is inserted:—

Blood samples to be provided in certain cases

10A—(1) Where a police officer reasonably believes that a person was the driver of a vehicle involved in an accident in which personal injury was sustained and that alcohol or a drug may have been present in that persons' blood at the time of the accident, the police officer may require that person to submit to the taking of a sample of blood for analysis.

(2) Where a person agrees to submit to the taking of a sample of blood, the relevant provisions of this Act apply as if the person were a person who had elected to provide a sample of blood in accordance with section 10 (4B).

Section 12 amended (Examination, &c., of persons incapable of consenting)

8—Section 12 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:—

(1) If a police officer is informed by a medical practitioner attending a person for medical treatment that the person is by reason of his or her physical condition incapable of giving consent—

(a) to the taking of a sample of his or her blood;
or

(b) to a medical examination—

to which, under this Division, the person has or could be directed to submit, the police officer may request the medical practitioner to take a sample of the person's blood or to carry out the medical examination.

(2) A medical practitioner must comply with a request made to him or her in accordance with subsection (1) unless the medical practitioner is of the opinion that to do so would be prejudicial to the proper care or treatment of the person.

Section 13 amended (Duties of medical practitioners and nurses in relation to taking of blood samples, &c.)

9—Section 13 of the Principal Act is amended as follows:—

(a) by omitting from subsection (5C) “as soon as practicable” and substituting “within 10 days”;

(b) by omitting subsection (6) and substituting the following subsection:—

(6) If a sample of blood or urine is taken from a person in accordance with section 12 (1) (person incapable of consenting), the police officer who requested that the sample be taken must—

(a) give written notice to the person that the sample was taken; and

(b) tender to the person the part of the sample referred to in subsection (5B); and

- (c) give written notice to the person that he or she may object to the sample being analysed, but in that case the person will be guilty of an offence under this Act—

as soon as the police officer considers it is practical to do so having regard to the person's physical condition.

Section 14 amended (Offences under Division 2)

10—Section 14 (1A) is amended by omitting “section 10 (1)” and substituting “section 10 (1) or 10A (1)”.

Section 17 substituted and sections 17A and 17B inserted

11—Section 17 of the Principal Act is repealed and the following sections are substituted:—

Penalties for drink/driving offences, &c.

17—(1) For the purposes of this section—

- (a) “the Table” means the Table at the end of this section; and
- (b) a person is guilty of a subsequent offence if that person has previously been convicted of an offence under section 4, 6 or 14 (5) or an offence in respect of a failure to comply with a requirement made under section 10 (4) or 10A (1).

(2) The application of this section does not extend to an offence committed before the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 1991*.

(3) Subject to subsection (5), a court that convicts a person of an offence specified in column 1 of the Table—

(a) must—

- (i) impose a fine of an amount not less than the minimum amount shown in the Table and not more than the maximum amount shown in the Table; or
- (ii) impose a term of imprisonment for a term not exceeding the term shown in the Table; or

- (iii) impose both that fine and that term of imprisonment; and
 - (b) must, in addition, disqualify the person from holding or obtaining a driver's licence for a period of not less than the minimum period shown in the Table and not more than the maximum period shown in the Table.
- (4) For the purposes of subsection (3)—
- (a) the relevant fine, period of disqualification and term of imprisonment for a first offence specified in column 1 of the Table is, in the case of an offence under section 6, to be ascertained by reference to the concentration of alcohol in the blood of the offender as specified in column 2 of Part 1 of the Table; and
 - (b) the relevant fine, period of disqualification and term of imprisonment for a subsequent offence is to be ascertained by reference to the concentration of alcohol in the blood of the offender as specified in column 2 of Part 2 of the Table.
- (5) Notwithstanding subsection (3), if a person who is convicted of an offence referred to in column 1 of the Table satisfies the court which convicted the person that there are special circumstances why the minimum fine specified in the Table or the minimum period of disqualification specified in the Table should not be imposed, the court may impose a lesser fine or a lesser period of disqualification.

TABLE

PART 1

FIRST OFFENCE

COLUMN 1 Section of Act or offence	COLUMN 2 Concentration of alcohol in blood in grams per millilitres of blood	COLUMN 3 Fine	COLUMN 4 Period of disqualification	COLUMN 5 Term of imprisonment
Section 6 (2)	less than 0.05	Minimum 2 penalty units Maximum 10 penalty units	Minimum 3 months Maximum 12 months	3 months
Section 6	0.05 or more but less than 0.1	Minimum 2 penalty units Maximum 10 penalty units	Minimum 3 months Maximum 12 months	3 months
	0.1 or more but less than 0.15	Minimum 4 penalty units Maximum 20 penalty units	Minimum 6 months Maximum 18 months	6 months
	0.15 or more	Minimum 5 penalty units Maximum 30 penalty units	Minimum 12 months Maximum 36 months	12 months
Section 4 or 14 (5) or failure to comply with a requirement made under section 10 (4) or 10A (1)		Minimum 5 penalty units Maximum 30 penalty units	Minimum 12 months Maximum 36 months	12 months

TABLE

PART 2

SUBSEQUENT OFFENCE

COLUMN 1 Section of Act or offence	COLUMN 2 Concentration of alcohol in blood in grams per millilitres of blood	COLUMN 3 Fine	COLUMN 4 Period of disqualification	COLUMN 5 Term of imprisonment
Section 6 (2)	less than 0.05	Minimum 4 penalty units Maximum 20 penalty units	Minimum 6 months Maximum 24 months	6 months
Section 6	0.05 or more but less than 0.1	Minimum 4 penalty units Maximum 20 penalty units	Minimum 6 months Maximum 24 months	6 months
	0.1 or more but less than 0.15	Minimum 8 penalty units Maximum 40 penalty units	Minimum 12 months Maximum 36 months	12 months
	0.15 or more	Minimum 10 penalty units Maximum 60 penalty units	Minimum 24 months Maximum 72 months	24 months
Section 4 or 14 (5) or failure to comply with a requirement made under section 10 (4) or 10A (1)		Minimum 10 penalty units Maximum 60 penalty units	Minimum 24 months Maximum 72 months	24 months

Penalties for other offences

17A—(1) A person who is convicted of an offence under this Act, other than an offence referred to in section 17, is liable to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

(2) A court that convicts a person of an offence referred to in subsection (1) may, in addition to any penalty imposed under that subsection, order the person to be disqualified from holding or obtaining a driver's licence for a period not exceeding 3 years.

Application of *Alcohol and Drug Dependency Act 1968*

17B—Section 30 of the *Alcohol and Drug Dependency Act 1968* applies in respect of an offence committed by a person under this Act, whether or not the court is of the opinion that that offence was committed as mentioned in subsection (1) (a) or (b) of that section.

Section 18A inserted

12—After section 18 of the Principal Act, the following section is inserted:—

Traffic infringement notice may be issued in certain circumstances

18A—(1) For the purposes of section 43H of the *Traffic Act 1925*, an offence under section 6 (1) of this Act is a prescribed offence in respect of which a police officer may serve a traffic infringement notice if the police officer is satisfied that the person on whom the notice is to be served—

(a) has not been convicted of—

- (i) the crime of manslaughter arising out of the driving of a motor vehicle; or
- (ii) the crime of causing death by dangerous driving; or
- (iii) an offence under this Act; or
- (iv) an offence under section 32 of the *Traffic Act 1925* (reckless driving), including an offence under that section that is a crime by virtue of subsection (4) of that section; and

(b) is the holder of a driver's licence, not being a provisional licence or learner's licence; and

(c) at the time of the alleged offence was not driving a public vehicle—

and the offence is in respect of a concentration of alcohol in that person's blood of less than 0.1 of a gram of alcohol in 100 millilitres of blood.

(2) The prescribed penalty in respect of the offence referred to in subsection (1) is a fine of 2 penalty units and disqualification from holding or obtaining a driver's licence for a period of 3 months.

(3) Where, in accordance with section 43H (4) of the *Traffic Act 1925*, a person accepts a traffic infringement notice in respect of an offence referred to in subsection (1)—

- (a) that person must at the same time as paying the penalty in accordance with section 43H (4) (a) of that Act or lodging a notice in accordance with section 43H (4) (b) of that Act also forward his or her driver's licence to the clerk to whom the penalty was paid or the notice was given; and
- (b) the period of 3 months disqualification from holding or obtaining a driver's licence starts from the date the licence is received by the clerk when forwarded in accordance with paragraph (a) of this subsection.

(4) A traffic infringement notice served in respect of an offence referred to in subsection (1) must, in addition to the matters specified in it in accordance with section 43H (2) of the *Traffic Act 1925*, also have specified in it the requirement to forward the driver's licence in accordance with subsection (3) (a) of this section.

Section 19 amended (Special hardship orders)

13—Section 19 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:—

(1) Except as provided by this section, section 36 of the *Traffic Act 1925* applies to the conviction of a person for an offence under this Act as it would apply if that offence were an offence under that Act.

(1A) No order is to be made under section 36 of the *Traffic Act 1925* in respect of a conviction for an offence under this Act if—

- (a) the offence was committed within 3 years after the end of any period of disqualification imposed under this Act; or
- (b) the offence was under section 6 where the offender had alcohol in his or her blood of a concentration equal to or greater than 0.15 of a gram of alcohol in 100 millilitres of blood; or
- (c) the offence was under section 4; or
- (d) the offence was under section 14 (5); or

- (e) the offender was the holder of a learner's licence or a provisional licence; or
- (f) the offender was driving a public vehicle at the time of the offence; or
- (g) the offence was in respect of a failure to comply with a requirement made under section 10 (4) or 10A (1).

(1B) If an order is made under section 36 of the *Traffic Act 1925* in respect of a conviction for an offence under this Act, the Court may increase the period of disqualification from holding or obtaining a driver's licence remaining at the time the order is made by an amount not exceeding the period so remaining.

(1C) The application of subsections (1A) and (1B) does not extend to an offence committed before the commencement of the *Road Safety (Alcohol and Drugs) Amendment Act 1991*.

Section 31 amended (Regulations)

14—Section 31 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (h) "such certificate." and substituting "such certificate; and";
- (b) by inserting the following paragraph after paragraph (h):—
 - (i) prescribe the fees to be paid by a person in respect of a course that person is required to attend in accordance with section 18 (1) and prescribe when and to whom those fees are to be paid.