

## TRAFFIC (No. 2).

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No. 57 of 1968.

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AN ACT to amend the Traffic Act, 1919-1967.

[Assented to 13th November, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and  
citation.

1. (1) This Act may be cited as the *Traffic Act Amendment Act (No. 2), 1968.*

Reprinted  
as approved  
for reprint  
31st August,  
1966, and  
further  
amended  
by Acts  
Nos. 57  
and 87 of  
1966 and  
56 of 1967  
and of 1968.

(2) In this Act the Traffic Act, 1919-1967, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Traffic Act, 1919-1968.

2. This Act shall come into operation on a date to be fixed by proclamation. Commence-  
ment.

3. Section seventeen of the principal Act is amended by substituting for the passage, "as a minor offence under section 74A", in lines four and five of subsection (1), the words, "for the purposes of section seventy-four". S. 17  
amended.

4. Section thirty-two of the principal Act is amended,— S. 32  
amended.

(a) as to subsection (1),—

(i) by adding, after the word, "drugs", in line eight, the words, "or of alcohol and drugs"; and

(ii) by adding, after the word, "drugs", in line three of the proviso, the passage, ", alone,";

and

(b) by adding, after subsection (5), the following subsection—

(6) A person charged with an offence under this section may, instead of being convicted of that offence, be convicted of an offence against section thirty-two AA of this Act. .

5. The principal Act is amended by adding, after section thirty-two, the following section— S. 32AA  
added.

32AA. (1) Every person who, having a percentage of alcohol in his blood of, or exceeding, 0.08 per centum, drives a motor vehicle, on a road or in any place commonly used by the public or to which the public is permitted to have access, commits an offence. Offence of  
driving  
with a  
certain  
percentage  
of alcohol  
in the blood.

(2) A person convicted of an offence against subsection (1) of this section is liable,—

(a) for a first offence, to a fine of not less than one hundred dollars or more than three hundred dollars and, in any event, the court convicting that person

shall order that any driver's license held by him be suspended, and that he be disqualified from obtaining a driver's license, for a period of not less than three months; and

- (b) for any subsequent offence, to a fine of not less than two hundred dollars or more than five hundred dollars and, in any event, the court convicting that person shall order that any driver's license held by him be suspended, and that he be disqualified from obtaining a driver's license, for a period of not less than six months.

(3) A member of the Police Force or an inspector may apprehend a person reasonably suspected of committing an offence against subsection (1) of this section and may drive that person's motor vehicle, if capable of being driven, to any police station. .

S. 32A  
amended.

6. Section thirty-two A of the principal Act is amended—

- (a) by adding after the word, "purposes", in line one, the passage, "of section thirty-two AA, and";
- (b) as to the interpretation, "percentage of alcohol in the blood", by adding, immediately before the word, "means", in line one, the passage, ", in relation to a person,"; and
- (c) by adding, after the interpretation, "percentage of alcohol in the blood", the following interpretation—

"preliminary test" means the exhalation by a person directly into apparatus approved by the Minister, under section thirty-two D of this Act, as providing an indication as to whether or not the percentage of alcohol in the blood of a person equals, or exceeds, a predetermined percentage; .

7. Section thirty-two B of the principal Act is amended— S. 32B  
amended.

(a) by repealing subsection (1) and re-enacting it, as follows—

(1) Where a member of the Police Force or an inspector has reasonable grounds for believing that—

(a) a person—

(i) was the driver of a motor vehicle the presence of which occasioned, or of which the use was an immediate or proximate cause of, personal injury or damage to property; or

(ii) has committed an offence against this Act of which the driving of a motor vehicle is an element;

Cf. Act No.  
30 of 1918,  
s. 4.  
"This Act"  
includes  
regulations

and

(b) the person had, at the time of the occurrence of the relevant event mentioned in paragraph (a) of this subsection, alcohol in his body,

the member of the Police Force or inspector may require that person to undergo a preliminary test and, if the preliminary test indicates that the percentage of alcohol in the person's blood is, or exceeds, 0.08 per centum, may require the person to submit himself for analysis of his breath for alcohol or submit himself to a medical practitioner and allow a sample of his blood to be taken, as the provisions of subsections (3), (4) and (5) of this section may, in the circumstances, require. ;

(b) as to subsection (2),—

- (i) by adding, after the word, “Force”, in line one, the words, “or an inspector”; and
- (ii) by adding after the word, “Force”, in line five, the words, “or inspector”;

(c) as to subsection (4),—

- (i) by adding, after the word, “Force”, in line one, the words, “or an inspector”; and
- (ii) by substituting for the word, “he”, in line five, the words, “the member of the Police Force or inspector” ;

(d) as to subsection (6),—

- (i) by adding, after the word, “Force”, in line one, the words, “or an inspector”; and
- (ii) by substituting for the passage, commencing with the word, “practitioner”, in line eleven, and ending with the word, “Force”, being the last word in the subsection, the following passage—

“ practitioner—

- (a) is not available within a distance of twenty-five miles;
- (b) is not available within the time limited by this section for the taking of blood samples; or
- (c) refuses to take the blood sample,

then, the member of the Police Force or inspector may, as he thinks fit, require the person to submit himself for analysis of his breath or submit himself to some other medical practitioner chosen by the member of the Police Force or inspector”;

- (e) as to subsection (8), by adding, after the word, "Force", in the penultimate line, the words, "or inspector";
- (f) by repealing subsection (9) and re-enacting it, as follows—

(9) Unless there is some substantial reason for his refusal (other than a desire to avoid providing information that may be used as evidence), the proof of which shall lie upon him, or he is, by reason of the event that gave rise to the requirement, incapable of submitting himself, or of undergoing a preliminary test, in terms of the requirement, a person who, being required pursuant to this section to—

(a) submit himself for analysis of his breath;

(b) submit himself to a medical practitioner and allow a sample of his blood to be taken for analysis; or

(c) undergo a preliminary test,

refuses to submit himself or undergo the test or refuses to co-operate in the analysis of his breath, in the taking of a sample of his blood or in the preliminary test, as the case may be, commits an offence. ;

and

- (g) by repealing subsection (10) and enacting the following subsections in its stead—

(10) A person convicted of an offence against subsection (9) of this section is liable to a fine of not less than one hundred dollars or more than three hundred dollars and, in any event, the court convicting that person shall order that any driver's license held by him shall be suspended, and that he be disqualified from obtaining a driver's license, for not less than three months.

(11) A member of the Police Force or an inspector may apprehend a person refusing to undergo a preliminary test, contrary to the provisions of subsection (9) of this section, and may drive that person's motor vehicle, if capable of being driven, to any police station. .

S. 32C  
amended.

8. Section thirty-two C of the principal Act is amended—

(a) by repealing subsection (4) and re-enacting it, as follows—

(4) Where evidence of the taking and analysis of a sample of a person's breath or blood and the calculation of an authorised person or the finding of a properly qualified analyst are accepted by the court in any proceeding such as is mentioned in subsection (1) of this section and the calculation or finding is that the percentage of alcohol in the person's blood, at a specified time, was 0.15 per centum or more, the finding or calculation is conclusive evidence that the person was, at that time, under the influence of alcohol to such an extent as to be incapable of having proper control of a vehicle, horse, other animal or drove of animals. ;

and

(b) by adding, after subsection (6), the following subsection—

(7) Except at the instance, or with the consent, of that person, evidence of a person undergoing a preliminary test and of any indication provided by such a test shall not be adduced, and, if adduced, shall not be admitted, in any proceedings, other than proceedings for unlawful arrest or for an offence against subsection (9) of section thirty-two B of this Act.

9. Section thirty-two D of the principal Act is amended by repealing subsection (2) and re-enacting it, as follows—

S. 32D  
amended.

(2) The Minister may, from time to time, by notice published in the *Government Gazette*, approve of—

- (a) apparatus for ascertaining the percentage of alcohol in the blood of a person by analysis of his breath; and
- (b) apparatus as providing an indication as to whether or not the percentage of alcohol in the blood of a person equals, or exceeds, a predetermined percentage,

and may, by notice published in like manner, revoke any such approval. .

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