

## TRAFFIC (No. 3).

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No. 84 of 1965.

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## AN ACT to amend the Traffic Act, 1919-1965.

[Assented to 7th December, 1965.]

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. 3), 1965*.

Reprinted as  
approved for  
reprint 15th  
June, 1964  
and  
amended  
by Acts Nos.  
51, 67 and 80  
of 1964, and  
No. 38 of 1965.

(2) In this Act the Traffic Act, 1919-1965, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Traffic Act, 1919-1965.

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

3. Section thirty-two of the principal Act is amended by substituting for the word, "drink", in line eight of subsection (1), the word, "alcohol". S. 32  
amended.

4. Section thirty-two A of the principal Act is repealed and the following sections are substituted— S. 32A  
repealed  
and sections  
substituted.

32A. For the purposes of sections thirty-two B to thirty-two D, inclusive, of this Act,— Interpreta-  
tion.

"authorised person" means a person authorised by the Director of the Government Chemical Laboratories, under section thirty-two D of this Act, as a person competent to operate breath analysing equipment;

"breath analysing equipment" means apparatus of a type approved by the Minister, under section thirty-two D of this Act, for ascertaining the percentage of alcohol present in a person's blood, by analysis of his breath;

"medical practitioner" has the same meaning as it has in, and for the purposes of, the Medical Act, 1894;

"percentage of alcohol in the blood" means the number of grams of alcohol contained in one hundred millilitres of blood;

"properly qualified analyst" means a person certified by the Director of the Government Chemical Laboratories, under section thirty-two D of this Act, as having the qualifications necessary for determining the percentage of alcohol in bodily substances.

Persons may  
be required  
to submit  
to breath  
analysis or  
blood  
sampling.

32B. (1) Where, arising out of the use of a vehicle or an animal on a road, a person suffers a fatal injury or suffers a bodily injury of such a nature as to require immediate medical attention, then, a member of the Police Force may, if he has reasonable grounds for believing of any person that—

- (a) he was the driver of a vehicle or animal that occasioned, or of which the use was an immediate or proximate cause of, the injury; and
- (b) he was, at the time of the occurrence of the injury affected by alcohol to the extent that his ability to control the vehicle or animal may have been impaired,

subject to subsections (3), (4) and (5) of this section, require that person to submit himself for an analysis of his breath for alcohol.

(2) Where a member of the Police Force has reasonable grounds for believing that a person has committed an offence against section thirty-two of this Act, by reason of his being under the influence of alcohol, the member of the Police Force may, subject to subsections (3) and (4) of this section, require that person to submit himself for an analysis of his breath for alcohol.

(3) A person shall not be required, under subsection (1) or (2) of this section, to submit himself for analysis of his breath, if—

- (a) breath analysing equipment, in proper working order, and an authorised person are not available within a distance of twenty-five miles, by the nearest route, from the place where the person then is;

- (b) the breath sample can not be taken within four hours after the occurrence of the event that gave rise to the requirement; or
- (c) he has sustained a bodily injury of such a nature as to be incapable of co-operating in the analysis.

(4) Where a member of the Police Force might, by virtue of subsection (1) of this section, require a person to submit himself for analysis of his breath but is precluded from so doing by subsection (3) of this section, then, but not otherwise, he may require the person to submit himself to a medical practitioner nominated by that person and allow a sample of his blood to be taken or, where the person is incapable of submitting himself, cause a sample of his blood to be taken by a medical practitioner, if, in either event (but excluding the case of a deceased person), the sample can be taken within four hours after the occurrence of the event giving rise to the requirement.

(5) A person who might, under the provisions of this section, be required to submit himself for analysis of his breath or, as the case may require, to submit himself to a medical practitioner and allow a sample of his blood to be taken may, himself, require that he be permitted to submit himself for one or other of those purposes; and a person who has been required, or permitted, to submit himself for analysis of his breath may require that, instead of, or in addition to, so submitting himself, he be permitted to submit himself to a medical practitioner nominated by him and allow a sample of his blood to be taken, for analysis for alcohol.

(6) A member of the Police Force shall give effect to a requirement made known to him by virtue of subsection (5) of this section, but only if that can be done in terms of subsection (3)

of this section or, as the case may be, within the time limited by this section for the taking of blood samples; and, where a person has, under the provisions of subsection (4) of this section, nominated the medical practitioner to whom he is to submit himself and allow a sample of his blood to be taken, if the medical practitioner is not available within a distance of twenty-five miles or within the time limited by this section for the taking of blood samples or if that medical practitioner is unwilling to take the blood sample, the person shall submit himself for that purpose to a medical practitioner chosen by the member of the Police Force.

(7) Where a person's breath is analysed under the provisions of this section, the analysis shall be made—

- (a) by an authorised person;
- (b) with breath analysing equipment; and
- (c) in accordance with the regulations;

and the authorised person shall, forthwith after the analysis, complete, sign and hand to the person whose breath was analysed a statement in writing of the percentage of alcohol (which may be by way of an indication on a scale) shown to be present in his blood and of the date and time at which the breath sample was taken.

(8) Where a sample of a person's blood is taken under the provisions of this section, it shall be taken—

- (a) by a medical practitioner; and
- (b) in accordance with the regulations;

and the sample shall be divided into two parts of which one shall be handed to the person from whom it was taken or to some other person, for the use and benefit of the former person, and one shall be handed to the member of the Police Force requiring or causing the sample to be taken.

(9) Unless there is some substantial reason for his refusal (other than a desire to avoid providing information that might be used as evidence), the proof of which shall lie upon him, or he is, by reason of the events that occurred, incapable of submitting himself in terms of the requirement, a person who, being required, pursuant to this section, to submit himself for analysis of his breath or to submit himself and allow a sample of his blood to be taken for analysis, refuses to submit himself or, having submitted himself, refuses to co-operate in the analysis of his breath or, as the case may be, to allow a sample of his blood to be taken commits an offence.

Penalty: Not less than fifty pounds or more than one hundred and fifty pounds.

(10) It is a defence to a complaint of an offence against subsection (9) of this section, arising out of the refusal of a person to submit himself for an analysis of his breath, that he required, pursuant to subsection (5) of this section, to be permitted to submit himself to a medical practitioner and allow a sample of his blood to be taken for analysis.

32C. (1) Without affecting the admissibility of any other evidence that may then be given, in any proceeding for an offence against this or any other Act in which the question whether a person was or was not, or the extent to which he was, under the influence of alcohol at the time of the alleged offence is relevant, evidence may be given of—

Evidence with regard to, and arising out of, blood or breath sampling.

(a) the taking of a breath sample from that person by an authorised person,

if taken within four hours after the time of the alleged offence;

- (b) the percentage of alcohol that was shown to be present in the blood of the person by breath analysing equipment operated by an authorised person;
- (c) the calculation, in accordance with the regulations, of the percentage of alcohol that was present in the blood of the person, at a time prior to the taking of a sample of his breath;
- (d) the taking of a blood sample from the person by a medical practitioner, if taken within four hours after the time of the alleged offence;
- (e) the analysis of the blood sample by a properly qualified analyst;
- (f) the percentage of alcohol found by a properly qualified analyst to be present in the blood sample at the time of the analysis; and
- (g) the finding of a properly qualified analyst, based on his analysis, the interval of time that has elapsed and the other relevant circumstances, as to the percentage of alcohol that was present in the blood of the person at a time prior to the taking of the sample.

(2) In any proceeding such as is mentioned in subsection (1) of this section, a certificate, in the prescribed form,—

- (a) purporting to be signed by the Director of the Government Chemical Laboratories, certifying that a person therein named is, or was at the material time, an authorised person;
- (b) purporting to be signed by a medical practitioner, certifying that an identi-

fied sample of blood was taken from a named person, on a date and at a time therein specified; or

- (c) purporting to be signed by a properly qualified analyst, certifying that an analysis of an identified sample of blood disclosed the presence of a specified percentage of alcohol and setting out the analyst's finding, based on the result of that analysis, that, at a time prior to the taking of the sample, the blood of the person from whom it was taken contained a specified percentage of alcohol,

if admitted in evidence, is *prima facie* evidence of the matters therein certified or set out, without proof of the signature of the person purporting to have signed it.

(3) In any proceeding such as is mentioned in subsection (1) of this section, evidence by an authorised person that—

- (a) the apparatus used by him, pursuant to section thirty-two B, was breath analysing equipment within the meaning of section thirty-two A, of this Act;
- (b) the breath analysing equipment was, on the occasion of its use, in proper working order and was operated by him, in the prescribed manner; or
- (c) at the material time, all regulations relating to analysis by breath analysing equipment were complied with,

is *prima facie* evidence of that fact.

(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,—

- (a) was 0.05 per centum or less, the finding or calculation is *prima facie* evidence that the person was not, at that time, under the influence of alcohol;
- (b) exceeded 0.05 per centum but was less than 0.15 per centum, the calculation or finding is evidence to be considered by the court, together with such other relevant and admissible evidence as may be given in that proceeding, but does not, of itself, give rise to any presumption as to whether the person was or was not, at that time, under the influence of alcohol;
- (c) was 0.15 per centum or more, the finding or calculation is *prima facie* evidence 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.

(5) Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act.

(6) Except at the instance, or with the consent, of the person from whom the sample was taken, evidence of the taking of a breath or blood sample, and of the result of the analysis of a breath or blood sample taken, pursuant to section thirty-two B of this Act shall not be adduced, and if adduced shall not be admitted, in any civil proceeding; and the fact of that evidence not being adduced or that

the necessary consent to its being adduced was withheld shall not be a matter for comment in any such proceeding.

32D. (1) The Governor may make regulations prescribing all matters that are necessary or convenient for the purpose of carrying out, or giving effect to, the provisions of sections thirty-two B and thirty-two C of this Act and, in particular and without limiting the generality of the foregoing, may make regulations—

Regulations,  
etc., relating  
to blood and  
breath  
sampling  
and  
analysis.

- (a) prescribing the manner of taking, and dealing with, samples of blood and the manner and methods by which those samples are to be analysed;
- (b) providing for the assessment by a properly qualified analyst of the percentage of alcohol in blood prior to the time of taking a sample thereof and the rate at which the analyst is to compute the variation of the blood alcohol concentration over a given period;
- (c) prescribing—
  - (i) the maintenance, preparation and use of breath analysing equipment;
  - (ii) the methods to be employed in ensuring that breath analysing equipment gives accurate results; and
  - (iii) the method of calculating the percentage of alcohol that was present in the blood of a person, at a time prior to the taking of a sample of his breath;
- (d) prescribing forms, including any certificate required for the purposes of the sections in this subsection mentioned; and

- (e) prescribing the fees payable to a medical practitioner attending a person for the purpose of taking a sample of his blood and those payable in respect of the analysis of those samples and for the payment and recovery of those fees.

(2) The Minister may, from time to time, approve of apparatus for ascertaining the percentage of alcohol present in a person's blood by analysis of his breath and may revoke any such approval.

(3) The Director of the Government Chemical Laboratories may, from time to time,—

- (a) certify a person as having the qualifications necessary for determining the percentage of alcohol present in bodily substances;
- (b) certify a person as being competent to operate breath analysing equipment;

and may rescind any certificate given under this subsection.

(4) Where a medical practitioner is, pursuant to section thirty-two B of this Act, requested by a member of the Police Force to take a sample of the blood of a person, no action shall lie against the medical practitioner by reason only of his complying with that request. .