

WESTERN AUSTRALIA

ROAD TRAFFIC AMENDMENT ACT (No. 2)

No. 121 of 1987

AN ACT to amend the *Road Traffic Act 1974* and for a related purpose.

[Assented to 24 December 1987]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Road Traffic Amendment Act (No. 2) 1987*.

Commencement

2. The provisions of this Act shall come into operation on such day as is or days as are respectively fixed by proclamation.

Principal Act

3. In this Act the *Road Traffic Act 1974** is referred to as the principal Act.

[*Reprinted as approved 19 July 1983 and amended by Acts Nos. 95 and 102 of 1984, 54 and 89 of 1985 and 78 of 1986.]

Section 5 amended

4. Section 5 of the principal Act is amended in subsection (1) by repealing the definition of “moped” and substituting the following—

“ “moped” means a motor cycle which has a propelling engine having a piston displacement not exceeding 50 millilitres and which is designed so as to be capable of a speed not exceeding 60 kilometres per hour whether or not it is also capable of being propelled as a pedal cycle; ”.

Section 65 amended

5. Section 65 of the principal Act is amended—

(a) in the definition of “authorized person”, by inserting after “operate” the following—

“ all types of ”; and

(b) by deleting “person.” and substituting the following—

“ person;

“self-testing breath analysing equipment” means breath analysing equipment of a type that is designated as self-testing apparatus under section 72 (2a). ”.

Section 66 amended

6. Section 66 of the principal Act is amended in subsection (5) by deleting paragraph (a) and substituting the following paragraph—

“ (a) a member of the Police Force might require a person to provide a sample of his breath for analysis under subsection (2) but is precluded from so doing by subsection (4) or section 68 (11); ”.

Section 67A amended

7. Section 67A of the principal Act is amended in subsection (1) by deleting “section 67 (2)” and substituting the following—

“ section 66 (1aa) or 67 (2) ”.

Section 68 amended

8. Section 68 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsections—

“ (1) Where, pursuant to section 66, a person provides a sample of his breath for analysis the analysis shall be made by breath analysing equipment.

(1a) If the breath analysing equipment is not self-testing breath analysing equipment subsections (1b) to (4) shall have effect in relation to the analysis.

(1b) The breath analysing equipment shall be operated by an authorized person and shall be operated in accordance with the regulations relating to analysis by breath analysing equipment of the relevant type. ”;

(b) in subsection (3)—

(i) by deleting “If” and substituting the following—

“ Subject to subsection (11), if ”;

(ii) by deleting “the authorized person” and substituting the following—

“ a member of the Police Force ”; and

(c) by inserting after subsection (4) the following subsections—

“ (5) If the breath analysing equipment is self-testing breath analysing equipment subsections (6) to (10) shall have effect in relation to the analysis.

(6) The breath analysing equipment shall be operated by an authorised person and shall be operated in accordance with the regulations relating to analysis by self-testing breath analysing equipment of the relevant type.

(7) Subject to subsection (11), if the breath analysing equipment does not indicate a result in the prescribed manner at the conclusion of the analysis, a member of the Police Force may again require the person to provide a sample of his breath for analysis or to allow a medical practitioner to take a sample of his blood for analysis under section 66 (2).

(8) If the breath analysing equipment indicates a result in the prescribed manner at the conclusion of the analysis, the result so indicated shall be the analysis result and shall be deemed to be the percentage of alcohol present in the blood of the person at the time the sample of breath was provided.

(9) Subject to subsection (10), the authorized person shall complete, sign, and hand to the person a statement in writing of the analysis result and of the date and time of the analysis.

(10) If the manner of indication of a result prescribed for the purposes of subsections (7) and (8) is the printing of a statement by the breath analysing equipment, the authorized person may comply with the requirements of subsection (9) by signing and dating the statement so printed and handing it to the person.

(11) If the person has provided 2 samples of his breath for analysis under section 66 (2) and the analysis of each sample has failed, the person shall not be required to provide another sample of his breath for analysis under section 66 (2).

(12) For the purposes of subsection (11) an analysis of a sample of breath shall be regarded as having failed if, and only if—

- (a) the analysis is made by breath analysis equipment that is not self-testing breath analysing equipment and the breath analysing equipment is determined not to be in proper working order; or
- (b) the analysis is made by self-testing breath analysing equipment and the breath analysing equipment does not indicate a result in the prescribed manner. ”.

Section 70 amended**9. Section 70 of the principal Act is amended—****(a) in subsection (1)—****(i) by inserting after “64” the following—**

“ or 64A ”;

(ii) by inserting after “equipment” in paragraph (c) the following—

“ that was not self-testing breath analysing equipment ”; and

(iii) by inserting after paragraph (c) the following paragraph—

“ (ca) the manner in which self-testing breath analysing equipment indicated the result of an analysis; ”;

(b) in subsection (2) (ba) (ii), by inserting after “equipment” the following—

“ , other than self-testing breath analysing equipment, ”;

(c) in subsection (2) (ba) (iii), by inserting before “were” the following—

“ of the relevant type ”;

(d) by inserting after subsection (2) (ba) the following paragraph—

“ (bb) purporting to be signed by an authorized person—

(i) certifying that a person therein named provided a sample of breath for analysis on a date and at a time stated therein;

(ii) certifying that the sample of breath so provided was analysed by apparatus operated by him and that apparatus was self-testing breath analysing equipment within the meaning of section 65;

(iii) certifying that the breath analysing equipment was operated by him in the prescribed manner and that the regulations

relating to analysis by self-testing breath analysing equipment of the relevant type were complied with;

- (iv) certifying that the breath analysing equipment indicated a result in the prescribed manner at the conclusion of the analysis;
- (v) setting out the analysis result obtained from the analysis;
- (vi) certifying that in accordance with subsection (9) of section 68 he completed, signed, and handed to the person by whom the sample of breath was provided, a statement as required by that subsection, or that he complied with the requirements of that subsection by signing, dating, and handing to the person, a statement printed by the breath analysing equipment; and
- (vii) certifying that he was at the material time an authorized person; ”;

(e) by inserting after subsection (2) the following subsection—

“ (2a) In any proceeding such as is mentioned in subsection (1), evidence by an authorized person that—

- (a) the apparatus operated by him pursuant to section 68 was self-testing breath analysing equipment within the meaning of section 65;
- (b) self-testing breath analysing equipment was operated by him in the prescribed manner and the regulations relating to analysis by self-testing breath analysing equipment of the relevant type were complied with; or
- (c) self-testing breath analysing equipment indicated a result in the prescribed manner on the occasion of its operation,

is *prima facie* evidence of that fact. ”;

(f) in subsection (3) (a), by inserting after “equipment” the following—

“ , other than self-testing breath analysing equipment, ”;

(g) in subsection (3) (b), by inserting before “were” the following—

“ of the relevant type ”;

(h) in subsection (3) (c), by inserting after “equipment” the following—

“ that was not self-testing breath analysing equipment ”;
and

(i) by inserting after subsection (3b) the following subsection—

“ (3c) In any proceeding for an offence against section 67 (2) (a) a certificate in the prescribed form 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 authorized person is *prima facie* evidence of the matters therein certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was such Director. ”.

Section 72 amended and transitional provision

10. (1) Section 72 of the principal Act is amended—

(a) in subsection (1) (b), by deleting “that equipment” and substituting the following—

“ breath analysing equipment, other than self-testing breath analysing equipment, ”;

(b) by inserting after subsection (1) (b) the following paragraph—

“ (ba) prescribing the manner of indication of a result for the purposes of section 68 (7) and (8); ”;

(c) by inserting after subsection (2) the following subsection—

“ (2a) Where approval is given under subsection (2) (a) in relation to a type of apparatus that, in the opinion of the Minister, does not need to be tested to determine whether it is in proper working order after each occasion on which it is used to make an analysis of a sample of breath, the Minister may, in the notice by which the approval is given, designate that type of apparatus as self-testing apparatus. ”;

and

(d) in subsection (3) (b), by inserting after “operate” the following—

“ all types of ”.

(2) A certificate that was in force under section 72 (3) (b) of the principal Act immediately before the commencement of subsection (1) (d) shall have effect after that commencement as if it certified the person named in the certificate as being competent to operate all types of breath analysing equipment.

Section 89 amended

11. Section 89 of the principal Act is amended—

(a) in subsections (1) and (2) by inserting after “uses” the following—

“ , or attempts to drive or use, ”; and

(b) by repealing subsection (3) and substituting the following subsections—

“ (3) If a complaint of an offence under this section has been made by a member of the Police Force and the owner of the vehicle has informed a member of the Police Force of loss or damage arising out of the alleged offence, it shall be the duty of the member of the Police Force by whom the complaint was made to make application to the Court by which the complaint is heard for compensation under this section on behalf of the owner of the vehicle.

(4) The Court shall enquire into such application and may, on or after conviction and in addition to any penalty imposed under this section, make such orders for compensation including loss of hire, time, fuel, or other loss and damage sustained by the owner and for the costs of the application against any or all persons convicted of an offence under this section in respect of the vehicle as seems just.

(5) In determining the application, the Court shall take into account the circumstances of the offence and whether the owner had left the vehicle unlocked or otherwise unsecured and may reduce wholly or in part the amount of compensation accordingly.

(6) Until the contrary is proved, any loss or damage sustained to the vehicle or by the owner shall be deemed for the purposes of this section to be the responsibility of the person or persons convicted of an offence under this section in respect of the vehicle.

(7) In the exercise of its jurisdiction under this section—

- (a) the Court shall have the powers of a Local Court under the *Local Courts Act 1904* and all such orders that it shall make shall be final but the Court shall not make any order for compensation against any person unless an opportunity has been given to that person to show why the order should not be made;
- (b) the Court shall not be bound by the strict rules of evidence and may receive any written affidavit or statutory declaration evidencing loss or damage as it considers to be reliable.

(8) No order for compensation under this section shall affect the right of any person to recover by civil proceedings any sum in excess of the amount of the order, and refusal or reduction of compensation under this section shall be no bar to civil proceedings, but no order for compensation against a convicted person shall deprive that person of the right in civil proceedings to contribution from any tortfeasor.

(9) In this section “owner of the vehicle”, in relation to an offence under this section, means the owner of the vehicle at the time of the offence and includes a person who was in lawful possession or charge of the vehicle at the time of the offence.

(10) Section 719 of *The Criminal Code* does not apply to an offence under this section. ”.
