



ANNO VICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 69 of 1975

An Act to amend the Traffic Act 1949–1975 in certain particulars

[ASSENTED TO 12TH DECEMBER, 1975]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Traffic Act Amendment Act 1975 (No. 2)*.

(2) In this Act the *Traffic Act 1949–1975* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Traffic Act 1949–1975*.

2. New subs. (2)–(6) of s. 16A. Section 16A of the Principal Act is amended by omitting subsections (2) to (6), both inclusive, and substituting the following subsections:—

“(2) (a) A member of the Police Force may request any person found by him or who he suspects on reasonable grounds was during the last preceding two hours:—

- (i) driving a motor vehicle, tram or train on a road or elsewhere;
- (ii) attempting to put in motion a motor vehicle, tram or train on a road or elsewhere;
- (iii) in charge of a motor vehicle, tram or train on a road or elsewhere; or
- (iv) driving or in charge of or attempting to put in motion a vessel being used or apparently about to be used in navigation,

to provide a specimen of breath for a breath test by him if he suspects on reasonable grounds—

that, having regard to the behaviour of the person in relation to the motor vehicle, tram, train or vessel or having regard to the behaviour of the motor vehicle, tram, train or vessel in question, the person has alcohol or any drug in his body; or

that in relation to the motor vehicle, tram, train or vessel the person has committed an offence against this Act during the last preceding two hours.

(b) Where a motor vehicle, tram, train or vessel is involved in an incident resulting in injury to or death of any person or damage to property a member of the Police Force may request any person who he suspects on reasonable grounds—

- (i) was driving or attempting to drive the motor vehicle, tram or train on a road or elsewhere;
- (ii) was in charge of the motor vehicle, tram or train on a road or elsewhere; or
- (iii) was driving or in charge of or attempting to drive the vessel,

at the time of the incident to provide a specimen of breath for a breath test by him.

(3) A member of the Police Force who is exercising a power conferred on him by subsection (2) may request the person in question to provide the specimen of breath—

- (a) at the time when and the place where he makes the request including at any police station where the person may then be; or
- (b) at the police station nearest to that place or at some other police station conveniently located as soon as practicable after he makes the request if the member of the Police Force believes on reasonable grounds that it is reasonable for such person to be taken to a police station for the purpose, having regard to the circumstances of the case.

(4) A request shall not be made under subsection (2) unless it is made as soon as practicable and within two hours after the occurrence of the event whereby a member of the Police Force is authorized by that subsection to make such a request.

(5) If a person requested by a member of the Police Force under subsection (2) to provide at a police station a specimen of breath for a breath test by him fails to go voluntarily to the police station for that purpose any member of the Police Force, using such force as is necessary, may take the person to the police station for that purpose.

This subsection shall be construed so as not to prejudice or affect in any way the provisions of section 42.

(6) If—

(a) it appears to a member of the Police Force in consequence of a breath test carried out by him on a specimen of breath of any person that the concentration of alcohol in the person's blood equals or exceeds 80 milligrams of alcohol to 100 millilitres of blood; or

(b) a person requested by a member of the Police Force under subsection (2) to provide a specimen of breath for a breath test by him—

(i) elects not to provide the specimen; or

(ii) fails to provide the specimen in the manner directed by the member of the Police Force who makes the request; or

(iii) declines to wait for such time as is reasonable in the circumstances to enable the test to be carried out satisfactorily,

any member of the Police Force, using such force as is necessary, may—

(c) take the person to a police station, hospital or other place authorized under this section; or

(d) if the person is already at a police station, detain him there or take him to such other police station as is convenient and reasonable in the circumstances,

for the purposes of subsection (8).

This subsection shall be construed so as not to prejudice or affect in any way the provisions of section 42."

3. Repeal of subs. (7) of s. 16A. Section 16A of the Principal Act is amended by omitting subsection (7).

4. Amendment of subs. (8) of s. 16A. Section 16A of the Principal Act is further amended by, in subsection (8)—

(a) omitting from paragraph (a) the words "or, as the case may be, the police station or hospital or other place as aforesaid" and substituting the words "police station or a hospital or other place authorized under this section as aforesaid";

(b) omitting from paragraph (b) the words "who has been arrested for any offence";

- (c) omitting from paragraph (c)—
(i) the words “ or subsection (3) ” wherever they occur;
(ii) the second subparagraph and substituting the following subparagraph:—

“A requisition shall not be made under this paragraph unless it is made as soon as practicable and within two hours after the occurrence of the event whereby a member of the Police Force is authorized under subsection (2) to request the person to provide a specimen of breath for a breath test by him.”;

- (d) omitting from paragraph (e) provision (i) and substituting the following provision:—

“(i) A person who is required pursuant to this subsection to provide a specimen of his breath for analysis shall do so, when directed by the medical practitioner or authorized member of the Police Force operating or who is to operate the breath analysing instrument, by placing his mouth over the mouthpiece of the instrument and blowing directly and continuously (and without escape of breath otherwise) through that mouthpiece into the instrument until told to stop by the medical practitioner or authorized member of the Police Force operating the instrument.”;

- (e) adding to provision (ii) of paragraph (e) the following subparagraph:—

“An authorized member of the Police Force shall continue as such notwithstanding that the writing whereby he was made such has been lost, mislaid or destroyed or otherwise cannot be produced and there may be issued to him as prescribed by this provision (ii) a fresh instrument of authority which shall be deemed to have been effective on and from the date when the instrument that it replaces took effect.”;

- (f) omitting paragraph (f) and substituting the following paragraph:—

“(f) A person who is required pursuant to this subsection to provide a specimen of his blood for a laboratory test shall do so by permitting such specimen to be taken by a medical practitioner indicated by the member of the Police Force who made the requisition when and as directed by and to the satisfaction of the medical practitioner, he being hereby authorized to take such specimen whether or not the person consents to the taking.”;

- (g) omitting from paragraph (g) the words “ as though it is ” and substituting the words “ as if it were ”.

5. Amendment of subs. (9) of s. 16A. Section 16A of the Principal Act is further amended by, in subsection (9)—

(a) omitting from paragraph (a) the words “ or, as the case may be, the police station or hospital or other place as aforesaid ” and substituting the words “ police station or a hospital or other place authorized under this section as aforesaid ”;

(b) omitting paragraph (c) and substituting the following paragraph:—

“(c) A person who is required pursuant to this subsection to provide a specimen of his blood for a laboratory test shall do so by permitting such specimen to be taken by a medical practitioner

indicated by the member of the Police Force who made the requisition when and as directed by and to the satisfaction of the medical practitioner, he being hereby authorized to take such specimen whether or not the person consents to the taking.

A person who is required pursuant to this subsection to provide a specimen of his urine for a laboratory test shall do so when and as directed by a medical practitioner.”.

6. Amendment of subs. (15) of s. 16A. Section 16A of the Principal Act is further amended by, in subsection (15)—

(a) inserting in paragraph (b) after the words “ fails to do so ” the words “ as prescribed by that subsection ”;

(b) inserting in provision (v) after the word “ provide ” the words “ as prescribed by subsection (8) ”;

(c) inserting in provision (B) after the word “ provide ” the words “ as prescribed ”;

(d) omitting from paragraph (c) the words “ evidence of the matters contained therein ” and substituting the words “ evidence of those matters ”;

(e) omitting paragraph (d) and substituting the following paragraph:—

“(d) A certificate referred to in paragraph (b) shall, upon its production in any proceeding, be accepted as evidence—

- (i) that a requisition to provide a specimen of his breath for analysis was made to the person concerned by the member of the Police Force named therein as the member of the Police Force making the requisition;
- (ii) that the person concerned failed to provide as prescribed by subsection (8) a specimen of breath when required;
- (iii) that an approved breath analysing instrument was available at the place where and at the time when the requisition was made for the purpose of analysing a specimen of breath provided in accordance with the requisition,

and until the contrary is proved shall be conclusive such evidence.”.

7. Amendment of subs. (16) of s. 16A. Section 16A of the Principal Act is further amended by, in subsection (16)—

(a) omitting from subparagraph (b) provision (i) and substituting the following provision:—

“(i) that there was received at the laboratory of the analyst from the member of the Police Force named in the certificate a specimen of the blood of the person named in the certificate provided by that person on the date and at the place and time stated in the certificate;”;

(b) omitting from subparagraph (b) the words “ evidence of the matters contained therein ” and substituting the words “ evidence of those matters ”;

(c) inserting in paragraph (c) after the words “ fails to do so ” the words “ as prescribed by the subsection under which the requisition is made ”;

(d) omitting paragraph (d) and substituting the following paragraph:—

“(d) A certificate referred to in paragraph (c) shall, upon its production in any proceeding, be accepted as evidence—

- (i) that a requisition to provide a specimen of his blood for a laboratory test was made to the person concerned by the member of the Police Force named therein as the member of the Police Force making the requisition;
- (ii) that the person concerned failed to provide as prescribed by the subsection under which the requisition was made a specimen of his blood when required,

and until the contrary is proved shall be conclusive such evidence.”.

8. New subs. (18) of s. 16A. Section 16A of the Principal Act is further amended by omitting subsection (18) and substituting the following subsection:—

“(18) A certificate purporting to be signed by a medical practitioner that on a date and at a place and time stated therein he took a specimen of blood for a laboratory test of a person named therein shall, upon its production in any proceeding, be accepted as evidence of those matters and until the contrary is proved shall be conclusive such evidence.

Where by any provision of this section a certificate of or purporting to be signed by a medical practitioner, an authorized member of the Police Force or an analyst is made evidence of any matter, a certificate purporting to be signed by a medical practitioner, an authorized member of the Police Force or an analyst, as the case may be, as to that matter shall, upon its production in any proceeding, be accepted as evidence—

- (a) that the signature thereto is that of the person by whom the certificate purports to be made;
- (b) of all matters contained therein including the status, authority or qualification of the person by whom the certificate purports to be made,

and until the contrary is proved shall be conclusive such evidence.”.

9. New subs. (19) of s. 16A. Section 16A of the Principal Act is further amended by omitting subsection (19) and substituting the following subsection:—

“(19) Where a member of the Police Force forwards a specimen of blood to the laboratory of an analyst by certified mail evidence by that member of the Police Force in any proceedings that he forwarded the specimen of blood to the laboratory of the analyst by certified mail and a certificate purporting to be signed by the analyst (produced in evidence) certifying that the specimen of blood was received at his laboratory from that member of the Police Force shall constitute sufficient evidence of compliance with subparagraph (ii) of paragraph (a) of subsection (16) or with subparagraph (ii) of paragraph (a) of subsection (17), as the case may be, and it shall be immaterial whether the specimen of blood is received at the laboratory of the analyst as certified mail or as ordinary mail.”.

10. Amendment of subs. (22) of s. 16A. Section 16A of the Principal Act is further amended by, in paragraph (a), inserting after the word “provide” where it occurs in provision (ii) the words “as prescribed by subsection (8)”.

11. Amendment of subs. (24) of s. 16A. Section 16A of the Principal Act is further amended by omitting from subsection (24) paragraphs (b) and (c) and substituting the following paragraph:—

- “(b) Evidence admissible pursuant to paragraph (a)—
- (i) may be given in the same manner, whether by a witness or by a certificate, as it may be given pursuant to the provisions of this section, other than this subsection, in respect of an offence against this Act;
 - (ii) is admissible in the same circumstances and in all respects to the same extent as it would be admissible pursuant to the provisions of this section, other than this subsection, in respect of an offence against this Act and, subject to provision (iii), shall have the same evidentiary value in relation to the same matters and times as are provided for by the provisions of this section, other than this subsection, in respect of such evidence;
 - (iii) where such evidence indicates a concentration of alcohol in that person’s blood equal to or exceeding 150 milligrams of alcohol to 100 millilitres of blood, shall be conclusive evidence that he was adversely affected by alcohol at all times in relation to which such evidence has evidentiary value pursuant to this section.”.