

1997

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

**MOTOR TRAFFIC (ALCOHOL AND DRUGS)
(AMENDMENT) BILL (NO 2) 1997**

EXPLANATORY MEMORANDUM

Circulated by the authority of the Minister for Urban Services

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Outline

The *Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No 2) 1997* (the Bill) amends the *Motor Traffic (Alcohol and Drugs) Act 1997* (the Act) to provide for the compulsory blood testing of a driver who attends hospital following an accident that involves a motor vehicle he or she was driving. It will not matter that the accident occurred outside the ACT. This is an arrangement that applies in New South Wales.

The *Traffic (Amendment) Bill 1997* makes similar provision with respect to pedestrians, cyclists and riders of animals.

At present the Act provides for blood and other body samples to be taken in various circumstances. For example, when a person is injured and it appears the injuries make it dangerous for the person to submit to a breath test consistently with the taking of blood samples being compulsory following an accident the Bill makes it compulsory that blood samples be taken in these circumstances.

At present the Act does not permit blood samples to be taken in various circumstances. For example, when taking the sample would be detrimental to the person's medical condition. The Bill preserves the intent of these provisions.

The opportunity has also been taken to review a number of the procedural aspects of the Act with a view to reducing the cost of its administration. For example, consistently with the responsibilities of nurses, the Bill provides that blood samples may be taken by a nurse or by a medical practitioner rather than only by a medical practitioner.

Financial implications

Taking blood samples from drivers of motor vehicles who attend hospital following an accident will result in some additional costs. It is anticipated these cost increases will be offset, at least in part, by efficiency measures implemented by the Bill.

Details of the Bill are as follows

Clauses 1, 2 and 3 - Short title; Commencement; Principal Act - these clauses are formal and provide for citation and commencement. The operative provisions of the Bill will commence when the Minister notifies a day in the Gazette. This is to allow time for necessary administrative measures to be put in place

Clause 4 - Interpretation inserts new definitions in the Act.

The definition of "accident" makes it clear that an accident can take place in the ACT or elsewhere. For practical purposes this means that various provisions of the Act will apply to a driver of a vehicle that is involved in an accident in New South Wales.

The definition of "driver involved in an accident" makes it clear that a driver must appear to be 15 or older. The definition also makes it clear that to be a "driver involved in an accident" for the purposes of the Act a person must attend hospital for the purpose of examination or treatment as a consequence of an accident.

Clause 5 - Taking blood samples from persons in custody - amends section 15 of the Act. Section 15 provides for blood samples to be taken in various circumstances. For example, when a person's injuries prevent him or her from taking a breath test. The section is amended so that it is an offence for a medical practitioner or a nurse not to take a sample of a person's blood. A penalty of 10 penalty units is provided. The amendments do not affect the operation of procedural requirements of the section. For example, the sample is placed in two containers one of which is available to the person from whom the sample is taken.

Clause 6 - Insertion- inserts a new section 15AA Taking blood samples from persons in hospital in the Act. The section provides that when a driver of a vehicle that has been involved in an accident attends hospital as a result of the accident a sample of the driver's blood is to be taken by a medical practitioner or a nurse within 2 hours of the person's arrival at the hospital. It is an offence for the medical practitioner or nurse not to take the sample. A penalty of 10 penalty units is provided.

The section also includes procedural provisions for dealing with the sample of blood. For example, it provides for the sample to be placed in two containers one of which is made available to the person from whom the sample was taken.

Clause 7 - Analysis of blood samples - amends section 15A of the Act. The section provides for blood samples taken under section 15 to be analysed by an analyst to ascertain the concentration of alcohol in the blood. The amendment will apply the section to samples taken under sections 15 and 15AA. It will also permit a police officer to request the analyst to analyse

the sample for drugs other than alcohol when the police officer has reasonable cause to suspect that the person has another drug in his or her body.

Clause 8 - Insertion - inserts a new section 15B Statements to be provided - in the Act. The new section will require a police officer to arrange for a person from whom a sample of blood has been taken under section 15 or 15AA to provide the person with a written statement. The statement will include details concerning the taking of the sample and the results of the analysis. If the person has not already been given one of the containers in which his or her blood was placed the statement will also include advice on how the person may collect one of the containers.

Clause 9 - Medical examinations - amends section 16 of the Act. The section provides for the medical examination of and for samples to be taken from a person who is suspected of having a drug other than alcohol in his or her body. The section is amended so that it applies to a driver of a vehicle who attends hospital as a consequence of an accident involving the vehicle. It is also amended to make it an offence for a medical examination not to be conducted and for samples not to be taken. Penalties of 10 penalty units are provided.

The section is also amended to include procedural requirements relating to the sample. These will result in the sample being placed in two containers one of which is available to the person.

Clause 10 - Substitution - inserts a new section 16A - Analysis of body samples - in the Act. The new section provides for the analysis of samples taken under section 16.

The clause also repeals existing section 17 and inserts a new section 17 - **Exemptions from requirements to take blood samples or carry out examinations**. Existing section 17 provides for circumstances in which a medical examination of, or, a sample is not to be taken from, a person. New section 17 provides that a medical practitioner or a nurse is not required:

- to conduct a medical examination of, or, take a sample from a person if to do so would be detrimental to the person's medical condition
- to take a sample under section 15 or 16 if the person objects on religious or other conscientious grounds or on medical grounds
- to take a sample under section 15AA if a sample has already been taken, or will be taken under section 15.

New section 17 also provides a defence to a medical practitioner or nurse if the medical examination was not conducted or the blood sample was not taken because of the behaviour of the person or for other reasonable cause.

Clause 11 - Protection of police officers and medical staff - amends section 18 of the Act as a consequence of it being an offence for medical practitioners and nurses not to take samples or conduct medical examinations.

Clause 12 - Prescribed blood alcohol concentration exceeded - makes a consequential amendment to section 19 of the Act.

Clause 13 - Refusal to submit to blood test or medical examination - makes a consequential amendment to section 23 of the Act.

Clause 14 - Certificate of evidence - makes consequential amendments to section 41 of the Act. In particular amendment (h) provides that certificate evidence that is provided following the taking of a blood sample in a New South Wales hospital is to be evidence in proceedings under the Act. Section 4G(11A) of the *Traffic Act 1909* (NSW) makes similar provision with respect to certificates prepared by ACT medical practitioners, nurses and analysts when a sample is taken in an ACT hospital following an accident in New South Wales.

Clause 15 - Evidence for insurance purposes - makes consequential amendments to section 41A of the Act.