

1993

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT)
BILL (NO.3) 1993**

EXPLANATORY MEMORANDUM

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Explanatory Memorandum

The Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No.3) 1993 ("the Bill") amends the *Motor Traffic (Alcohol and Drugs) Act 1977* ("the Act") to enable a person to be given a Traffic Infringement Notice and incur demerit points in respect of a drink driving offence and to require that a person whose licence has been cancelled by a Court must hold a probationary licence for 12 months before the person may apply for a full or provisional licence.

The Motor Traffic (Alcohol and Drugs) Act 1977

The Act provides for the detection of persons who drive motor vehicles after having consumed alcohol and drugs and establishes various offences in respect of drinking and driving. In particular, the Act prescribes the maximum blood alcohol concentration which a driver may have and section 19 makes it an offence for a person to drive if the person's blood alcohol concentration is equal to, or exceeds, the prescribed concentration.

The Act enables a Traffic Infringement Notice (TIN) to be given to a person in relation to an offence against section 19 where the person is a first offender, is an experienced driver and his or her blood alcohol concentration has not exceeded the prescribed concentration by more than .03 grams of alcohol per 100 millilitres of blood.

The Act also authorises the cancellation of a driving licence by a Court or the disqualification from holding a driving licence of a person and enables a Court to order the Registrar of Motor Vehicles ("the Registrar") to grant a licence to a person whose licence has been so cancelled or who has been disqualified from holding a driving licence.

The Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No.3) 1993

The Bill amends the Act so that a TIN may be given to a driver in respect of an offence against section 19 of the Act, regardless of whether the person is a first offender.

However, it will remain the case that a TIN may only be given if the driver is an experienced driver and has not exceeded the prescribed concentration of blood alcohol by more than .03 grams of alcohol per 100 millilitres of blood.

In addition the Bill amends the Act so that where a TIN is given for such an offence the offender will also incur the number of demerit points prescribed in respect of the offence by the Motor Traffic Regulations.

The Bill also amends the Act to the effect that where a Court orders the Registrar to grant a licence to a person who has been disqualified from holding a driving licence or whose licence has been cancelled by the Court, the only type of licence it may order the Registrar to grant is a probationary licence.

The Bill complements the amendments to the *Motor Traffic Act 1936* effected by the Motor Traffic (Amendment) Bill (No.3) 1993 introducing a scheme for demerit points to be incurred against a driver's licence where a traffic offence is committed.

Financial implications

There are no financial implications

Details of the Bill are in the Attachment.

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Clauses 1 and 2 - Formal provisions

Clauses 1 and 2 are formal provisions dealing with the short title and commencement of the Bill, respectively. The substantive provisions of the Bill commence upon the day on which the substantive provisions of the Motor Traffic (Amendment) Bill (No.3) 1993 commence.

Clauses 3 and 4 - Interpretation

Clause 3 is an interpretation provision which establishes that references in the Bill to the "Principal Act" are references to the *Motor Traffic (Alcohol and Drugs) Act 1977*.

Clause 4 amends section 4 of the Act consequentially upon the amendments to the *Motor Traffic Act 1936* effected by the Motor Traffic (Amendment) Bill (No.3) 1993 to introduce a graduated driver licensing scheme. It also defines the term "Commonwealth vehicle".

Paragraph 4(a) amends the definition of the term "experienced driver" to the effect that the period for which a person holds a learner's licence cannot be counted towards the three years for which a person must hold a licence to be an experienced driver.

Paragraph 4(b) amends the definition of the term "prescribed concentration" by replacing paragraphs (a) and (b) of that definition with new paragraphs (a) and (b).

Pursuant to new paragraph (a) the "prescribed concentration" in relation to the holder of a learner, provisional, probationary or special licence is .02 grams of alcohol per 100 millilitres of blood.

Pursuant to new paragraph (b) the "prescribed concentration" in relation to the driver of a heavy motor vehicle, dangerous goods vehicle,

Commonwealth vehicle, public motor vehicle, or private hire car is .02 grams of alcohol per 100 millilitres of blood.

Paragraph 4(c) defines the term "Commonwealth vehicle".

Clause 5 - Traffic infringement notice

Clause 5 amends section 26A of the Act which treats a first offence against section 19 of the Act, by an experienced driver, where the driver has not exceeded the prescribed blood alcohol concentration by more than .03 grams of alcohol per 100 millilitres of blood, as a prescribed offence for the purposes of section 180A of the *Motor Traffic Act 1936*, making it possible for a Traffic Infringement Notice (TIN) to be issued in respect of such an offence.

Clause 5 amends section 26A so that it treats an offence against section 19, provided the offender is an experienced driver and has not exceeded the prescribed concentration of blood alcohol by more than .03 grams of alcohol per 100 millilitres of blood as a prescribed offence for the purposes of sections 180A and 180NB of the *Motor Traffic Act 1936*.

As a result a person, whether or not he or she is a first offender, may be given a TIN in respect of an offence against section 19 of the Act and where a TIN is given the offender will incur the number of demerit points prescribed in respect of the offence by the Motor Traffic Regulations.

Clause 6 - Cancellation and disqualification - previous offenders

Clause 6 amends section 32 of the Act by omitting paragraph 32(6)(c) which requires that where a person, other than a first offender, commits an offence of the type to which section 26A applies the Court must suspend or cancel the person's licence. These provisions are no longer required as the revised provisions of section 26A no longer distinguish between first offenders and previous offenders - in all cases to which section 26A applies the offender will be given a TIN.

Paragraph 6(b) corrects an incorrect reference in paragraph 32(6)(e).

Clause 7 - Requirements to be complied with where licence suspended or cancelled

Clause 7 amends subsection 35(3) of the Act to make it clear that where a person's licence is suspended or cancelled the person has no entitlement to a refund of the fee or any part of the fee paid on the grant of the licence.

Clause 8 - Restoration of cancelled licences

Clause 7 amends section 40 to the effect that where the Court makes an order directing the Registrar to grant a licence to a person who has had his or her licence cancelled, or has been disqualified from driving by the Court, under the Act, the only type of licence which the Court may direct the Registrar to grant is a probationary licence.

This provision complements amendments to the *Motor Traffic Act*, effected by the Motor Traffic (Amendment) Bill (No.3) 1993, which require that where a person's licence is cancelled by a Court, or cancelled because the person has incurred demerit points on a full licence, the person must hold a probationary licence for 12 months before the person may apply for a provisional or full licence.