

1993

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

**MOTOR TRAFFIC (ALCOHOL AND DRUGS)  
(AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of the Minister for Urban Services**

**Terry Connolly MLA**

**MOTOR TRAFFIC (ALCOHOL AND DRUGS)  
(AMENDMENT) BILL 1993**

**Outline**

The Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1993 ("the Bill") amends the *Motor Traffic (Alcohol and Drugs) Act 1977* ("the Act") to close a loophole which enables a driver who has undergone a breath or blood analysis in accordance with the Act, which shows the driver's blood alcohol concentration to be equal to or above the prescribed limit, to avoid conviction by relying upon a subsequent blood analysis result or other evidence even though that evidence, of itself, is consistent with the driver's blood alcohol concentration having exceeded the prescribed concentration.

**Financial implications**

There are no financial implications arising from the Bill.

***The Motor Traffic (Alcohol and Drugs) Act 1977***

The Act provides for the detection of persons who drive motor vehicles after having consumed alcohol or drugs, for approval of breath analysis instruments and includes measures for the treatment and rehabilitation of persons found guilty of offences under its provisions.

In particular, Part III of the Act sets out a number of offences. In the A.C.T. an offence is committed where a driver of a motor vehicle is required by police to provide a breath or a blood sample, within a specified time, and the sample is analysed to show that the blood alcohol concentration of the driver equals or exceeds the prescribed concentration. The offence provision requires the police to rely upon the result of a breath or blood analysis conducted in accordance with the Act to prove the offence. If the reliability or accuracy of such a breath or blood analysis is successfully challenged, the police are unable to rely upon other evidence to prove the commission of the offence.

Even if the evidence relied upon by a defendant to challenge the accuracy of a breath or blood analysis is, itself, consistent with, or indicative of, the defendant having had a blood alcohol concentration equal to or in excess of the prescribed concentration that evidence may not be used to show the commission of the offence. This loophole in the legislation has enabled a defendant to successfully appeal a conviction (Harrington v. Zaal (SCA 118/91)).

***The Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1993***

The Bill overcomes this deficiency in the Act by amending the Act to make it an offence for a driver to have, within a specified time of ceasing to drive, a blood alcohol concentration equal to or in excess of the prescribed blood alcohol concentration and to enable the use of evidence other than a breath or blood analysis conducted in accordance with the Act to establish the commission of the offence.

**MAIN AMENDMENT**

***Clause 3 - prescribed blood alcohol concentration exceeded***

Sections 19 and 20 of the Act setting out, respectively, the offences of -

- driving when there is present in the driver's blood a concentration of alcohol equal to or more than the prescribed concentration of alcohol, as determined by a breath analysis conducted in accordance with the Act; and
- driving when there is present in the driver's blood a concentration of alcohol equal to or more than the prescribed concentration of alcohol, as determined by a blood analysis,

are repealed and replaced with new provisions.

New subsection 19(1) creates a new offence where a person drives a motor vehicle and within a specified "relevant" period of ceasing to drive the vehicle has a blood alcohol concentration equal to or exceeding the prescribed concentration.

The "relevant period" for the purpose of subsection 19(1) is defined in new subsection 19(3) and is the period between the driver ceasing to drive until the latest time at which the police may conduct a breath analysis in accordance with the Act or, where it is not possible to conduct such an analysis, the latest time at which a blood sample may be taken in accordance with the Act.

New subsection 19(2) sets out the methods by which, for the purposes of establishing the commission of an offence against new subsection 19(1), the blood alcohol concentration of a driver may be determined. New paragraph 19(2)(a) permits evidence of a breath or blood analysis, in accordance with the Act, to be used to show the blood alcohol concentration of a driver and new paragraph 19(2)(b) allows evidence of other types of analyses to establish blood alcohol concentration. It is intended that where the police carry out a breath or blood analysis such analysis will be done in accordance with the Act. Paragraph 19(2)(b) overcomes the problem highlighted by Harrington v. Zaal by permitting evidence other than the breath or blood analysis conducted in accordance with the Act to be used to show the commission of the offence.

#### **OTHER AMENDMENTS**

*Clauses 1, 2, 4 and 5 - formal, technical and consequential amendments*

*Clause 1* is a formal clause dealing with the citation of the Bill.

*Clause 2* is an interpretation clause.

The amendments effected by *paragraphs 4(a) and (c)* and *clause 5* are consequential upon the amendment to the Act repealing sections 19 and 20 and replacing them with a new section 19.

*Paragraph 4(b)* is a formal amendment which provides for the citation of an Act in accordance with modern drafting practice.