

1992

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

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

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MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1992

The Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1992 ("the Bill") amends the *Motor Traffic (Alcohol and Drugs) Act 1977* ("the Act") to -

- enable breath analysis instruments of a particular type to be approved by notice in the *Gazette* instead of each instrument being approved separately by the Minister;
- change the method by which the Minister approves screening devices from a "notice in writing" to a "notice in the *Gazette*";
- exempt breath analyses conducted at police stations from the application of the privacy provisions of the Act;
- enable a print-out produced by an approved breath analysis instrument to be presented in Court as evidence of the matters stated in it and to remove the need for preparation of an evidentiary certificate; and
- bring the language of the Act into accord with modern usage and drafting practice.

Financial implications

Although there are no direct financial implications arising from the Bill changes to the requirements for the approval of breath analysis instruments, preparation of evidentiary certificates and the conduct of breath analyses at police stations will result in a more cost efficient use of police resources.

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.

Approval of breath analysis instruments and screening devices

The Act provides for the Minister to separately approve each breath analysis instrument. The Bill amends the Act to enable breath analysis instruments to be approved generically, by type, by a notice in the *Gazette*.

The Bill also changes the method by which the Minister approves screening devices from a "notice in writing" to a "notice in the *Gazette*".

Exception to privacy

The Act provides that when administering a breath test the operator of a breath analysis instrument should take all reasonable steps to ensure that it is not readily apparent to the public that the breath analysis is being conducted. The police carry out breath tests in police stations, roadside vans and hospitals. Where a test is conducted at a police station, to comply with the privacy provisions, the police take a test subject from a staging room, in which other test subjects awaiting breath testing may be present, to have the test administered in a separate room.

Test subjects taken to a police station are observed for fifteen minutes to ensure that they do not consume anything which might interfere with the test and to allow time for the alcohol present in the mouth to disappear.

The Bill amends the Act to enable the police to administer the breath test in the staging room where other test subjects are held and observed while awaiting testing. The amendments will enable more efficient and less labour intensive processing of breath test subjects by avoiding the need for a police operator of breath analysis equipment to observe and test each subject in a separate and private room.

Certificate evidence

The Act provides for the use of evidentiary certificates relating to the conduct by the police of breath analyses using a breath analysis instrument.

The Bill amends the Act to enable the print-out produced by the breath analysis instrument to be used in place of such a certificate. The matters required to be included in the print-out are specified in the regulations and include such matters as the date, start time and location of the test, particulars of the test subject, the police involved in conducting the test, and the results.

The amendment eliminates the time consuming preparation of an evidentiary certificate by the police.

MAIN AMENDMENTS

Clause 4 - approval of instruments

Section 5 of the Act is amended to replace the existing provision which enables the approval of each breath analysis instrument by the Minister with a new subsection 5(1) which enables the Minister to approve breath analysis instruments generically, by type, by means of a notice published in the *Gazette*.

Subsection 5(2) which requires the Minister to approve screening devices by notice in writing is amended to require that such devices be approved by notice in the *Gazette*.

Clause 6 - precautions for privacy

Section 13 of the Act requires that the conduct of a breath analysis be conducted, insofar as it is practicable, in such a way as to protect the privacy of the subject of the analysis.

Clause 6 amends the Act so that this provision does not apply in respect of a breath analysis conducted at a police station. The amendment enables the police officer who operates the breath analysis instrument to conduct a breath analysis in the staging room, where a number of persons may be waiting under the observation of that police officer prior to providing a breath sample.

Clause 7 - certificate evidence

Clause 7 amends section 41 of the Act consequentially upon the amendment effected by clause 4 of the Bill by omitting paragraph 41(1)(aa). The words "*prima facie*" and "*of the facts on which they are based*" are also omitted from subsection (1) wherever they occur. These amendments are made because the words omitted do not add to, or detract from, the standard or burden of proof otherwise required for establishing evidence of the offence under the relevant provisions of the Act.

Subparagraphs (1)(a)(iiia) and (iiib) and (1)(b)(iiia) and (iiib) and subsections (3) and (4) are omitted from section 41. They set out the required form of an evidentiary certificate relating to the use of breath

analysis equipment. These requirements are replaced by new paragraph 41(1)(ba) which enables the presentation of the print-out produced by an approved breath analysis instrument to be taken, in Court proceedings, to be evidence of the matters stated in the print-out.

The matters which must be included in the print-out are prescribed in regulations made under the Act and include such matters as -

- . the date of the analysis;
- . starting time of the analysis;
- . location of the analysis;
- . particulars of the subject;
- . particulars of the police conducting the analysis; and
- . the results of the analysis.

OTHER AMENDMENTS

Clause 10 - savings provisions

Clause 10 ensures that where a breath analysis instrument of a particular type was approved under subsection 5(1) prior to the commencement of this amending Act, an instrument of that type will be deemed to be approved for the purposes of the Act as amended. The amendment has the effect of preserving existing approvals.

The amendment also specifies that subsection 27(1) of the *Interpretation Act 1967* applies to such approvals. As a result, they may be revoked or amended or varied by the Minister.

Clauses 1, 2, 3, 5, 8 and 9 - formal, technical and consequential amendments

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

Clauses 2 and 3 are interpretation clauses. *Clause 3* amends section 4 of the Act to omit the definition of "approved breath analysing instrument" and replace it with a definition for an "approved breath analysis instrument", reflecting modern English usage. Such an instrument must be approved by the Minister under the provisions of new subsection 5(1).

Clauses 5, 8 and 9 make a series of minor amendments to the Act, most of which are to bring the language into accord with current drafting practice, including the removal of sexist language, and others which are required as a consequence of the main amendments made by the Bill.

