

1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the Authority of
Ms Rosemary Follett MLA
Attorney-General)

15055/89 Cat. No. 89 5135 4

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1989

OUTLINE

The Motor Traffic (Alcohol and Drugs) Act 1977 (the principal Act) creates several offences relating to driving a motor vehicle while under the influence of alcohol or a prescribed drug. The principal Act establishes a procedural framework for analysing the breath or the blood of persons who are suspected of driving while under the influence of alcohol. Under the provisions of the principal Act, a police officer may require a person to undergo a blood test where it is not practicable for that person to undergo a screening test or a breath analysis.

Several prosecutions have failed where the driver charged was unconscious (as a result, say, of an accident) at the time the blood sample was taken. This is because the relevant offence in section 20 of the principal Act implicitly assumes that the blood was taken from a conscious person with his or her active consent. The Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1989 (the Bill) amends the principal Act to make it clear that a medical practitioner may take a sample of blood for analysis where he or she decides that the person is incapable of giving or refusing permission. The Bill makes it an offence if analysis determines that the blood alcohol concentration of that sample is equal to or more than the prescribed limit. The Bill inserts new procedures for the taking of blood samples for analysis and makes provision for the admissibility of written certificate evidence to prove formal facts in subsequent proceedings. A new provision limits the use which may be made of certificate evidence obtained under the Act in any private proceedings which relate to an insurance contract.

Other technical amendments are also made to the principal Act in the interests of improved drafting style. None of these amendments changes the substantive law.

FINANCIAL STATEMENT

The Bill has no effect on Government expenditure. The procedures which the amendments reflect are already followed.

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1989

CLAUSE NOTES

Clause 1: Short Title

Clause 1 cites the short title of the Act as being the Motor Traffic (Alcohol and Drugs) (Amendment) Act 1989.

Clause 2: Principal Act

This clause defines the "principal Act" as being the Motor Traffic (Alcohol and Drugs) Act 1977

Clause 3: Interpretation

Clause 3 amends section 4 of the principal Act to extend the definition of 'medical practitioner' to include persons who are approved qualified persons under the Medical Practitioners Registration Act 1930. A definition of "one-way box" is inserted. A significant feature of a one-way box is that only approved analysts have access to samples once they are placed in it.

Clause 4: Restriction on screening tests and breath analyses

This clause recasts paragraphs 14(1)(a) and (b) and inserts new subsection 14(1A) to clarify the time limits within which a police officer may require a person to undergo a screening test or a breath analysis. These amendments merely re-express the existing provisions in subsection 14(1) of the principal Act without changing the law.

Clause 4 also amends paragraph 14(2)(a) of the principal Act to preclude a screening test or a breath analysis where it would be impracticable - for example, where the person is unconscious - or where it would be dangerous because of injury which the person has suffered. This amendment has the effect of permitting, in those circumstances, a blood test under section 15 of the principal Act.

Clause 5: Taking Blood Samples

This clause makes a number of amendments to section 15 of the principal Act which deals with procedures for the taking of blood samples for analysis.

The amendments:

- remove gender specific language from section 15;
- insert new subsection 15(4A) which has the effect of applying the time constraints in subsection 14(1) of the principal Act to the taking of a blood sample from an unconscious person;
- insert new subsections 15(6) to 15(10) which establish revised procedures for the taking of blood from persons, including those incapable of giving or refusing permission for the procedure. Where a person is unable to consent to a blood test, the medical practitioner must put both the original and the control samples in sealed and marked containers in the one-way box. The police officer is then required to arrange for an approved analyst (who alone has access to the one-way box) to collect the two containers as soon as practicable. New subsections 15(8) and (9) require the police officer to give the person a written statement containing relevant particulars within a reasonable time after the original sample has been analysed. New subsection 15(10) provides that a person may collect the analysed control sample of blood from the analyst within 6 months of the sample being taken.

Clause 6: Insertion

Clause 6 inserts new section 15A which sets out the procedure for analysing a blood sample. In the case of blood having been taken from an unconscious person and both samples having been put into the one-way box, the analyst must analyse one sample and keep the unanalysed control sample under refrigeration until collected or 6 months elapse.

Clause 7: Blood Alcohol Exceeding Prescribed Concentration

Clause 7 inserts new subsection 20(2) into the principal Act. This creates an offence where a driver has had a blood sample taken while unconscious and the analysis determines that the concentration of alcohol in this blood equals or exceeds the prescribed concentration.

Clause 8: Certificate Evidence

Clause 8 amends section 41 by:

- removing gender-specific language; and
- inserting new paragraph 41(cb) which provides that a certificate, signed by a medical practitioner and setting out the procedures followed in taking a blood sample from an unconscious person, is prima facie evidence of the matters stated in the certificate.

Clause 9: Insertion

Clause 9 inserts new section 41A which deals with evidence for insurance purposes. The new section limits the use which may be made of evidence of proceedings under the principal Act in relation to blood samples taken from an unconscious person. This evidence is not admissible in any civil proceedings concerning an insurance contract for the purpose of proving that the person had driven under the influence of alcohol.

Clause 10 and Schedule: Additional Amendments

Clause 10 and the Schedule amend the principal Act by substituting "officer" for "member" wherever occurring. "Police officer" is defined in section 14 of the Interpretation Act 1967. The references concerned are those which were not caught by a similar amendment to the principal Act made in 1985.