

1990

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

**MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1990**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Attorney General**

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## MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1990

The *Motor Traffic (Alcohol and Drugs) Act 1977* (the Principal Act) provides powers to examine the breath or blood of persons who drive motor vehicles for the presence of alcohol or drugs.

In particular the Principal Act provides for a maximum concentration of 0.08 grams of alcohol per 100 millilitres of blood.

The Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1990 (the Bill) amends the Principal Act to lower the current 0.08 blood alcohol concentration (BAC) to 0.05 for all drivers, and further lowers the BAC to 0.02 for drivers under 25 years of age in their first 3 years of driving and for drivers of heavy vehicles, dangerous goods vehicles and public vehicles.

The Bill also provides that drivers in the .05 BAC category who record a BAC between .05 and .08 (inclusive) for the first time will be issued with a traffic infringement notice carrying a penalty of \$500. Repeat offenders in the same circumstances will be dealt with by the Court and subject to a Court imposed fine and mandatory licence suspension up to 6 months, or licence cancellation within the Court's discretion.

### **Financial Considerations**

Publicising the new requirements will involve some costs. It is expected that an increase in prosecutions and the issue of traffic infringement notices will result in an increase in revenue from fines.

Details of the Bill are included in the Attachment.

ATTACHMENT

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1990

Clause 1 states that the short title of the Bill will be the Motor Traffic (Alcohol and Drugs) (Amendment) Act 1990.

Clause 2 provides that the Bill commences on 1 January 1991.

Clause 3 defines the Principal Act to be the *Motor Traffic (Alcohol and Drugs) Act 1977*.

Clause 4 provides for the insertion of several definitions into subsection 4(1) of the Principal Act.

Paragraph 4(a) substitutes a new definition of 'prescribed concentration' which reduces the general maximum concentration of alcohol in the blood from .08 grams to .05 grams per 100 millilitres of blood, and includes also a maximum of .02 grams for a person under the age of 25 years who is an inexperienced driver and for the driver of a heavy motor vehicle, a dangerous goods vehicle or a public motor vehicle.

Paragraph 4(b) inserts the following definitions:

- 'dangerous goods vehicle' means a vehicle which is or is required to display a sign or marking on it under the Dangerous Goods Regulation 1978, or under a code prescribed by the Regulation;
- 'experienced driver' means a person who has held a driver's licence for at least three years under the Motor Traffic Act 1936 or under a corresponding State or Territory law;

'heavy motor vehicle' means a motor vehicle that has a manufacturer's gross vehicle mass exceeding 15 tonnes, or a motor vehicle and trailer combination, or an articulated vehicle with a manufacturer's gross combination mass exceeding 15 tonnes.

Clause 5 amends section 10A of the Principal Act which provides that as soon as possible after a person has undergone a breath screening test, a police officer must provide that person with a written statement giving details of that test. The amendment inserts a requirement that the screening test must indicate that the concentration of alcohol in the blood of the person is equal to or more than the prescribed concentration, before the police officer is required to provide a written statement. This is intended to streamline random breath testing operations as such statements are unnecessary if the reading is below the prescribed concentration.

Clause 6 amends section 11 of the Principal Act by inserting new subsection 11(2) which provides that subsection 11(1) applies

when a screening test indicates that the concentration of alcohol in the blood of the person is equal to or more than .02 grams of alcohol per 100 millilitres of blood, and

the police officer has reasonable grounds to believe that the person is an inexperienced driver under 25 years of age or a driver of a heavy motor vehicle, a dangerous goods vehicle or a public motor vehicle.

Subsection 11(1) provides that a person who registers the prescribed concentration or above in a screening test can be taken into custody for the purpose of having a breath analysis test carried out.

This amendment is intended to overcome circumstances where a person may escape prosecution. For example, where the driver doesn't have his or her licence in his or her possession at the time and the police officer is unable to immediately determine whether a 0.02 BAC applies or not. In such a situation the officer can require the driver to undertake a breath analysis test whilst driver details are established.

Clause 7 consequentially amends section 19 of the Principal Act which provides that it is an offence if a driver's blood alcohol concentration exceeds .08, by substituting for ".08" the words "the prescribed concentration".

Clause 8 inserts the following new definition into subsection 25(1) of the Principal Act:

"traffic infringer" means a person who has been issued with a traffic infringement notice (TIN) in respect of an offence against section 19 or 20 [exceeding the prescribed concentration of alcohol] and

- a) the prescribed penalty has been paid; or
- b) the penalty has not been paid and the TIN has not been withdrawn and the Court has not dismissed a charge in respect of the offence under the TIN.

Clause 9 inserts new section 26A into the Principal Act. New section 26A deals with persons in the .05 BAC category who record a reading of between .05 and .08 for the first time. These persons are issued with a TIN carrying a penalty of \$500.

New subsection 26A provides that where a police officer has reason to believe that

- a) a person has committed an offence against section 19 or 20,
- b) the person is not a traffic infringer as defined in clause 8;
- c) the driver falls into the .05 BAC category; and
- d) the prescribed concentration is not less than .05 grams and no more than .08 grams,

the traffic infringement notice provisions apply under section 180A of the Motor Traffic Act 1936 and carry a \$500 penalty.

Clause 10 amends section 28 of the Principal Act by inserting new subsection 28(2).

New subsection 28(2) provides that where a driver in the .05 BAC category is convicted of an offence against section 19 or 20 and the prescribed concentration is not less than .05 grams and no more than .08 grams, subsection (1) does not apply.

The effect of this provision is to remove the Court's option of imposing a discretionary jail sentence for offenders in this category.

Clause 11 amends section 31 of the Principal Act by adding new subsection 31(2).

New subsection 31(2) provides that where a driver in the .05 BAC category is convicted of an offence against section 19 or 20 and the prescribed concentration is not less than .05 grams and no more than .08 grams, subsection (1) does not apply.

The effect of this provision is that such offenders will not be subject to the mandatory 3 month licence suspension or cancellation provisions for a first offence. As stated above, such persons will be issued with a traffic infringement notice carrying a \$500 penalty.

Clause 12 amends section 32 of the Principal Act by inserting new subsections 32(5) and (6). The effect of these subsections is to provide that where a previous offender in the .05 BAC category is convicted of an offence against section 19 or 20 and the prescribed concentration is not less than .05 grams and no more than .08 grams, the mandatory licence cancellation or disqualification provisions in subsection (1) do not apply. [Such a person is dealt with via a traffic infringement notice.]

If however, the driver in the above category is a traffic infringer, the driver is subject to a Court imposed fine, mandatory licence suspension for up to six months or licence cancellation within the Court's discretion.

New subsection 32(5) provides that subsection (1) does not apply where a previous offender in the .05 BAC category is convicted of an offence against section 19 or 20 and the prescribed concentration is not less than .05 grams and no more than .08 grams.

New subsection 32(6) provides that where the driver in the above circumstances, is a traffic infringer the Court shall -

- i) if the person is a licence holder, suspend the licence for a period up to 6 months or cancel the licence within the Court's discretion until otherwise ordered;
- ii) if the person is deemed to be licensed to drive under section 107 or 108 of the Motor Traffic Act 1936, [which deal with visiting motor vehicles and drivers of Defence Force vehicles],
  - disqualify the person from holding a licence for up to 6 months, or if warranted in the circumstances disqualify the person from holding a licence until the Court otherwise orders;
- iii) if the person does not hold a licence and is not a person referred to in (ii) above,
  - disqualify the person from holding a driving licence for up to 6 months or if warranted in the circumstances disqualify the person from holding a licence until the Court otherwise orders.

Clause 13 consequentially amends section 42 of the Principal Act which provides for the effect of non-compliance with the Principal Act in the process of carrying out a breath or blood analysis test, by substituting the reference to ".08" with the words "the prescribed concentration".

Clause 14 consequentially amends subsection 42B(2) of the Principal Act which provides for the effect of non compliance with the Principal Act, where a person refuses to provide a breath sample, by substituting the reference to ".08" with the words "the prescribed concentration".

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Clause 8

Paragraph (a) of proposed definition of 'traffic infringer'  
Page 3, line 24 -

Omit "26A(e)", substitute "26A(f)".