

2010

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

**ROAD TRANSPORT (ALCOHOL AND DRUGS) LEGISLATION
AMENDMENT BILL 2010**

GOVERNMENT AMENDMENTS

SUPPLEMENTARY EXPLANATORY STATEMENT

Circulated by authority of
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Minister for Transport

- **EXPLANATORY STATEMENT FOR GOVERNMENT AMENDMENTS**

These government amendments are minor or technical in nature or in response to Scrutiny Committee comments (refer to Assembly Standing Order 182A).

OVERVIEW

The first of these amendments relates to the new offence of drug driving offence, and is a technical amendment relating to evidence about the presence of prescribed drugs in oral fluid or blood. The amendments align the drafting of the evidentiary provision with the drafting of a similar evidentiary provision relating to alcohol tests. These amendments are made in response to comments from the Scrutiny of Bills Committee in Scrutiny Report No. 30 of 2010.

Government amendments 2 to 11 relate to the provisions dealing with immediate suspension notices.

The existing offence in section 32 of the *Road Transport (Driver Licensing) Act 1999* of 'drive while suspended' (the section 32 offence) may apply to an ACT driver whose licence is suspended by an immediate suspension notice given under proposed new section 61B of the *Road Transport (General) Act 1999*. Section 61B will be inserted by clause 131 of the Bill. However, ACT legislation can only suspend an interstate or external licence holder's right to drive in the ACT.¹ Therefore, the section 32 offence would not apply to interstate or external licence holders, because it is not possible for an ACT enactment to suspend an interstate or external driver licence. If an interstate or external licence holder drives in contravention of an immediate suspension notice, the driver is not, technically speaking, driving 'while suspended'.

The proposed Government amendments will ensure that immediate suspension notices can be enforced effectively in relation to these interstate and external licence holders by suspending their right to drive in the ACT and by ensuring that there is a specific offence of driving while a suspension notice is in effect.

DETAIL

Amendment 1 Clause 42 **Proposed new section 20 (1B)**

This Government amendment replaces proposed section 20 (1B) of the *Road Transport (Alcohol and Drugs) Act 1977*. New section 20 (1B) is an evidentiary provision, based on section 19 (4). It provides that in proceedings for an offence under section 20 of that Act, evidence may be given that a person has a prescribed drug in his or her oral fluid, based on an analysis conducted under section 13 G (new paragraph 20 (1B) (a)); or in the person's blood, based on an analysis conducted under section 15A (new paragraph 20 (1B) (b)). This amendment ensures that the

¹ Due to the operation of section 4A of the Commonwealth's *Jervis Bay Territory Acceptance Act 1915*, the ACT effectively encompasses the Jervis Bay Territory. In practice, this means that a person whose right to drive in the ACT is suspended is also suspended from driving in the Jervis Bay Territory.

evidence that the Court has available when hearing a charge under section 20 are the results of an analysis from a NATA accredited laboratory, rather than evidence from a screening test or on-site police analysis.

Amendment 2 Clause 129
Proposed new section 5A, note 1, new dot point

This Government amendment inserts a reference to the offence in new section 61BA (which is a new offence provision dealing with driving while a suspension notice is in effect) in new section 5A. New section 5A is a standard provision that explains the application of the Criminal Code.

Amendment 3 Clause 131
Proposed new section 61A, new definition of interstate driver licence

This Government amendment inserts a new definition of *interstate driver licence*. This amendment is included as it is related to the amendments that provide for the effect of an immediate suspension notice that is given to an interstate driver licence holder.

Amendment 4 Clause 131
Proposed new section 61B (2) (f) (i)

This Government amendment applies to 61B (2) (f), which sets out the matters that must be stated in an immediate suspension notice. It substitutes new sections 61B (2) (f) (i) and (ia), which explain that if the person holds an ACT² driver licence, the suspension notice suspends the person's driver licence. If the person holds an interstate or external driver licence³, the notice operates to suspend that person's right to drive in the ACT.

Amendment 5 Clause 131
Proposed new section 61B (2) (f) (iii)

This Government amendment applies to 61B (2) (f), which sets out the matters that must be stated in an immediate suspension notice. It substitutes new sections 61B (2) (f) (iii) and (iiia). These provision explains that while the notice is in force, if the person holds an ACT driver licence, the person must not drive a vehicle and if the person holds an interstate or external driver licence, the person must not drive a vehicle in the ACT.

² It should be noted that although these provisions do not explicitly refer to an ACT driver licence, under the dictionary to the *Road Transport (Driver Licensing) Act 1999*, 'driver licence' means a driver licence issued under that Act. This definition applies generally to the road transport legislation: see the dictionary to the *Road Transport (General) Act 1999*.

³ The term *external driver licence* is defined in dictionary to the *Road Transport (Driver Licensing) Act 1999*.

Amendment 6 Clause 131
Proposed new section 61B (4) (a)

This Government amendment applies to section 61B (4), which sets out the consequences of being served with an immediate suspension notice. The amendment substitutes new sections 61B (4) (a) and (aa). These provisions explain that if the person holds an ACT driver licence, the person's licence is suspended. If the person holds an interstate or external driver licence, the person's right to drive in the ACT is suspended.

Amendment 7 Clause 131
Proposed new section 61B (4) (c)

This Government amendment applies to section 61B (4), which sets out the consequences of being served with an immediate suspension notice. The amendment substitutes new sections 61B (4) (c) and (ca). These provisions explain that if the person holds an ACT driver licence, the person must not drive a vehicle. If the person holds an interstate or external driver licence, the person must not drive a vehicle in the ACT.

Amendment 8 Clause 131
Proposed new section 61BA

This Government amendment inserts new section 61BA, which creates a new offence of 'drive while suspension notice in effect.' The offence is committed if the person has been given an immediate suspension notice that is still in effect and the person drives in contravention of the notice. The penalty for the offence is 20 penalty units. This penalty is lower than the maximum penalty for the section 32 offence of driving while suspended. That offence carries a higher maximum penalty because it can apply where a driver's licence has been suspended by order of a court. Disobeying a court order is viewed as more serious than disregarding a notice, direction or order made by a non-judicial officer. The penalty in proposed section 61BA is the same as the penalty for the offence of 'driving while a person's right to drive is suspended'. That offence is found in section 44 (6) of the *Road Transport (General) Act 1999*, but applies only in relation to non-payment of infringement penalties. The proposed offence is a strict liability offence. It is similar to other strict liability offences in the Bill and in the road transport legislation that involve failing to comply with directions or orders given by police or authorised persons. The use of strict liability in this context is justified, given the road safety objectives that underpin the introduction of the provisions for immediate suspension orders.

Amendment 9 Clause 135
Proposed new dictionary definitions, new definitions of *conditional licence* and *driver licence receipt*

This is a consequential Government amendment to insert definitions of *conditional licence* and *driver licence receipt* in the dictionary to the *Road Transport (General)*

Act 1999. These terms are used in the new definition of *interstate driver licence*, to be inserted by Government amendment 3.

Amendment 10 Clause 135
Proposed new dictionary definitions, new definitions of *probationary licence* and *provisional licence*

This is a consequential Government amendment to insert definitions of *probationary licence* and *provisional licence* in the dictionary to the *Road Transport (General) Act 1999*. These terms are used in the new definition of *interstate driver licence*, to be inserted by Government amendment 3.

Amendment 11 Clause 144

This item substitutes replacement clause 144, which amends **Schedule 1, part 1.7** to insert new items 12A and 12B. This clause consequentially amends the table to include references to the offences in new section 61BA and 61C of the *Road Transport (General) Act 1999*.