

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

ROAD TRANSPORT (ALCOHOL AND DRUGS) AMENDMENT BILL 2013

SUPPLEMENTARY EXPLANATORY STATEMENT

GOVERNMENT AMENDMENTS

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SUPPLEMENTARY EXPLANATORY STATEMENT

These amendments are circulated under Standing Order 182A on the basis that they are in response to comment made by the Scrutiny Committee.

Outline of amendments

These amendments address comments made about the operation of the amendments proposed by clauses 5 to 12 of the Road Transport (Alcohol and Drugs) Amendment Bill 2013 (the Bill), to the effect that a person directed by a police officer to undergo an alcohol or drug screening test must remain at the place where the screening test is being carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed.

As the Explanatory Statement for the Bill outlined, the purpose of the amendments was to create certainty for police and drivers, by codifying the common law position that the power to request a person to undergo a drug or alcohol screening test, necessarily implies a power to require the driver to remain until the screening test has been conducted. It was also intended to clarify the outer limits of the time a person could be required to remain as 30 minutes, in order to deal with random screening requests made when the police do not have a working screening instrument immediately available.

The concern that has been raised is that, in order to invoke the power to require the driver to remain for up to 30 minutes, while a screening device is obtained, there should be some circumstance that justifies the exercise of that power to avoid scope for an arbitrary exercise of the power.

In response to this, amendments have been prepared which address these concerns but preserve the efficacy of the provisions of the *Road Transport (Alcohol and Drugs) Act 1977* (the Act) to support routine random alcohol and drug screening – a fundamental plank of the ACT's road safety strategy.

The amendments to the Bill are to:

- (a) clause 5, relating to section 8, which provides for random alcohol screening;
- (b) clause 9, relating to section 13A, which provides for random drug screening; and
- (c) clause 15, inserting new section 22B, dealing with the offence of failing to stay for a screening test.

The amendments to the Bill do not extend to the clauses amending those sections of the Act that provide a power to require drivers or driver trainers to undergo a screening test in the following situations:

- a police officer has reasonable cause to suspect the person was the driver or driver trainer of a vehicle involved in an accident, at the time of the accident;

- a police officer does not know or has doubt about who was the driver of a vehicle at the time of the accident and has reasonable cause to suspect the person was in the vehicle at the time of the accident;
- a police officer has reasonable cause to suspect the person has committed the offence of culpable driving, or was a driver trainer in a vehicle involved in an offence of culpable driving.

These are circumstances where it cannot be considered that the basis for requiring a person to remain until a screening test can be completed is “random” or arbitrary.

The amendments to the Bill modify the amendments to sections 8 and 13A to provide that, where an alcohol or drug screening device is not immediately available, a police officer may only direct a driver to remain at the place where the screening test is to be conducted for the time (not exceeding 30 minutes) reasonably necessary for the screening device to be made available and the test to be completed, where the police officer has reasonable cause to suspect that the person has alcohol or a drug in the person’s body.

There has been no change to the existing powers in the Act for a police officer to require a person to undergo an alcohol or drug screening test based on nothing more than the fact of the person being the driver of a vehicle on a road or road related area, or the police officer having reasonable cause to suspect that the person was, shortly before the requirement to undergo the screening test, a driver on road or road related area. It remains the case that that there is no requirement for a police officer to suspect that the driver or driver trainer is under the influence of, or otherwise affected by, alcohol and/or drugs when considering whether to request the driver of a vehicle to undergo a random screening test.

Human rights analysis

It is considered that any limitation on a person’s human rights arising from this amendment is reasonable and proportionate, and can be demonstrably justified in a free and democratic society as per section 28 of the *Human Rights Act 2004*.

The nature of the right being limited

The amendment engages the right to security of the person and freedom from arbitrary detention and the right to freedom of movement. The right to liberty and security of the person provides that no-one may be arbitrarily arrested or detained, and that no-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law. The right to freedom of movement provides that everyone has the right to move freely within the ACT. The right to freedom of movement may be subject to restrictions as provided by law which are necessary to protect public order, public health or the rights and freedoms of others.

The importance of the purpose of the limitation

The purpose of the limitation is to clarify, for drivers and for police, the power of police officers to require a person to remain to undertake a screening test to enable enforcement of the drug and drink driving provisions of the road transport legislation. Roadside drug and alcohol testing is an integral part of the Government’s road safety strategy. The promotion of road safety through prevention of drink or drug driving is of high importance, given the well-known risks of death and injury associated with drink and drug impaired driving.

The nature and extent of the limitation

The limitation is not considered extensive, and provides that a driver, who has been directed to undertake a drug or alcohol screening test in accordance with the road transport legislation, must remain at the place where the alcohol or drug screening test is being carried out until the test is completed. In addition, if a screening device is not immediately available and the police officer has reasonable cause to suspect that the person has alcohol or a drug in the person's body, the police officer may direct the person to remain at the place where the screening test is to be carried out for the time (not exceeding 30 minutes) reasonably necessary for a screening device to be made available and the test to be completed. A person commits an offence under section 22B, if a person fails to comply with such a direction by a police officer.

The relationship between the limitation and its purpose

The limitation is directly relevant to the purpose of clarifying the power of police officers to require a person to remain to undertake a roadside screening test to enforce the drug and drink driving provisions of the road transport legislation.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no less restrictive means reasonably available that would achieve the purpose of the amendment. The amendment to the Bill ensures that, for the purposes of random screening, where police do not have a screening device immediately available to conduct a screening test, they can only direct the person to remain for up to 30 minutes while a device is sourced, where a police officer has reasonable cause to suspect that the person has alcohol or a drug in their body. An alternative approach to achieve the objective of confirming whether or not the person was impaired by alcohol or drugs would be to take the driver into custody to undertake the screening test at the nearest police station or other location with suitable facilities. This would not be a less restrictive means of achieving the purpose of the provision.

Notes on Clauses

Amendment 1

Amendment 1 substitutes new clause 5, that inserts new sections 8 (1A) and 8 (1B), for clause 5 of the Bill.

Existing section 8 (1) provides that a police officer may require a person to undergo one or more alcohol screening tests in accordance with the directions of that officer.

New section 8 (1A) provides that a person must remain at the place where the alcohol screening test is being carried out until the test is completed in accordance with the police officer's directions. This new section confirms the existing common law position that the power of a police officer to stop and direct a driver to undergo an alcohol screening test necessarily includes an obligation that the driver remains stationary until the test is completed. The section reflects a similar requirement in section 13A(2) of the Act in relation to drivers directed to undertake a drug screening test under section 13A.

New section 8 (1B) provides that, in addition to the requirement in new section 1A, if an alcohol screening device is not immediately available and the police officer has reasonable cause to suspect that the person has alcohol in the person's body, the police officer may direct

the person to remain at the place where the alcohol screening test is to be conducted for the time (not exceeding 30 minutes) reasonably necessary for an alcohol screening device to be made available and the test to be completed. The amendment ensures that, in those cases when a police officer is not equipped with an alcohol screening device and encounters a driver who they consider should be screened before being allowed to resume driving, they may direct that driver to remain at that location until a screening device can be sourced and the screening test completed. However the maximum time the driver can be required to remain in this situation is 30 minutes.

The notes to the provision clarify that circumstances where a screening device is not immediately available include where there is no working screening device at the place where the screening test is to be carried out.

Amendment 2

Amendment 2 substitutes new clause 9, inserting new section 13A (2A), for clause 9 of the Bill.

New section 13A (2A) provides that, in addition to the requirement in existing section 13A (2) for a person to remain at the place where the drug screening test is completed in accordance with the police officer's directions, if a drug screening device is not immediately available and the police officer has reasonable cause to suspect that the person has a drug in the person's body, the police officer may direct the person to remain at the place where the drug screening test is to be conducted for the time (not exceeding 30 minutes) reasonably necessary for a drug screening device to be made available and the test to be completed. The amendment ensures that when a police officer encounters a driver who they consider should be screened before being allowed to resume driving, because they have a reasonable cause to suspect that the person has a drug in their body, they may direct that driver to remain at that location until a screening device can be sourced and the screening test completed. However the maximum time the driver can be required to remain in this situation is 30 minutes.

Amendment 3

Amendment 3 amends clause 15 of the Bill, which amends section 22B of the Act.

Section 22B presently provides that a person commits an offence if the person fails to remain as directed by a police officer to undertake a drug screening test. Clause 15 of the Bill amends section 22B to expand the section to apply to failure to remain as directed to undertake an alcohol screening test.

The amendment to clause 15, which substitutes a new section 22B(1)(b), is consequential upon amendments 1 and 2, restructuring the amendments to sections 8 and 13A.