

2013

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

ROAD TRANSPORT (ALCOHOL AND DRUGS) AMENDMENT BILL 2013

REVISED EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney-General**

ROAD TRANSPORT (ALCOHOL AND DRUGS) AMENDMENT BILL 2013

Overview of the Bill

The Road Transport (Alcohol and Drugs) Amendment Bill 2013 (the Bill) makes a number of amendments to the roadside alcohol and drug testing schemes, as established in the *Road Transport (Alcohol and Drugs) Act 1977* (the Act), to improve the effectiveness of the schemes, and in turn improve road safety for all road users in the ACT.

The Bill implements four main changes that will improve ACT Policing's ability to enforce the road transport legislation relating to roadside alcohol and blood testing. The amendments and their purposes are described below.

1 Restricting the ability of a driver to rely on the defence of honest and reasonable mistake of fact for the offence of driving with a prescribed drug present in the person's oral fluid or blood when the driver claims he or she believed they had taken a controlled drug that was not a prescribed drug

A driver commits an offence under section 20 of the Act if they drive with a prescribed drug in their oral fluid or blood (as determined by the results of analysis of a sample of the driver's oral fluid or blood). Prescribed drugs are: methylamphetamine (commonly known as ice, speed or crystal meth), cannabis, and ecstasy.

The offence in section 20 is a strict liability offence, which means that no criminal intent or fault element is required to be proven. As this offence is a strict liability offence, drivers are able to rely on section 36 of the *Criminal Code 2002*, which provides that a person is not criminally responsible for a strict liability offence if the person was under a mistaken but reasonable belief about the facts, and, had the facts existed as believed, the conduct would not have been an offence.

This amendment would prevent drivers from seeking to rely on this defence where they knowingly took a controlled drug which they thought was not a prescribed drug which in fact turned out to be a prescribed drug. The defence in section 36 of the *Criminal Code 2002* would still be available to a driver in other circumstances (e.g. they had a mistaken but reasonable belief that they were not consuming a controlled drug at all, but rather a prescription drug or some other over-the-counter medication such as aspirin). The definition of controlled drug in the Bill cross-references to the definition of controlled drug in section 600 of the *Criminal Code 2002*. That section defines controlled drug as 'a substance prescribed by regulation as a controlled drug, but does not include a growing plant'. The *Criminal Code Regulation 2005* prescribes a substance in schedule 1 of that Regulation as a controlled drug.

Human rights analysis

Section 28 of the *Human Rights Act 2004* provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered.

The nature of the right affected

This amendment may engage rights in criminal proceedings (section 22 of the Human Rights Act), particularly the right to a presumption of innocence. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where the offences are regulatory of a kind where those who might be affected by the offence would be expected to be aware of it.

The importance of the purpose of the limitation

The purpose of the limitation is to address the risks to the ACT road using community associated with drug-affected driving, recognising the broader community's expectations of a right to a safe road system.

The nature and extent of the limitation

The limitation is not extensive. It would prevent drivers who have been charged with the offence in section 20 of the Act (Prescribed drug in oral fluid or blood—driver or driver trainer) from seeking to rely on the defence of honest and reasonable mistake of fact where they knowingly took a controlled drug which they thought was not a prescribed drug which in fact turned out to be a prescribed drug. The defence would still be available to a driver in other circumstances (e.g. they had a mistaken but reasonable belief that they were not consuming a controlled drug at all, but rather a prescription drug or some other over-the-counter medication such as aspirin).

The relationship between the limitation and its purpose

The amendment seeks to increase the safety of all road users by ensuring that the laws to deter and punish drug driving are not compromised. It does this by removing the mistake of fact defence, in circumstances where a person knowingly took a controlled drug and proceeded to drive, even though the person thought the controlled drug was not a prescribed drug. Controlled drugs (commonly referred to as illicit drugs) are taken by users for their mood and perception altering effects. These effects can, in turn, impact the driver's ability to drive safely.

While certain over-the-counter or prescription drugs can also cause driver impairment, those drugs are required to display warnings to inform users of the risks associated with driving whilst under the influence of that drug. Controlled drugs, by their very nature, are not subject to the same requirements as legal drugs and so users are not made aware of the impact of the drug on their ability to operate a vehicle safely. In addition, the strength and potency of controlled drugs varies and is impossible for a user to determine prior to taking the drug (unlike legal medication, which is required to clearly display this information), making it more likely that a driver may consume a higher concentration than they expected. Finally, the chance of a person taking a different controlled drug to the one that they believed that they were taking is far higher than in the case of legal drugs because of the lack of regulation, packaging and warning labels.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no, less restrictive means, reasonably available to achieve the purpose.

For these reasons it is considered that any limitation on human rights is reasonable and proportionate, noting the public interest in addressing the risks to community safety associated with drug-affected driving, and the need to protect the rights of other road users and the broader community.

2 Amend the requirement in section 47 of the Act for police to contact a doctor or authorised nurse practitioner nominated by a person arrested for an offence against that Act

Section 47 of the Act places an obligation on a police officer who has arrested a person for an offence under the Act to advise that person that they have the right to request a medical examination by a doctor or nurse practitioner of their choice. Should the arrested person exercise that right, the police officer is obliged to contact a doctor or nurse practitioner and arrange the medical examination.

Section 47 was originally introduced to provide drivers arrested for an offence under the Act with access to their own blood test, or medical opinion, that they could use to defend a charge that they were driving with a prescribed concentration of alcohol in the person's blood or breath or were driving whilst under the influence of alcohol. In practice, although few drivers exercise this right, noting increased community and judicial confidence in the accuracy of police alcohol testing facilities, when drivers choose to exercise their right, it imposes an unreasonable administrative burden on police. This burden is compounded given that the majority of people arrested for an offence under this Act are arrested outside of standard business hours, at a time when most nominated medical or nurse practitioners are not readily contactable.

This amendment would not remove a person's right to seek an independent medical examination, but instead removes the requirement for police to locate and contact the nominated medical practitioner and arrange the examination. The obligation on police is to provide the arrested person with access to a phone to contact their preferred medical practitioner to arrange an examination in the same way that access to a phone is given to arrested people to enable them to seek legal representation. Alternatively the arrested person may ask the police officer to contact the police-contracted on-call Forensic Medical Officer to undertake the examination. In either case the cost of the examination would be borne by the arrested driver.

There is also no change to the obligation on the arresting police officer to advise the arrested person of their right to receive a medical examination.

There are no human right implications from this amendment.

3 Power for police officers to direct drivers to remain at the scene where they were originally pulled over by police for the purpose of an alcohol or drug screening test where a screening device is not immediately available or not in working order

Currently police officers have no legislative power to require that a driver remain for a roadside drug or alcohol screening test if a screening device is not immediately available at the scene, or a device is not in working order. Delays can occur if the screening device malfunctions, or a driver is stopped for some other purpose but the police officer subsequently considers it necessary to determine if the driver is under the influence of drugs or alcohol but they do not have a screening device in their vehicle.

Although there is no express legislative power to direct a driver to remain for such a test, there are a small number of judicial precedents which have held that a power to direct a driver to stop to allow a screening test to be conducted necessarily includes an obligation that the driver remain stationary for such reasonable time as may be necessary to allow the police officer to undertake the test. In the 2012 ACT Magistrates Court decision of *Hackett v Gault* (2011/9222) the defendant argued that a police officer had no power to compel a driver to remain whilst a replacement screening device was obtained. In that case the batteries failed on the screening device carried by the police officer who originally stopped the defendant's vehicle, and a replacement unit was obtained from the nearest station, causing the defendant to be delayed for approximately 10 minutes. Magistrate Campbell found:

“the duty of a driver to stop when directed to by a police officer must include a duty or obligation to remain stationary for such reasonable time as may be necessary to enable the traffic officer to carry out the breath test. Otherwise one would have the absurd situation where, as an officer returns to his motor vehicle to collect his breath screening device, the driver could drive away and the officer would have no recourse. Implicit in the provision is that there has to be some power to detain or require the driver to remain at the roadside to enable the purpose of the section to be achieved....[S]ome delay must be taken to be an anticipated and acceptable imposition on the liberty of drivers bearing in mind the statutory object of the legislation. The scheme would otherwise be rendered unworkable.

The direction to the defendant ... to remain pending the arrival of a machine resulted in his detention for a short period (which from the outset was going to be of limited duration). This is not an unreasonable or disproportionate limitation on the defendant's right to liberty particularly when measured against the public interest in ensuring that people do not drive when affected by alcohol.”.

The amendment creates a legislative power to allow a police officer to direct a person to remain at the place where an alcohol screening test is to be carried out for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions. 30 minutes has been identified as the preferred maximum period, as that would allow a drug screening device to be sourced from the Traffic Operations Centre in Belconnen (where all drug screening units are stored) and delivered to any part of metropolitan Canberra where the driver has been directed to remain.

Human rights analysis

It is possible that human rights may be engaged by this amendment, particularly the right to security of the person and freedom from arbitrary detention and the right to freedom of movement. To the extent that this power constitutes a qualification of a driver's human rights, the provisions have been included in the Bill on the basis that the power is justified and any limitation is reasonable. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

The nature of the right being affected

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 driver 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 very 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 for the time (not exceeding 30 minutes) reasonably necessary for the test to be completed in accordance with the police officer's directions. A person commits an offence if a person fails to comply with such a direction by a police officer under new section 22B. The maximum penalty for that offence is consistent with the penalties applying for refusing to follow a direction from a police officer found in other sections of the road transport legislation.

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. As Magistrate Campbell noted, *the duty of a driver to stop when directed to by a police officer must include a duty or obligation to remain stationary for such reasonable time as may be necessary to enable the traffic officer to carry out the breath test.... The scheme would otherwise be rendered unworkable*". As noted above, currently police officers have no legislative power to require a driver to remain for a screening test if a screening device is not immediately available at the scene, or a device is not in working order. The amendments in clauses 5 to 12 are intended to codify the existing common law power, to provide certainty for both police officers and the general public, as to the maximum period that a driver may be directed to remain.

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. 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 policy objective.

For these reasons 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.

4 Creating an offence of refusing to undertake a screening test for alcohol or drugs

Currently, if a driver refuses to undertake a roadside screening test for alcohol or drugs, the only option available to a police officer is to take the person into custody for a breath or oral fluid analysis. It is only when a driver refuses to undertake the analysis that they can be charged with the offence of refusing a breath or oral fluid analysis.

In practice, drivers are unlikely to agree to an analysis if they have already refused to undergo the initial screening. Some drivers readily admit that, for cultural or professional reasons, they would prefer to have a conviction for the offence of refusing a police request as opposed to having a conviction for a drink or drug driving offence. In other cases drivers are merely seeking to delay any test in the belief that they will no longer be over the limit when the test is conducted. Given that in almost all cases, and irrespective of the reason why the driver is refusing to undertake the screening test, the driver will refuse to provide the sample for analysis, the formal process of taking the person into custody and directing them to undertake the breath or oral fluid analysis uses up police time and resources that could be better targeted at other road safety and enforcement activities.

This amendment creates a new offence of refusing to undergo an alcohol or drug screening test. The offence would apply to the driver or a driver trainer of a motor vehicle on a road or road related area who has been required, in accordance with the Act, to undergo an alcohol or drug screening test. The offence would be committed if the person fails to undergo the screening test in accordance with the reasonable directions of the police officer who made the requirement.

It would be a defence to a prosecution for this offence if the defendant proves that the failure to undergo the test was based on medical grounds.

The maximum penalty for the offence is 30 penalty units. This is the same penalty as for the similar existing offences of refusing to provide a breath sample for analysis or refusing to provide oral fluid sample (sections 22 and 22A of the Act). These penalties are aligned with the penalty for a high-range drink driving offence to ensure that high-range drink drivers are not advantaged by refusing to undertake the test.

Human rights analysis

The offence is a strict liability offence. Strict liability offences may be seen as engaging or limiting the right in section 22 (1) of the Human Rights Act – the presumption of innocence. While the inclusion of strict liability limits the range of defences that may be available for a person accused of this offence, a number of defences including mistake of fact remain open to the accused, depending on the particular facts of each case.

In relation to the medical grounds defence for this offence, to the extent that the imposition of a legal burden can be seen as interfering with or restricting human rights, particularly rights in criminal proceedings, it is considered that this interference is a reasonable limitation that can be demonstrably justified, as necessary for ensuring the effective operation of the alcohol and drug testing scheme established by the Act, which is an integral part of the Territory's road safety strategy. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

The nature of the right being limited

Section 22 of the Human Rights Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The presumption of innocence is a fundamental principle of our justice system. However, a reverse onus provision will not necessarily violate the presumption of innocence provided that the law is not unreasonable in the circumstances and maintains the rights of the accused. The purpose of the reverse onus provision is important in determining its justification. Such a provision may be justified if the nature of the offence makes it very difficult for the prosecution to prove each element, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.

The importance of the purpose of the limitation

The purpose of the amendments (promotion of road safety through prevention of drink or drug driving) is considered to be of high importance, given the known risks of death and injury associated with drink and drug impaired driving.

The nature and extent of the limitation

The limitation is not extensive, and only applies to drivers who refuse a lawful request to undertake a screening test for alcohol or drugs. The offence would apply to the driver or a driver trainer of a motor vehicle on a road or road related area who has been required, in accordance with the Act, to undergo an alcohol or drug screening test. The offence would be committed if the person fails to undergo the screening test in accordance with the reasonable directions of the police officer who made the requirement.

The relationship between the limitation and its purpose

The limitation is not extensive, and is directly relevant to the purpose of promoting road safety through prevention of drink or drug driving.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve. Any limitation caused by imposing such a legal burden of proof on the defendant is justified as the defendant is best placed to know the existence and nature of any medical condition that would prevent them from safely undertaking a screening test. The defendant has the burden of proof because the defence arises from matters peculiarly in the defendant's knowledge. It is relevant that the limitation relates to a defence that is designed to protect a person's human rights, by protecting them from committing an offence of refusing to undertake a screening test where they are medically unable to undertake such a test.

Furthermore, the legal burden imposed in section 22C (3) is consistent with the remainder of the Act, which imposes a legal burden on defendants in comparable circumstances. For example, section 22A (Refusing to provide oral fluid sample) imposes a similar legal burden on a defendant to prove that a failure to provide a sample of oral fluid was based on medical grounds. A similar legal burden is also imposed on a defendant in section 19, requiring a defendant to establish that the concentration of alcohol in their blood or breath was caused either by the consumption of an alcoholic beverage that formed part of a religious observance or the consumption or use of a substance that was not consumed or used for its alcohol content.

Climate change analysis

The climate change impacts of the amendments made by the Bill have been considered and no impacts have been identified.

CLAUSE NOTES

Clause 1 Name of Act

This clause states the name of the Bill once enacted - the *Road Transport (Alcohol and Drugs) Amendment Act 2013*.

Clause 2 Commencement

This clause states that the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause states that the Act amends the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 4 Offences against Act—application of Criminal Code etc Section 4, note 1, dot point 4

This clause amends note 1 in section 4 of the principal Act, to update the list of sections to which the Criminal Code applies. This amendment is consequential on the amendments to section 22B (Failing to stay for a screening test) and the creation of new section 22C (Refusing to undergo screening test) made by clause 15 below.

Clauses 5 to 12 inclusive

These clauses provide 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.

The amendment will allow a police officer to direct a driver to remain at that location whilst an alcohol or drug screening device is obtained. A driver cannot be detained for more 30 minutes, which is the maximum period of time that would allow a drug screening device to be sourced and delivered to any part of metropolitan Canberra where the driver has been directed to remain.

A person commits an offence under new section 22B if the person fails to comply with the direction of a police officer under these provisions. The offence is a low-level summary offence, with a maximum penalty of 20 penalty units. This is consistent with the penalty for offences of refusing a direction given by a police officer under other road transport legislation.

Clause 13 Prescribed drug in or blood—driver or driver trainer New section 20 (2A)

This clause inserts a new section 20 (2A), which provides that a driver charged with driving whilst they have a prescribed drug in their oral fluid or blood (an offence against section 20) cannot rely on the defence of honest and reasonable mistake of fact when the driver claims he or she believed they were taking another controlled drug that was not also a prescribed drug. Prescribed drugs are ice, speed or crystal meth, cannabis and ecstasy.

The offence in section 20 is a strict liability offence, which means that no criminal intent or fault element is required to be proven. As this offence is a strict liability offence, drivers are able to rely on section 36 of the *Criminal Code 2002*, which provides that a person is not criminally responsible for a strict liability offence if the person was under a mistaken but reasonable belief about the facts, and, had the facts existed as believed, the conduct would not have been an offence.

This amendment would prevent drivers from seeking to rely on this defence where they knowingly took a controlled drug which they thought was not a prescribed drug which in fact turned out to be a prescribed drug (eg the person thought they were taking cocaine but the drug they took was a prescribed drug). The defence in section 36 of the *Criminal Code 2002* would still be available to a driver in other circumstances (e.g. they had a mistaken but reasonable belief that they were not consuming a controlled drug at all, but rather a prescription drug or some other over-the-counter medication such as aspirin).

Clause 14 Section 20 (4), new definition of controlled drug

This clause inserts a new definition for section 20 of *controlled drug*. The definition cross-references to the definition of controlled drug in section 600 of the *Criminal Code 2002*. That section defines controlled drug as ‘a substance prescribed by regulation as a controlled drug, but does not include a growing plant’. The *Criminal Code Regulation 2005* prescribes a substance in schedule 1 of that Regulation as a controlled drug.

Clause 15 Section 22B

This clause replaces existing section 22B with new sections 22B and 22C.

Existing section 22B provides that a person commits an offence if the person is required to undergo a drug screening test and fails to remain until the test is completed. New section 22B retains the offence for failing to stay for a drug screening test, but extends it to also include failing to stay for an alcohol screening test. It provides that a person commits an offence if a police officer requires them to undergo an alcohol or drug screening test under the Act and the person fails to remain at the place where the screening test is being carried out until the test is completed.

A person cannot be directed to remain at the location for more than 30 minutes, which is a reasonable period of time to allow a drug screening device to be sourced and delivered to where the driver has been directed to remain.

An offence against the new section 22B is a strict liability offence, with a maximum penalty of 20 penalty units. This is the same penalty that applies under the existing section 22B. This is also consistent with the penalty for offences of refusing a direction given by a police officer under other road transport legislation.

New section 22C creates a new offence of refusing to undergo an alcohol or drug screening test. It provides that a person commits an offence if a police officer requires the person to undergo an alcohol or drug screening test under the Act and the person fails to undergo the screening test in accordance with the reasonable directions of the police officer.

An offence against the new section 22C is a strict liability offence, with a maximum penalty of 30 penalty units. This penalty is the same as for the existing offences of refusing to provide a breath sample for analysis or refusing to provide oral fluid sample (sections 22 and 22A of the Act), which is aligned with the penalty for a high-range drink driving offence to ensure that high-range drink drivers are not advantaged by refusing to undertake the test.

It is a defence to a prosecution for this offence if the defendant proves that the failure was based on medical grounds.

**Clause 16 Driver etc intoxicated
Section 24A (2) and (3)**

This clause omits existing sections 24A (2) and (3). These sections provide that a person arrested for an offence under section 24A (driving whilst under the influence of alcohol) is entitled to be examined by a doctor or authorised nurse practitioner if the person asks to be examined. If a request is made, the person making the arrest must provide reasonable facilities for the examination.

These sections are no longer necessary, given section 47 of the Act grants a right of all persons arrested under the Act (not just section 24A) to be examined by a doctor or medical practitioner at their request.

Clause 17 Section 27 heading

This is a consequential amendment to the heading of section 27, following the amendment to that section made by clause 18 below.

Clause 18 Section 27 (a)

This clause adds the new section 22C (Refusing to undergo screening test) to the list of offences for which the court may, if it considers that in all the circumstances and having regard to the antecedents of the person that it is appropriate to do so, sentence the person to a term of imprisonment of up to 6 months (for a first offender) or up to 12 months (for a repeat offender). This term of imprisonment is in addition to any pecuniary penalty the court may impose.

The addition of new section 22C to the list of offences for which a court may order a term of imprisonment is consistent with the other offences for which a court can currently order a term of imprisonment. These include section 22 (Refusing to provide a breath sample), section 22A (Refusing to provide oral fluid sample) and section 23 (Refusing blood test etc).

The inclusion of new section 22C in the list of offences for which a court may order a term of imprisonment is necessary to prevent a driver who would otherwise be guilty of an offence under section 24 (Driving under the influence of intoxicating liquor or drug) of the Act, or another section of the Act that prescribes a term of imprisonment, from refusing to undergo the screening test to avoid a possible term of imprisonment.

Clause 19 Section 47

Section 47 currently places an obligation on a police officer who has arrested a person for an offence under the Act to advise that person or someone else acting on behalf of the person that they have the right to request a medical examination of the person by a doctor or nurse practitioner of the person's choice. Should the arrested person exercise that right, the police officer is obliged to contact a doctor or nurse practitioner and arrange the medical examination.

This clause replaces existing section 47 with a new section 47. New section 47 retains the obligation on the arresting police officer to advise the arrested person of their right to ask for a medical examination. New section 47 removes the requirement for police to locate and contact the nominated medical practitioner and arrange the examination. The obligation on police under the amended provision is to provide the arrested person with access to means such as a phone to contact their preferred medical practitioner to arrange an examination in the same way that access to a phone is given to arrested people to enable them to seek legal representation. Alternatively the arrested person may ask the police officer to contact the police-contracted on-call Forensic Medical Officer to undertake the examination. In either case the cost of the examination would be borne by the arrested driver.

New section 47 does not retain references to "someone else acting on behalf of the person", consistent with modern drafting practice. A person remains entitled to arrange for another person to act on their behalf, without the requirement for express reference to this in new section 47.

Clause 20 Dictionary, definition of *disqualifying offence*, new paragraph (da)

This clause amends the definition of disqualifying offence to add the new offence in section 22C (Refusing to undergo screening test) to the list of offences for which the automatic driver licence disqualification provisions of the Act would apply. These provisions provide that if a court convicts an offender of a disqualifying offence, the person is automatically disqualified from holding or obtaining a driver licence for a certain period.

Making the new offence of refusing to undergo a screening test a disqualifying offence ensures that offenders convicted of this offence receive a similar sanction to drivers who are convicted of similar 'refuse to provide' offences (such as sections 22 (Refusing to provide breath sample), 22A (Refusing to provide oral fluid sample) and 23 (Refusing blood test etc) – all of which are disqualifying offences). Including the new offence in the definition of disqualifying offence ensures that the penalty for refusing to undergo a screening test is aligned with the penalty for a high-range drink driving offence to ensure that high-range drink drivers are not advantaged by refusing to undertake a screening test.