

## Road Transport Legislation (Breath Testing and Analysis) Bill 2007

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Road Transport (General) Amendment (Heavy Vehicle User Charges) Bill 2007*.

### Overview of Bill

Currently in New South Wales, the concentration of alcohol revealed by a breath test or breath analysis is required to be measured by reference to the amount of alcohol in grammes in 100 millilitres of blood.

The National Measurement Institute has developed a new standard for evidential breath analysers. See NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*. This Standard provides for the concentration of alcohol revealed by new breath measuring devices to be measured by reference to the amount of alcohol in grammes in 210 litres of exhaled breath.

An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood. For example, a concentration of alcohol of 0.05 grammes can be expressed either by reference to alcohol in 210 litres of breath or 100 millilitres of blood.

The objects of this Bill are:

- (a) to amend the *Road Transport (Safety and Traffic Management) Act 1999* and other legislation permitting breath testing or breath analysis to enable the concentration of alcohol revealed by a breath sample to be expressed in terms of the amount of alcohol in grammes in 210 litres of breath (as well as by reference to alcohol in 100 millilitres of blood for older breath measuring devices), and
- (b) to make consequential amendments to certain other legislation.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, subject to certain exceptions. Schedule 1 [14] and [15] commence on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Road Transport (Safety and Traffic Management) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to certain other legislation set out in Schedules 2 and 3.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999

**Schedule 1** amends the Road Transport (Safety and Traffic Management) Act 1999:

- (a) to enable the concentration of alcohol revealed by a breath test or breath analysis to be measured by reference to alcohol in the breath as well as in the blood, and

- (b) to enable the approval of breath analysing instruments and other breath testing devices that provide readings of alcohol concentration by reference to exhaled breath rather than blood, and
- (c) to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

#### **Schedule 2 Amendment of other legislation dealing with breath testing or analysis**

**Schedule 2** makes comparable amendments to those made by Schedule 1 to other Acts and Regulations that provide for the determination of concentrations of alcohol by breath testing or breath analysis. The following Acts and Regulations are amended:

- (a) the Children (Detention Centres) Act 1987 and Children (Detention Centres) Regulation 2005,
- (b) the Crimes (Administration of Sentences) Act 1999 and Crimes (Administration of Sentences) Regulation 2001,
- (c) the Marine Safety Act 1998,
- (d) the Passenger Transport Act 1990 and Passenger Transport (Drug and Alcohol Testing) Regulation 2004,
- (e) the Police Act 1990 and Police Regulation 2000,
- (f) the Rail Safety Act 2002 and Rail Safety (Drug and Alcohol Testing) Regulation 2003.

#### **Schedule 3 Consequential amendment of legislation**

**Schedule 3** makes amendments to various Acts and Regulations that are consequential on the amendments made by Schedules 1 and 2.