

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003

Explanatory note

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

Overview of Bill

The principal object of this Bill is to amend the *Road Transport (Safety and Traffic Management) Act 1999* (the **Principal Act**) to prohibit drivers who are the holders of learner licences or provisional licences from driving with any alcohol present in their blood.

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.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

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

Schedule 1 [4] inserts proposed section 9 (1A) into the Principal Act to make it an offence for a person who is the holder of a learner licence or a provisional licence to drive or attempt to drive a motor vehicle while there is present in the person's blood a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 100 millilitres of blood (the **novice range prescribed concentration of alcohol** (see **Schedule 1 [13]**)). The proposed offence is punishable by a maximum penalty of 10 penalty units (currently \$1,100), in the case of a first offence, or 20 penalty units (currently \$2,200), in the case of any subsequent offence.

Such a person will also be liable for an offence under the existing section 9 (1), (2), (3) or (4) of the Principal Act if found guilty of driving or attempting to drive a motor vehicle while there is present in the person's blood a concentration of alcohol that exceeds the novice range prescribed concentration of alcohol.

Schedule 1 [8] sets out a defence to the new offence provided for in proposed section 9 (1A). It is a defence to the new offence if the defendant proves that the presence in the defendant's blood of the novice range prescribed concentration of alcohol at the time that the person is alleged to have committed the offence was not caused by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance, such as Holy Communion),
- (b) the consumption or use of any other substance (for example, food or medicine containing alcohol) for the purpose of consuming alcohol.

Schedule 1 [1], [2], [3] and [5] make consequential amendments to sections 8 and 9 of the Principal Act.

Schedule 1 [6] makes a consequential amendment to section 10 of the Principal Act, extending the application of that section to the offence under proposed section 9 (1A). Section 10 enables a court to convict a defendant who is charged with an offence under section 9, involving prescribed concentrations of alcohol, with a lesser offence under that section if the more serious offence is not established but the less serious offence is established.

Schedule 1 [7] makes a consequential amendment to section 11 of the Principal Act extending the offences to which the section applies to the offence under

proposed section 9 (1A). Section 11 provides that a defendant cannot plead as a defence that he or she had a concentration of alcohol in his or her blood that was greater than the concentration of alcohol specified for the offence with which he or she is charged.

Schedule 1 [9] makes a consequential amendment to section 14 of the Principal Act extending the application of the section to the novice range prescribed concentration of alcohol. Section 14 authorises a police officer to arrest and detain a person after a breath test if the test indicates that the person had any one of the prescribed concentrations of alcohol in his or her blood or if the person refuses to undergo a breath test.

Schedule 1 [10] makes a consequential amendment to section 32 of the Principal Act extending the application of section 32 to the offence under proposed section 9 (1A). Section 32 facilitates the admission into evidence in proceedings for an offence under section 9 of the alcohol concentration in the defendant's breath or blood, as revealed by a breath test or blood analysis.

Schedule 1 [11] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [12] inserts a transitional provision into the Principal Act. The effect of this provision is that legal proceedings for offences committed before the commencement of the proposed amendments will continue to be determined under the law as it stood before that commencement.

Schedule 1 [14] removes an unnecessary definition from the Dictionary to the Principal Act.

Schedule 2 Amendment of other Acts

Schedule 2.3 sets out proposed amendments to the *Road Transport (General) Act 1999*.

Schedule 2.3 [1] and [2] amend section 25 of the *Road Transport (General) Act 1999*. The proposed amendments provide for the automatic disqualification of novice drivers convicted of offences under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999* (as inserted by **Schedule 1 [4]**).

Schedule 2.3 [3] and [4] amend the *Road Transport (General) Act 1999* in relation to interlock driver licences. In particular, the amendments enable a court that convicts a person of an offence under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999* to order the suspension of the person's disqualification from holding a driver licence if the person participates in an interlock program.

Schedule 2.3 [5] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.1 and 2.2 make consequential amendments to section 353A of the *Crimes Act 1900* and section 134 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, respectively, relating to the power of a court to order persons found guilty of certain offences to submit to the taking of identification particulars. The proposed amendments will extend the offences in relation to which such orders may be made to offences under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999*.