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GRNS--The Greens

LEGISLATIVE COUNCIL

Road Transport Legislation Amendment (Drink and Drug Driving Offence) Bill 2021

First print

Proposed amendments

No. 1 **Combined drug and alcohol offence**

Page 3, line 5, Schedule 1[1]. Insert "or 111B(1), (2) or (3)" after "(3)".

No. 2 **Prescribed quantity of drugs**

Pages 3 and 4, Schedule 1[3], proposed section 111A, line 11 on page 3 to line 2 on page 4. Omit all the words on those lines. Insert instead—

111A Presence of both prescribed quantity of relevant drug in person's oral fluid, blood or urine and prescribed concentration of alcohol in person's breath or blood

(1) Offence—high range prescribed concentration of alcohol and presence of prescribed quantity of relevant drug

A person must not, while there is present in the person's breath or blood the high range prescribed concentration of alcohol and present in the person's oral fluid, blood or urine the prescribed quantity of a relevant drug—

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—60 penalty units or imprisonment for 2 years or both, or
- (b) for a second or subsequent offence—100 penalty units or imprisonment for 2 years or both.

(2) Offence—other prescribed concentration of alcohol and presence of prescribed quantity of relevant drug

A person must not, while there is present in the person's breath or blood a concentration of 0.02 grams or more, but less than 0.15 grams, of alcohol in 210 litres of breath or 100 millilitres of blood and present in the person's oral fluid, blood or urine the prescribed quantity of a relevant drug—

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- (a) drive a motor vehicle, or
 - (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
 - (c) if the person is the holder of an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—50 penalty units or imprisonment for 18 months or both, or
- (b) for a second or subsequent offence—60 penalty units or imprisonment for 2 years or both.

No. 3 Prescribed quantity of drugs

Page 4, Schedule 1[3], proposed section 111A(3)(a), lines 6–8. Omit “(2) or (3), while there is present in the person’s oral fluid, blood or urine, a prescribed illicit drug”.

Insert instead “while there is present in the person’s oral fluid, blood or urine the prescribed quantity of a relevant drug”.

No. 4 Prescribed quantity of drugs

Page 4, Schedule 1[3], proposed section 111A(4), line 13. Insert “, 111B” after “111(1)”.

No. 5 Prescribed quantity of drugs

Page 4, Schedule 1[3], proposed section 111A. Insert after line 41—

(8) Regulations

The regulations may provide for—

- (a) a drug that is a relevant drug for the purposes of this section, and
- (b) the quantity of a relevant drug, present in the person’s oral fluid, blood or urine, that constitutes a prescribed quantity, for the purposes of an offence under this section.

(9) In this section—

drug does not include alcohol.

prescribed quantity, of a drug, means the amount prescribed by the regulations under subsection (8).

relevant drug, means a drug, prescribed by the regulations under subsection (8).

No. 6 Under the influence of alcohol and another drug

Page 4. Insert before line 42—

111B Presence of prescribed quantity of drug in person’s oral fluid, blood or urine and under the influence of drugs

(1) Offence—high range prescribed concentration of alcohol and under the influence of drugs

A person must not, while there is present in the person’s breath or blood the high range prescribed concentration of alcohol and while the person is under the influence of a drug—

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or

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- (c) if the person is the holder of an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—60 penalty units or imprisonment for 2 years or both, or
- (b) for a second or subsequent offence—100 penalty units or imprisonment for 2 years or both.

(2) **Offence—other prescribed concentration of alcohol and under the influence of drugs**

A person must not, while there is present in the person's breath or blood a concentration of 0.02 grams or more, but less than 0.15 grams, of alcohol in 210 litres of breath or 100 millilitres of blood and while the person is under the influence of a drug—

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence, other than an applicable provisional licence or applicable learner licence—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty—

- (a) for a first offence—50 penalty units or imprisonment for 18 months or both, or
- (b) for a second or subsequent offence—60 penalty units or imprisonment for 2 years or both.

(3) **Offence—second or subsequent offence of combined alcohol and drug driving offence**

A person commits an offence against this subsection if—

- (a) the person commits an offence under section 110(1) while the person is under the influence of a drug, and
- (b) the person has been convicted of an offence against this subsection or subsection (1) or (2) in the previous 5 years.

Maximum penalty—50 penalty units or imprisonment for 18 months or both.

- (4) A person cannot be convicted of an offence against this section and section 110, 111(1), 111A or 112 in relation to the same conduct.

(5) **Alternative verdicts**

If the court, on a prosecution of a person for an offence against a subsection of this section, is not satisfied that the offence is proven but is satisfied that the person has committed an offence against another subsection of this section or against section 110 or 111(1), having the same or a lesser maximum penalty, the court may acquit the person of the offence with which the person is charged and find the person guilty of the other offence, and the person is liable to be punished accordingly.

(6) **Presence of higher concentration of alcohol not defence**

It is not a defence to a prosecution for an offence against a subsection of this section if the defendant proves that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, a greater concentration of alcohol was present in the defendant's breath or blood than the prescribed concentration of alcohol referred to in the offence.

(7) **Defence for offence relating to novice range prescribed concentration of alcohol**

It is a defence to a prosecution for an offence against subsection (3), if—

- (a) an element of the offence under subsection (3) is that the person is alleged to have committed an offence under section 110(1), and
- (b) the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened section 110(1), the presence in the defendant's breath or blood of the novice range prescribed concentration of alcohol was not caused, in whole or in part, by—
 - (i) the consumption of an alcoholic beverage, other than for the purposes of religious observance, or
 - (ii) the consumption or use of another substance, for example, food or medicine, for the purpose of consuming alcohol.

(8) In this section—
drug does not include alcohol.

- No. 7 **Under the influence of alcohol and another drug**
Page 4, Schedule 1[4], line 46. Insert "or 111B" after "111A".
- No. 8 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[5], line 2. Insert ", 111B" after "111A".
- No. 9 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[6], line 5. Insert "111B," after "111A,".
- No. 10 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[7], line 8. Insert "or 111B(2)" after "111A(2)".
- No. 11 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[8], line 17. Insert "or 111B(1)" after "111A(1)".
- No. 12 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[9], line 26. Insert "or 111B(3)" after "111A(3)".
- No. 13 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[10], line 35. Insert "or 111B(2)" after "111A(2)".
- No. 14 **Under the influence of alcohol and another drug**
Page 5, Schedule 1[11], line 44. Insert "or 111B(1)" after "111A(1)".
- No. 15 **Under the influence of alcohol and another drug**
Page 6, Schedule 1[12], line 8. Insert "or 111B(1), (2) or (3)," after "or (3)".
- No. 16 **Under the influence of alcohol and another drug**
Page 6, Schedule 1[13], line 16. Insert "or 111B(1), (2) or (3)" after "or (3)".
- No. 17 **Under the influence of alcohol and another drug**
Page 7. Insert before line 1—

An offence against section 111B(1) that is a first offence by the offender for any other alcohol-related major offence	6 months	9 months	24 months
An offence against section 111B(1) that is a second or subsequent offence by the offender for any other alcohol-related major offence	9 months	12 months	48 months
An offence against section 111B(2) that is a first offence by the offender for any other alcohol-related major offence	3 months	6 months	12 months
An offence against section 111B(2) that is a second or subsequent offence by the offender for any other alcohol-related major offence	6 months	9 months	24 months
An offence against section 111B(3)	1 month	3 months	12 months

- No. 18 **Under the influence of alcohol and another drug**
Page 7, Schedule 1[17], line 2. Insert “or 111B(2)” after “111A(2)”.
- No. 19 **Under the influence of alcohol and another drug**
Page 7, Schedule 1[18], line 9. Insert “or 111B” after “111A”.
- No. 20 **Under the influence of alcohol and another drug**
Page 7, Schedule 1[18], line 11. Insert “or 111B” after “111A”.
- No. 21 **Under the influence of alcohol and another drug**
Page 7, Schedule 1[19], line 18. Insert “or 111B(2)” after “111A(2)”.
- No. 22 **Under the influence of alcohol and another drug**
Page 7, Schedule 1[19], line 22. Insert “or 111B(1) or (3)” after “or (3)”.
- No. 23 **Under the influence of alcohol and another drug**
Page 8, Schedule 1[21], proposed clause 32A, line 4. Insert “or 111B” after “111A”.
- No. 24 **Under the influence of alcohol and another drug**
Page 8, Schedule 1[21], proposed clause 32A(1), line 5. Insert “or 111B” after “111A”.
- No. 25 **Under the influence of alcohol and another drug**
Page 8, Schedule 1[21], proposed clause 32A(4), line 21. Insert “or 111B(5)” after “111A(5)”.
- No. 26 **Prescribed quantity of drugs**
Page 8, Schedule 1[21], proposed clause 32B, lines 22–45. Omit all words on those lines. Insert instead—

32B Evidence of prescribed quantity of relevant drug in proceedings for offences against section 111A

- (1) This clause applies to proceedings for an offence against section 111A in relation to evidence of the prescribed quantity of a relevant drug.
- (2) In the proceedings in relation to the prescribed quantity of the drug—
 - (a) evidence may be given of the quantity of the drug in the oral fluid of the person charged as determined by an oral fluid analysis under this Schedule of a sample of the person's oral fluid, and
 - (b) the quantity of a drug in a person's oral fluid determined by an oral fluid analysis under this Schedule is taken to show the quantity of the drug at the time of the occurrence of the relevant event referred to in section 111A(1), (2) or (3) if the oral fluid sample analysed was provided within 2 hours after the event, unless the defendant proves—
 - (i) the absence of the drug when the event occurred, or
 - (ii) the quantity of the drug when the event occurred was less than the prescribed quantity of the drug.
- (3) In the proceedings in relation to the prescribed quantity of the drug—
 - (a) evidence may be given of the presence of the prescribed quantity of a drug in the blood or urine of the person charged as determined by an analysis of the person's blood or urine under this Schedule, and
 - (b) the quantity of a drug determined by an analysis of the person's blood or urine under this Schedule is taken to be present at the time of the occurrence of the relevant event referred to in section 111A(1), (2) or (3) if the blood or urine sample was taken within 4 hours after the event, unless the defendant proves—
 - (i) the absence of the drug when the event occurred, or
 - (ii) the quantity of the drug when the event occurred was less than the prescribed quantity of the drug.

- (4) In this clause—

drug does not include alcohol.

prescribed quantity, of a relevant drug, means the amount prescribed by the regulations under section 111A(8).

relevant drug, means a drug prescribed by the regulations under section 111A(8).

No. 27 **Under the influence of alcohol and another drug**

Page 8. Insert after line 45—

[21A] Schedule 3, clause 33

Insert “111B or” after “section” in the heading to the clause.

[21B] Schedule 3, clause 33(1)

Insert “111B (Presence of prescribed quantity of drug in person's oral fluid, blood or urine and under the influence of drugs) or” after “section”.

[21B] Schedule 3, clause 33(2)(b)

Insert “111B(1), (2) or (3) or” after “section”.

No. 28 **Under the influence of alcohol and another drug**

Page 9, Schedule 1[22], line 3. Insert “or 111B” after “111A”.

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- No. 29 **Under the influence of alcohol and another drug**
Page 9, Schedule 1[23], line 5. Omit “or 111A”. Insert instead “, 111A or 111B”.
- No. 30 **Under the influence of alcohol and another drug**
Page 9, Schedule 1[26], line 14. Insert “or 111B” after “111A”.
- No. 31 **Under the influence of alcohol and another drug**
Page 10, Schedule 2.1, line 4. Insert “, 111B” after “111A”.
- No. 32 **Under the influence of alcohol and another drug**
Page 10, Schedule 2.2, line 7. Insert “111B,” after “111A,”.
- No. 33 **Under the influence of alcohol and another drug**
Page 10, Schedule 2.3, line 10. Insert “111B,” after “111A,”.
- No. 34 **Under the influence of alcohol and another drug**
Page 10, Schedule 2.4, line 13. Insert “111B,” after “111A,”.
- No. 35 **Combined drug and alcohol offence**
Page 10, Schedule 2.5, proposed clause 28AA(1), lines 18–24. Omit all words on those lines.
Insert instead—
 (1) An offence under the law of another jurisdiction is a *corresponding combined alcohol and drug driving offence* if the offence involves—
 (a) the presence of alcohol in a person’s breath or blood if the presence is a range that would, for the person, be considered to be an offence in New South Wales and the presence of the prescribed quantity of a relevant drug in a person’s oral fluid, blood or urine, or
 (b) the presence of alcohol in a person’s breath or blood if the presence is a range that would, for the person, be considered to be an offence in New South Wales while the person is under the influence of another drug.
- No. 36 **Under the influence of alcohol and another drug**
Page 11, Schedule 2.6[3], line 2. Insert “, 111B” after “111A”.

