



New South Wales

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

## Explanatory note

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

## Overview of Bill

The object of this Bill is to introduce a combined alcohol and drug driving offence under the *Road Transport Act 2013* (the *Act*) and provide for the penalties for the offence. The Bill makes other minor and consequential amendments.

## 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.

## Schedule 1 Amendment of Road Transport Act 2013 No 18

**Schedule 1[1]** inserts the definition of *combined alcohol and drug driving offence*.

**Schedule 1[2]** amends the definition of *major offence* to provide that a combined alcohol and drug driving offence is a major offence.

**Schedule 1[3]** inserts proposed section 111A which provides that it is an offence for a person driving, occupying the driving seat of a motor vehicle and attempting to put the vehicle in motion, or occupying the seat next to a learner driver driving the vehicle while a high range prescribed concentration of alcohol and presence of a prescribed illicit drug or a middle range prescribed concentration of alcohol and presence of a prescribed illicit drug is present in the person. Proposed section 111A(3) also provides that it is an offence for a person to commit an offence under section 110(1), (2) or (3) while there is present in the person's oral fluid, blood or urine, a prescribed illicit drug if the person has, within the previous 5 years, been convicted of combined alcohol and drug

driving offence under proposed section 111A(1) or (2), or if the person has previously been convicted of the same offence under subsection (3) in the previous 5 years. The proposed new offence provides that a person cannot be convicted of certain other offences in relation to the same conduct. The court is also provided with a power to acquit a person of an offence against proposed section 111A and find the person guilty of certain offences with the same or a lesser maximum penalty. The proposed section sets out the circumstances which are not a defence to a prosecution for an offence. It also provides a defence for an offence that relates to a novice range prescribed concentration of alcohol.

**Schedule 1[4]** inserts a reference to proposed section 111A in relation to section 113(1) for the purpose of ensuring that the provision about detention of vehicles in certain cases extends to the proposed combined alcohol and drug driving offence.

**Schedule 1[5]** inserts a reference to proposed section 111A in section 202(1)(d) for the purpose of prescribing the period within which proceedings may be commenced.

**Schedule 1[6]** amends section 203(2)(a) to provide that proposed section 111A is an *applicable offence* for the purpose of disapplying the *Crimes (Sentencing Procedure) Act 1999*, section 10, in certain circumstances.

**Schedule 1[7]–[11]** provide that a conviction for an offence against proposed section 111A is a type of offence for which a disqualification, including an automatic disqualification, from holding a driver licence applies, and prescribes the periods for the disqualification.

**Schedule 1[12]** provides that section 205(4) does not apply in relation to the calculation of disqualification periods for multiple convictions of a person if one or more of the convictions is for a combined alcohol and drug driving offence.

**Schedule 1[13]** inserts a provision to provide for the maximum period of automatic disqualification from holding a licence if multiple offences are committed arising out of a single incident and one of the offences is a combined alcohol and drug driving offence.

**Schedule 1[14]** amends the definition of *alcohol-related major offence* to include a combined alcohol and drug driving offence as an alcohol-related major offence for Part 7.4, Division 2.

**Schedule 1[15]** amends the definition of *mandatory interlock offence* to include a combined alcohol and drug driving offence that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence.

**Schedule 1[16]** provides for offences against proposed section 111A to be inserted into the table relating to mandatory interlock offences and provides for the minimum and maximum disqualification period and minimum interlock period.

**Schedule 1[17]** amends section 212(3)(c) and (5) to provide for circumstances that affect whether the court may make a mandatory interlock order in relation to a conviction for an offence against proposed section 111A(2).

**Schedule 1[18]** continues the operation of a suspension notice given by a police officer for an offence against section 110 if the driver is later charged with an offence against proposed section 111A, until all charges are withdrawn or heard and determined by the court.

**Schedule 1[19]** amends the definition of *sanctionable offence* to include a combined alcohol and drug driving offence for the purposes of Part 7.6.

**Schedule 1[20]** provides for when a police officer may impose an additional sanction for a sanctionable offence that is a combined alcohol and drug driving offence.

**Schedule 1[21]** inserts into Schedule 3 provisions relating to evidence about the alcohol concentration for proceedings for an offence against proposed section 111A and the presence of drugs for proceedings for an offence against proposed section 111A.

**Schedule 1[22] and [23]** amend Schedule 3 to provide that a conviction for an offence against proposed section 111A is not admissible as evidence of the fact that a person was at any time under

the influence of, or in any way affected by, intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle for the purpose of a contract of insurance. Certain covenants, terms, conditions or provisions in a contract of insurance relating to an offence against proposed section 111A are also void.

**Schedule 1[24] and [25]** extend provisions about certificate evidence to apply for an offence against proposed section 111A.

**Schedule 1[26]** inserts the proposed section 111A offence in the definition of *related alcohol or drug offence* in Schedule 3, clause 40(4), in relation to ensuring a person is not convicted of an offence against section 112(1) as well as a combined alcohol and drug driving offence if the offences arose out of the same circumstances.

## **Schedule 2      Amendment of other legislation**

**Schedule 2.1** amends the *Criminal Procedure Regulation 2017* to include the new combined alcohol and drug driving offence as an offence prescribed for the purposes of the *Criminal Procedure Act 1986*, section 187(5), for which a prosecutor is not required to serve a brief of evidence.

**Schedule 2.2** amends the *Health Services Regulation 2018* to prescribe a combined alcohol and drug driving offence as a traffic offence for the purposes of Part 4 of that Regulation.

**Schedule 2.3** provides that a combined alcohol and drug driving offence is a disqualifying offence under the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017*, clause 24.

**Schedule 2.4** includes a combined alcohol and drug driving offence in the *Recreation Vehicles Act 1983*, section 23 which relates to driving a motor vehicle in a recreational vehicle area.

**Schedule 2.5** prescribes, for the purposes of the Act, section 9(5)(e), that an offence under the law of another jurisdiction that includes the same elements of a combined alcohol and drug driving offence is an equivalent offence.

**Schedule 2.6** provides that a combined alcohol and drug driving offence is a type of offence for which Transport for NSW may require a person to undertake an alcohol or other drug education program and makes consequential amendments to update references to Transport for NSW.