

# Road Transport Amendment (Alcohol and Drug Testing) Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Road Transport Act 2013* as follows:
  - (i) to enable a police officer to require a person who has been physically unable to submit to a breath analysis to provide a blood sample instead for alcohol analysis,
  - (ii) to prevent a person who provides a blood sample in the above circumstances from being liable to be convicted for refusing or failing to submit to a breath analysis,
  - (iii) to enable a police officer to require a person who has submitted to oral fluid testing to remain at the place of testing so that testing may be completed,
  - (iv) to make certain procedures relating to the taking of urine samples under the Act consistent with those relating to the taking of blood and oral fluid samples,
  - (v) to extend the bases on which a police officer may form a reasonable belief that a person may be under the influence of a drug (as a prerequisite to requiring the person to submit to a sobriety test) to include the person's behaviour, condition or appearance,
  - (vi) to enable sample takers and analysts to perform their duties under the Act through persons acting at their direction,
  - (vii) to reframe the matters in relation to which certificate evidence may be given by analysts to accommodate performance of their duties by persons acting under their authority,
  - (viii) to clarify who may give certificate evidence concerning sample taking or analysis performed in another jurisdiction,
  - (ix) to provide that certain breath analyses carried out by police officers who had undertaken relevant training are taken to have been carried out by police officers duly authorised to do so,
  - (x) to make consequential, minor or ancillary amendments, and
- (b) to amend the *Marine Safety Act 1998*:
  - (i) to make amendments corresponding with those referred to in paragraph (a) (i)–(iii) and (v)–(viii), and
  - (ii) to make consequential, minor or ancillary 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 on a day or days to be appointed by proclamation.

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

### Requirement to provide blood sample for alcohol analysis if physically unable to submit to breath analysis

**Schedule 1 [8]** enables a police officer to require a person who has been physically unable to submit to a breath analysis as directed, to provide instead a sample of the person's blood, in accordance with the directions of an authorised sample taker, for analysis to determine the concentration of alcohol in the blood. **Schedule 1 [7]** enables a person to be arrested, taken to a hospital or prescribed place and detained there for the purpose of providing such a blood sample. **Schedule 1 [5]** provides for the period after the expiration of which a police officer cannot require

a person to provide such a blood sample.

**Schedule 1 [14]** creates an offence of refusing or failing to submit to the taking of a blood sample if required to do so in the above circumstances. The maximum penalty for the offence is 30 penalty units (currently \$3,300) or imprisonment for 18 months, or both, in the case of a first offence, or 50 penalty units (currently \$5,500) or imprisonment for 2 years, or both, in the case of a second or subsequent offence. It is a defence to a prosecution for the offence that the defendant was unable to provide a blood sample on medical grounds.

The proposed offence has the same maximum penalty, and is treated in the same way for the purposes of the Act, as the offence of failing or refusing to submit to a breath analysis when required to do so by a police officer, including by being made a *major offence* (enabling immediate licence suspension and automatic licence disqualification) and an *alcohol-related major offence* (enabling participation in an interlock program as an alternative to disqualification). **Schedule 1 [1]–[4]** make related amendments.

**Schedule 1 [31]** makes a consequential amendment to prevent a person who submits to the taking of a blood sample when required to do so in the proposed circumstances from being charged with driving under the influence of alcohol in relation to the same driving event (as is the case with a person who submits to a breath analysis).

**Schedule 1 [33]** prevents a person who submits to the taking of a blood sample when required to do so in the proposed circumstances (or who is prosecuted for failing or refusing to submit to the taking of a blood sample but satisfies the court that he or she was unable, on medical grounds, to so submit) from being liable to be convicted, in relation to the person's inability to submit to the breath analysis, of the offence of failing or refusing to submit to a breath analysis.

Schedule 1 [33] also prevents a person who fails or refuses to provide a blood sample in those circumstances from being convicted of both the offence of failing or refusing to submit to a breath analysis and the proposed offence of failing or refusing to submit to the taking of a blood sample.

**Schedule 1 [15]** makes a consequential amendment to make it an offence for a person to wilfully alter the concentration of alcohol in the person's blood between the time of the driving event that preceded the requirement for a breath test and the time the person provides a sample of blood when required to do so in the proposed circumstances. The offence attracts the same maximum penalty (being the same as that referred to in relation to the offence created by Schedule 1 [14]), and is treated in the same way for the purposes of the Act, as the equivalent offence in relation to breath analysis.

**Schedule 1 [34]** extends provision for protection from personal liability for authorised sample takers to cover the proposed sample taking.

As a consequence of the amendment proposed to be made by Schedule 1 [8], **Schedule 1 [10]** amends a provision that enables a police officer to require a person to provide a blood sample if the person has been unable to comply with a direction to provide an oral fluid sample, to make it clear that the inability to comply must be physical in nature.

### **Requirement to remain at place of oral fluid testing for reasonable period to enable completion of testing**

**Schedule 1 [9]** enables a police officer to direct a person who has submitted to an oral fluid test to remain at or near the place of testing for such period as is reasonable to enable the test to be completed. A person who does not comply with such a direction is liable to a maximum penalty of 10 penalty units (currently \$1,100).

### **Revision of procedures for urine sampling consistent with blood and oral fluid sampling**

**Schedule 1 [19]–[21]** make the procedure for taking urine samples consistent with those for taking blood and oral fluid samples by requiring the sample taker to give the person from whom the sample was taken a certificate identifying the urine sample as the person's sample (rather than a portion of the urine sample itself) for the purposes of obtaining an independent analysis. The person may, within 12 months, apply to an authorised laboratory for a portion of the sample to be sent for analysis (at the person's own expense) to a medical practitioner or laboratory nominated by the person.

### **Requirement to submit to sobriety assessment on basis of behaviour, condition or**

## **appearance**

**Schedule 1 [12]** enables a police officer to require a person who was driving or attempting to drive a vehicle and whose breath test results do not permit the person to be required to submit to a breath analysis, to submit to a sobriety assessment if the police officer reasonably believes the person may be under the influence of a drug by the behaviour, condition or appearance of the person.

Currently, a police officer may form this belief only on the basis of the way in which the person was driving or attempting to drive the vehicle. **Schedule 1 [13]** notes provision in the Act for the period after the expiration of which a police officer cannot require a person who has been required to submit to a sobriety assessment, to provide a blood or urine sample as a consequence of the assessment or a refusal to submit to it.

**Schedule 1 [6], [11], [16] and [17]** reframe certain temporal reference points as a consequence of the amendment proposed to be made by Schedule 1 [12].

## **Discharge of duties of sample takers and analysts**

**Schedule 1 [23]** enables the duties of an authorised sample taker or analyst under the Act to be performed by other persons at the direction of (rather than only under the supervision of) the authorised sample taker or analyst and provides that a duty performed by any such person is taken to have been performed by the authorised sample taker or analyst.

## **Evidence certificates of sample takers and analysts**

**Schedule 1 [26]–[29]** reframe provisions specifying matters concerning samples submitted for analysis that may be the subject of certificate evidence from analysts in proceedings for certain offences under the Act, to accommodate the performance of analysts' duties by persons acting under their supervision or at their direction, rather than by analysts personally.

**Schedule 1 [30]** expands the definitions of *interstate analyst* and *interstate sample taker* to make it clear that certificate evidence concerning sample taking or analysis that is performed in another jurisdiction may be given not only by persons who personally perform the analysis or sample taking but also by persons who supervise or direct those procedures.

**Schedule 1 [22]** requires a police officer to notify the prescribed laboratory to which a blood or urine sample is submitted following a fatal accident, rather than an analyst at the laboratory, of certain matters before the sample may be analysed.

## **Amendments dealing with savings, transitional and other matters**

**Schedule 1 [18] and [32]** make amendments by way of statute law revision.

**Schedule 1 [24] and [25]** standardise references to an authority required from the Commissioner of Police under the Act to carry out a breath analysis.

**Schedule 1 [35]** makes provision of a savings and transitional nature consequent on certain of the proposed amendments.

Schedule 1 [35] also provides that breath analyses carried out between 1 December 1999 and 21 February 2014 by police officers who had undertaken a NSW Police Force training course in breath analysis are taken to have been carried out by police officers duly authorised to do so, and the police officers to have been duly authorised to carry them out.

## **Schedule 2 Amendment of Marine Safety Act 1998 No 121**

**Schedule 2** amends the *Marine Safety Act 1998* to the same effect as Schedule 1 amends the *Road Transport Act 2013*, and makes certain consequential and related amendments, as follows:

- (a) **Schedule 2 [1]–[5], [9], [26] and [32]–[36]**—Requirement to provide blood sample for alcohol analysis if physically unable to submit to breath analysis,
- (b) **Schedule 2 [12], [13] and [16]**—Revision of procedures for urine sampling consistent with blood and oral fluid sampling,
- (c) **Schedule 2 [17]–[19] and [23]–[25]**—Requirement to submit to sobriety assessment on basis of behaviour, condition or appearance,
- (d) **Schedule 2 [8]**—Discharge of duties of sample takers and analysts,
- (e) **Schedule 2 [11], [14], [15] and [27]–[31]**—Evidence certificates of sample takers and analysts.

Schedule 2 also makes amendments to the *Marine Safety Act 1998* dealing with savings,

transitional and other matters, as follows:

- (a) **Schedule 2 [6] and [7]** replace certain references to “medical practitioner” with references to “authorised sample taker”, consistent with the *Road Transport Act 2013*,
- (b) **Schedule 2 [10] and [20]–[22]** make amendments by way of statute law revision,
- (c) **Schedule 2 [37]** inserts savings and transitional provisions consequent on the proposed amendments to which the provisions refer.