

MOTOR TRAFFIC (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Motor Traffic Act, 1909 ("the Principal Act"), so as—

- (a) to give indemnification from legal proceedings to medical practitioners and certain others for providing the Department of Motor Transport with information concerning persons who would not be safe drivers on account of illness or disability (Schedule 1); and
- (b) to enact a number of miscellaneous amendments to the provisions of the Principal Act, relating to compulsory blood testing, disqualification from holding a driver's license, and the definition of a "major offence" (Schedule 2).

The Bill—

- (a) indemnifies a registered medical practitioner, optometrist or physio-therapist from legal proceedings if he expresses to the Department of Motor Transport an opinion that a person whom he has examined or treated would be a dangerous driver by reason of—
 - (i) illness or bodily or mental infirmity, defect or incapacity; or
 - (ii) the effects of treatment for any such illness, infirmity, defect or incapacity,or if he states to the Department the nature of any such illness, etc. (Schedule 1);
- (b) provides that it is a defence for a medical practitioner who fails to take a blood sample of a motor accident victim, if the requirement to take the sample arose under the Principal Act after 12 hours after the accident occurred (Schedule 2 (2) (a));
- (c) removes from section 4F (7) of the Principal Act the offence, when committed by a pedestrian, of preventing the taking of a sample of his blood or wilfully altering the concentration of alcohol in his blood, and re-enacts the offence in a new subsection (but with a lower penalty)—this amendment will also produce the result that the offence, when committed by a pedestrian, will not be a "major offence" within the meaning of the Principal Act (Schedule 2 (2) (b), (d));

- (d) provides that a driver, who does anything to alter wilfully the concentration of alcohol in his blood after a motor accident and before a sample of his blood is taken, does not commit an offence if he did the thing at the direction or under the supervision of a person of a class prescribed by regulation (Schedule 2 (2) (c));
 - (e) provides that it is a defence for a person (whether a driver or a pedestrian) who does anything to alter wilfully the concentration of alcohol in his blood after a motor accident and before a sample of his blood is taken, if he did the thing after 2 hours after the accident occurred (Schedule 2 (2) (e));
 - (f) gives indemnification from legal proceedings to a medical practitioner who takes a blood sample, if he was informed by a member of the police force that the person from whom the sample was taken was within the category of persons from whom samples are to be taken (Schedule 2 (2) (i));
 - (g) provides for a certificate given by an analyst as to a blood sample to specify the day on which the sample was received (Schedule 2 (3));
 - (h) provides for a P.C.A. offence committed before 17th December, 1982, to be taken into account for the purpose of the application of the license disqualification provisions of the Principal Act to major offences committed after the amendment takes effect (Schedule 2 (1) and (4) (a) and (c), and clause 5 of Schedule 3);
 - (i) equates the periods of automatic or minimum disqualification for the offence of driving under the influence of intoxicating liquor or drugs (D.U.I.) with those applicable to the offence of driving with the middle range prescribed concentration of alcohol (Schedule 2 (4) (b)); and
 - (j) makes other provisions of a minor, consequential or ancillary nature.
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MOTOR TRAFFIC (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Motor Traffic Act, 1909, so as to provide indemnification in respect of the making of certain reports as to the medical fitness of certain persons; and to make further provisions with respect to the blood testing of persons involved in motor accidents and the disqualification of certain persons from holding drivers' licenses.

[MR COX—24 March, 1983.]

Motor Traffic (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Motor Traffic (Amendment) Act, 1983".

Commencement.

2. (1) Except as provided by this section, this Act shall commence on 10 the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedule 1 or 2, shall commence on the day on which the provision commences.

(3) Schedule 2 (2) (b), (2) (d) and (4) shall commence on such day or days as may be appointed by the Governor in respect thereof and as 15 may be notified by proclamation published in the Gazette.

Principal Act.

3. The Motor Traffic Act, 1909, is referred to in this Act as the Principal Act.

Schedules.

20 4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEDICAL REPORTS.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

25 SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

Motor Traffic (Amendment).

Amendment of Act No. 5, 1909.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions.

5 6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
MEDICAL REPORTS.

10 (1) Section 17 (1)—

Omit "Nothing", insert instead "Except as provided by section 17A, nothing".

(2) Section 17A—

After section 17, insert:—

15 **Indemnification for medical reporting.**

17A. (1) In this section, "registered person" means a person registered under the Medical Practitioners Act, 1938, the Optometrists Act, 1930, or the Physiotherapists Registration Act, 1945, and includes a person registered or licensed under a prescribed Act or under the prescribed provisions of a prescribed Act.

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Motor Traffic (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
MEDICAL REPORTS—*continued.*

- 5 (2) No civil or criminal liability is incurred by a registered person for—
- (a) expressing to the Commissioner or an officer of the Department of Motor Transport, whether in writing or otherwise, an opinion that a specified person whom the registered person has examined or treated may not, by reason of—
- 10 (i) illness or bodily or mental infirmity, defect or incapacity; or
- (ii) the effects of treatment for any such illness, infirmity, defect or incapacity,
- 15 be competent or medically fit to drive a motor vehicle with safety to the public; or
- (b) stating to the Commissioner or such an officer, whether in writing or otherwise, the nature of any such illness, infirmity, defect, incapacity, effect or treatment.

SCHEDULE 2.

20 (Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 2 (1), definition of “Major offence”—
In paragraph (a), after “10A”, insert “(1)”.
- (2) (a) Section 4F (5) (da)—
- 25 After section 4F (5) (d), insert:—
- (da) the requirement that he take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or he believed on reasonable grounds that the requirement so arose;

Motor Traffic (Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 4F (7)—

5 After “person” where firstly occurring, insert “(other than a pedestrian involved in the accident concerned)”.

(c) Section 4F (7) (b)—

After “medical practitioner”, insert “, or a person of a prescribed class or description,”.

(d) Section 4F (7A)—

10 After section 4F (7), insert:—

(7A) Any person (being a pedestrian involved in the accident concerned) who—

15 (a) by reason of his behaviour, prevents a medical practitioner from taking a sample of his blood in accordance with this section; or

20 (b) between the time of the accident concerned and the taking of a sample of his blood in accordance with this section wilfully does anything to alter the concentration of alcohol in his blood (except at the direction or under the supervision of a medical practitioner, or a person of a prescribed class or description, for the proper care and treatment of the person),

shall be guilty of an offence under this Act.

(e) Section 4F (7B)—

25 Before section 4F (8), insert:—

30 (7B) It is a defence to a prosecution of a person for an offence under subsection (7) or (7A) of wilfully doing anything to alter the concentration of alcohol in his blood if he satisfies the court that he did the thing after the expiration of 2 hours after the accident concerned occurred.

Motor Traffic (Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) Section 4F (11)—

5 Omit “action lies against”, insert instead “civil or criminal liability is incurred by”.

(g) Section 4F (11) (a)—

Omit “or”.

(h) Section 4F (11) (b)—

Omit “section,”, insert instead “section; or”.

10 (i) Section 4F (11) (c)—

After section 4F (11) (b), insert:—

(c) he was informed by a member of the police force that the person was a person from whom he was required to take the sample under this section,

15 (j) Section 4F (11)—

Omit “against” where secondly occurring, insert instead “by”.

(3) Section 4G (11) (a)—

Omit the paragraph, insert instead:—

20 (a) that he received, on a specified day, a portion of a sample of a specified person’s blood in a container submitted for analysis under this section;

(4) (a) Section 10A (2)—

25 Omit “crime or offence (whether of the same or a different kind) of the class referred to in this section”, insert instead “major offence (whether of the same or a different kind)”.

Motor Traffic (Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 10A (2) (b), (3) (b)—

After “(1F)” wherever occurring, insert “or section 5 (2)”.

5 (c) Section 10A (3)—

Omit “crimes or offences (whether of the same or a different kind) of the class referred to in this section”, insert instead “major offences (whether of the same or a different kind)”.

SCHEDULE 3.

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SAVINGS AND TRANSITIONAL PROVISIONS.

(Sec. 6.)

Defence for failing to take blood sample.

1. Section 4F (5) (da) of the Principal Act, as amended by this Act, applies to and in respect of offences committed before the commencement of Schedule 2 (2) (a), as well as to and in respect of offences committed after that commencement, except where proceedings before a court of petty sessions for such an offence have been concluded before that commencement.

Defence for altering concentration of alcohol.

2. Section 4F (7B) of the Principal Act, as amended by this Act, applies to and in respect of offences committed before the commencement of Schedule 2 (2) (e), as well as to and in respect of offences committed after that commencement, except where proceedings before a court of petty sessions for such an offence have been concluded before that commencement.

Offences by pedestrians not to be major offences.

25 3. An offence under section 4F (7) of the Principal Act committed by a pedestrian involved in the accident concerned before the commencement of Schedule 2 (2) (b) shall be deemed not to be, and shall be deemed never to have been, an offence to or in respect of which section 10A of the Principal Act applies or applied.

Motor Traffic (Amendment).

SCHEDULE 3—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Indemnification for medical practitioners.

4. Section 4F (11) of the Principal Act, as amended by this Act, applies to and in
5 respect of anything done before the commencement of Schedule 2 (2) (f)–(j), as well
as to and in respect of anything done after that commencement.

Former P.C.A. offences to be taken into account for license disqualification.

5. (1) Offences committed under section 4E (1) or (1B) of the Principal Act as in
force before 17th December, 1982, shall be disregarded for the purposes of section 10A
10 of the Principal Act, except for the purpose of the application of section 10A of the
Principal Act to major offences committed after the commencement of Schedule 2 (4).

(2) Nothing in subclause (1) limits the power of a court to order disqualification
under section 10A of the Principal Act.



