

TASMANIA

ROAD SAFETY (ALCOHOL AND DRUGS) AMENDMENT BILL (No. 2) 2005

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**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL (No. 2) 2005**

*(Brought in by the Minister for Police and Public Safety, the
Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the Road Safety (Alcohol and Drugs) Act 1970, the Motor Accidents (Liabilities and Compensation) Act 1973, the Rail Safety Act 1997, the Rail Safety Regulations 1999, the Road Safety (Alcohol and Drugs) Regulations 1999 and the Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Road Safety (Alcohol and Drugs) Amendment Act (No. 2) 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

s. 3

No. *Road Safety (Alcohol and Drugs) Amendment* 2005
(No. 2)

3. Transitional provision

Notwithstanding any amendment made to the *Road Safety (Alcohol and Drugs) Act 1970* by this Act, the provisions of the *Road Safety (Alcohol and Drugs) Act 1970* as in force immediately before the commencement of this Act apply to a person who committed an offence under the *Road Safety (Alcohol and Drugs) Act 1970* before the commencement of this Act.

4. Effect of amendments to regulations specified in Parts 5 and 6

The amendments by this Act of a provision of any regulations does not prevent that or any other provision of those regulations from being amended or rescinded by a subsequent regulation.

PART 2 – ROAD SAFETY (ALCOHOL AND DRUGS)
ACT 1970 AMENDED

5. Principal Act

In this Part, the *Road Safety (Alcohol and Drugs) Act 1970** is referred to as the Principal Act.

6. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended as follows:

- (a) by omitting “blood” from the definition of “breath analysing instrument” and substituting “breath”;
- (b) by omitting “blood” from the definition of “breath analysis” and substituting “breath”;
- (c) by inserting “breath or” after “a person’s” in the definition of “breath test”;
- (d) by omitting the definition of “prescribed concentration” and substituting the following definition:

“prescribed concentration” means a concentration of 0·05 of a gram of alcohol in 210 litres of breath or a concentration of 0·05 of a gram of alcohol in 100 millilitres of blood;

*No. 77 of 1970

7. Section 6 amended (Driving with excessive concentration of breath or blood alcohol)

Section 6(1) of the Principal Act is amended by inserting “breath or” after “his”.

8. Section 7 amended (Consumption, &c., of intoxicating liquor in motor vehicles)

Section 7(3A) of the Principal Act is amended by omitting “*Liquor and Accommodation Act 1990*” and substituting “*Liquor Licensing Act 1990*”.

9. Section 7A amended (Power of police officer to require driver of motor vehicle to undergo breath test)

Section 7A(4) of the Principal Act is amended by inserting “breath or” after “person’s”.

10. Section 8 amended (Liability for breath test as a result of conduct)

Section 8 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “breath or” after “person’s”;
- (b) by inserting in subsection (8) “breath or” after “person’s”.

| COLUMN 1 Section of Act or offence | COLUMN 2 Concentration of alcohol in breath in grams per 210 litres of breath or in blood in grams per 100 millilitres of blood | COLUMN 3 Fine | COLUMN 4 Period of disqualification | COLUMN 5 Term of imprisonment |
|--|--|------------------|---|-------------------------------------|
|--|--|------------------|---|-------------------------------------|

(d) by omitting

| COLUMN 1 Section of Act or offence | COLUMN 2 Concentration of alcohol in blood in grams per 100 millilitres of blood | COLUMN 3 Fine | COLUMN 4 Period of disqualification | COLUMN 5 Term of imprisonment |
|--|--|------------------|---|-------------------------------------|
|--|--|------------------|---|-------------------------------------|

from Part 2 of the table in subsection (5) and substituting the following:

| COLUMN 1 Section of Act or offence | COLUMN 2 Concentration of alcohol in breath in grams per 210 litres of breath or in blood in grams per 100 millilitres of blood | COLUMN 3 Fine | COLUMN 4 Period of disqualification | COLUMN 5 Term of imprisonment |
|--|--|------------------|---|-------------------------------------|
|--|--|------------------|---|-------------------------------------|

14. Section 18A amended (Traffic infringement notice may be issued in certain circumstances)

Section 18A(1) of the Principal Act is amended by omitting “blood of less than 0·1 of a gram of alcohol in 100 millilitres of blood” and substituting “breath of less than 0·1 of a gram of alcohol in 210 litres of breath or a concentration of alcohol in that person’s blood of less than 0·1 of a gram of alcohol in 100 millilitres of blood”.

15. Section 19 amended (Special hardship orders)

Section 19(1A)(b) of the Principal Act is amended as follows:

- (a) by inserting “breath or” after “her”;
- (b) by inserting “equal to or greater than 0.15 of a gram of alcohol in 210 litres of breath or” after “concentration”.

16. Section 21 amended (Avoidance of certain provisions in contracts of insurance)

Section 21(b) of the Principal Act is amended by inserting “breath or” after “in his”.

17. Section 22 amended (Application of Division 1)

Section 22(1)(b) of the Principal Act is amended by inserting “breath or” after “in the”.

18. Section 23 amended (Statutory presumptions with respect to breath analyses and blood tests, &c.)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “blood” three times occurring and substituting “breath”;
- (b) by inserting in subsection (4) “breath or” after “in the”;

- (c) by inserting in subsection (4) “breath or” after “been the concentration of alcohol in his”;
- (d) by inserting in subsection (4) “breath or” after “that the concentration of alcohol in his”;
- (e) by inserting in subsection (5) “breath or” after “analysis had alcohol in his”;
- (f) by inserting in subsection (5) “breath or” after “he had alcohol in his”;
- (g) by inserting in subsection (6) “breath or” after “shown that the concentration of alcohol in the”;
- (h) by inserting in subsection (6) “breath or” after “proved, that the concentration of alcohol in the”.

19. Section 24 amended (Restrictions on admission of evidence of breath analysis)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “blood” first occurring and substituting “breath”;
- (b) by omitting from subsection (2) “blood” and substituting “breath”.

20. Section 25 amended (Evidence as to carrying out of breath analysis)

Section 25(2)(f) of the Principal Act is amended as follows:

- (a) by omitting “100 millilitres of blood” and substituting “210 litres of breath”;
- (b) by omitting “blood” second occurring and substituting “breath”.

**PART 3 – MOTOR ACCIDENTS (LIABILITIES AND
COMPENSATION) ACT 1973 AMENDED****21. Principal Act**

In this Part, the *Motor Accidents (Liabilities and Compensation) Act 1973** is referred to as the Principal Act.

22. Section 24 amended (Exclusions from scheduled benefits)

Section 24(4) of the Principal Act is amended by omitting the column headings from the table and substituting the following:

| <i>Section of Road Safety (Alcohol and Drugs) Act 1970</i> | Concentration of alcohol in breath (grams per 210 litres of breath) or in blood (grams per 100 millilitres of blood) | Proportion of disability allowance otherwise payable |
|--|---|--|
|--|---|--|

*No. 71 of 1973

PART 4 – RAIL SAFETY ACT 1997 AMENDED**23. Principal Act**

In this Part, the *Rail Safety Act 1997** is referred to as the Principal Act.

24. Section 29 amended (Railway employees)

Section 29 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(c)(i) “breath or” after “her”;
- (b) by inserting in subsection (2)(a) “breath or” after “her”.

25. Schedule 1 amended (Notifiable Occurrences)

Clause 19 of Schedule 1 to the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) while there is present in his or her blood a concentration of 0·05 of a gram or more of alcohol in 210 litres of breath or a concentration of 0·05 of a gram or more of alcohol in 100 millilitres of blood; or

*No. 24 of 1997

PART 5 – RAIL SAFETY REGULATIONS 1999
AMENDED

27. Principal Regulations

In this Part, the *Rail Safety Regulations 1999** are referred to as the Principal Regulations.

28. Regulation 8 amended (Notifiable occurrences)

Regulation 8(6) of the Principal Regulations is amended as follows:

- (a) by inserting in paragraph (b) “breath or” after “her”;
- (b) by inserting in paragraph (c)(i) “breath or” after “employee’s”.

29. Regulation 9 amended (Railway employees - alcohol and drugs)

Regulation 9 of the Principal Regulations is amended by omitting subregulation (1) and substituting the following subregulation:

- (1) For the purposes of section 29 of the Act, the prescribed concentration of alcohol is a concentration of 0·05 of a gram or more of alcohol in 210 litres of breath or a concentration of 0·05 of a gram or more of alcohol in 100 millilitres of blood.

*S.R. 1999, No. 105

30. Schedule 1 amended (Railway employees - alcohol and drugs - testing procedures and requirements)

Schedule 1 to the Principal Regulations is amended as follows:

- (a) by omitting the definition of “prescribed concentration of alcohol” from clause 1(1) of Part 1 and substituting the following definition:

“prescribed concentration of alcohol” means a concentration of 0.05 of a gram or more of alcohol in 210 litres of breath or a concentration of 0.05 of a gram or more of alcohol in 100 millilitres of blood;

- (b) by inserting in clause 3(2)(b) of Part 2 “breath or” after “her”;
- (c) by omitting from clause 5 of Part 2 “blood” and substituting “breath”;
- (d) by omitting from clause 7(1) of Part 2 “blood” first occurring and substituting “breath”;
- (e) by inserting in clause 9(3) of Part 3 “breath,” after “person’s”;
- (f) by omitting from clause 10(1) of Part 4 “blood” twice occurring and substituting “breath”;
- (g) by omitting from clause 10(2)(b) of Part 4 “blood” second occurring and substituting “breath”;

- (h) by inserting in clause 10(5) of Part 4 “breath or” after “present in the”;
- (i) by omitting from clause 10(6)(b) of Part 4 “100 millilitres” and substituting “210 litres of breath”;
- (j) by omitting from clause 10(6)(b) of Part 4 “blood” and substituting “breath”.

**PART 6 – ROAD SAFETY (ALCOHOL AND DRUGS)
REGULATIONS 1999 AMENDED****31. Principal Regulations**

In this Part, the *Road Safety (Alcohol and Drugs) Regulations 1999** are referred to as the Principal Regulations.

32. Regulation 15 amended (Forms of statements)

Regulation 15(1) of the Principal Regulations is amended as follows:

- (a) by omitting from paragraph (a) “blood” and substituting “breath”;
- (b) by omitting from paragraph (c) “blood” and substituting “breath”.

33. Schedule 1 amended (Forms)

Schedule 1 to the Principal Regulations is amended by omitting Forms 2, 3 and 4 and substituting:

*S.R. 1999, No. 173

FORM 2

Regulation 15

Statement in a case where the concentration of alcohol in the breath of the person submitting to the breath analysis, as determined by that analysis, is greater than the prescribed concentration.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you (name)
submitted on (date) and which was completed at
..... (time) on that day has shown that your breath alcohol level
EXCEEDS THE LIMIT permitted by law for drivers of motor vehicles. Your breath
alcohol level was grams of alcohol in 210 litres of
breath.

YOU MAY –

(1) Accept this reading

OR

(2) Submit to a blood test.

If you do submit to a blood test, evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test you should make your request now.

This statement was read over to you at (time) on
..... (date).

.....
(Signature of approved operator)

FORM 3

Regulation 15

Statement in a case where it appears to the approved operator carrying out the breath analysis that the person submitting to the analysis is, or may be, a person mentioned in section 6(3) or (4) of the Act and the result of the analysis indicates that alcohol is present in that person's body.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you (name)
submitted on (date) and which was completed at
..... (time) on that day has shown that your breath alcohol level was
..... grams of alcohol in 210 litres of breath.

If you are a person mentioned in section 6(3) or (4) of the Act, this indicates that you have committed an offence in driving a vehicle while alcohol is present in your body.

YOU MAY –

(1) Accept this breath alcohol level

OR

(2) Submit to a blood test.

If you do submit to a blood test, evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test you should make your request now.

This statement was read over to you at (time) on
..... (date).

.....
(Signature of approved operator)

BACK OF FORM

You are a person mentioned in section 6(3) or (4) of the Act if –

- (a) you do not hold an authority to drive a motor vehicle; or
- (b) you do not hold an authority to drive a motor vehicle of the class you were driving immediately before the breath analysis was taken; or
- (c) you were driving a prescribed vehicle immediately before the breath analysis was taken; or
- (d) you hold a provisional licence or a learner licence; or
- (e) on or after 12 December 1991 you have been convicted of –
 - (i) the crime of manslaughter arising out of the driving of a motor vehicle; or
 - (ii) the crime of causing death by dangerous driving –
 and, as a result of the course of conduct giving rise to that crime, you were also convicted of an offence under section 4 or section 6 of the Act; or
- (f) you were driving under the authority of a restricted driver licence granted in respect of a disqualification from driving under the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (g) you have been convicted of 3 or more offences under the Act arising from at least 3 separate incidents where at least one of those offences was committed on or after 12 December 1991.

FORM 4

Regulation 15

Statement in a case where the concentration of alcohol in the breath of the person submitting to the breath analysis, as determined by that analysis, is not greater than the prescribed concentration, and that person has not, on inquiry made of him or her by an approved operator, indicated that he or she is a person mentioned in section 6(3) or (4) of the Act.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you (name)
submitted on (date) and which was completed at
..... (time) on that day has shown that your breath alcohol level was
..... grams of alcohol in 210 litres of breath, which
does NOT exceed the prescribed limit.

.....
(Signature of approved operator)

**PART 7 – VEHICLE AND TRAFFIC (DRIVER
LICENSING AND VEHICLE REGISTRATION)
REGULATIONS 2000 AMENDED**

34. Principal Regulations

In this Part, the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000** are referred to as the Principal Regulations.

35. Regulation 16 amended (Conditional licences)

Regulation 16 of the Principal Regulations is amended as follows:

- (a) by inserting in subregulation (3)(i) “breath or” after “with a”;
- (b) by inserting in subregulation (6)(a) “breath or” after “with a”.

*S.R. 2000, No. 49