

CLAUSE NOTES

Road Safety (Alcohol and Drugs) Amendment Bill 2017

PART 1 – PRELIMINARY

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies that the Act commences on a day or days to be proclaimed.

Clause 3: Repeal of Act

This clause provides that the *Road Safety (Alcohol and Drugs) Amendment Act 2017* is repealed on the three hundred and sixty fifth day from the day on which it commences.

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

Clause 4: Principal Act

Specifies that the *Road Safety (Alcohol and Drugs) Act 1970* is referred to as the Principal Act.

Clause 5: Section 2 amended (Interpretation)

Section 2 of the Act is amended by indicating the relevant section for the definition of approved analyst.

Indicates the change of section that contains the definition for an approved operator.

Remove reference to the Governor and replace it with Ministerial approval for breath analyser instrument and breath testing equipment.

Insert a definition for the word crash.

Insert a definition of oral fluid analysis that includes the requirement for the device to be approved by the Minister.

Extend the definition of qualified person to authorise suitably qualified people to take a sample of blood (to be prescribed in Regulations), in addition to doctors and nurses.

The renaming of an Excessive Drink Driving Notice to A Road Safety Disqualification Notice.

Defining supervision for the purposes of the technical analysis of samples.

Including a vehicle carrying dangerous goods as a prescribed vehicle for the purposes of a 0.00% blood alcohol content (BAC).

Defines what constitutes driving, inserting contemporary descriptions that should be easier to understand, implement and prosecute.

Re-establishing requirements of a supervising driver when accompanying a learner license driver.

Clause 6: Section 3

This clause repeals the current section, Supervising Analyst and inserts sections 2A, 2B, 3 and 3A.

Section 2A provides when relevant time starts, this is the time frame that is provided for a driver to be tested within.

Section 2B, 'Person liable to submit to analysis, examination, &c., to comply with police requirements', is inserted to ensure drivers have clear direction as to what is expected of them, this does not provide any further powers for police, it does however put process in place to ensure that the law is enforced efficiently.

Section 3, 'Approved analysts and approved operators', is repealed and a new version providing explanations on requirements for approved analysts and approved operators.

Section 3A, 'Delegation', is inserted to allow for the flexibility of delegating tasks to suitably qualified people within the legislative requirements of the Act.

Clause 7: Section 4 amended (Driving while under the influence of alcohol, drugs, &c., prohibited)

Is amended to clearly indicate that the offence of drive under the influence (DUI) relates to a person driving and is incapable of controlling that vehicle.

By replacing the word "things" with "substances" which is more appropriate terminology in the context.

Clause 8: Section 5 amended (Powers of arrest, &c.)

By extending the power of arrest without warrant to include, not only the offence of DUI (s4), but also escape from custody (s14(1B)) and drive whilst disqualified (s19A(1)).

Clause 9: Section 5A is inserted (Powers in relation to vehicles)

Include a new section (5A) to provide powers for police to confiscate keys and forbid a person from a driving, if a police officer believes, on reasonable grounds, that the person has committed an offence under this Act. This section also

extends to providing police with the power to move a vehicle to a safer, or more suitable location.

Clause 10: Section 6 amended (Driving with excessive concentration of breath or blood alcohol)

Section 6 provides for the offence of exceeding the prescribed alcohol limit. Subsections have been inserted at s6(3) to include people who hold a licence with a condition of 0% BAC. Additionally it inserts that if a person has been convicted of reckless, negligent or dangerous driving (in conjunction with DUI) that a condition of any future license is 0% BAC.

A time frame of 6 months, is inserted for s6(3A), to provide a definite time for “an unintentional failure to comply with and administrative requirement”, considering that this defines the BAC level for a driver (either 0% or 0.05%).

Clause 11: Section 6A amended (Driving with prescribed illicit drug in blood)

Oral fluid is inserted in s6A(1) to establish the offence, for which oral fluid analysis will be used, to test for illicit drugs.

Clause 12: Section 7AA is inserted (Application of Part)

This new section is inserted to clarify the powers of police when attempting to intercept and test drivers. The wording reflects those that are used in the *Misuse of Drugs Act 2001*.

Clause 13: Section 7A amended (Power of police officer to require driver of motor vehicle to undergo breath test)

This clause amends the section by providing scope for subsequent breath test. This is to ensure that an accurate reading is obtained. There are occasions when alcohol is retained in the mouth which may affect an initial reading.

It also repeals subsection 7A(5) to ensure that police are able to fulfil required duties.

Clause 14: Section 7B amended (Power of police officer to require driver of motor vehicle to undergo oral fluid test)

Subsection 7B(5) has been replaced providing the option for a second oral fluid test and additionally, for a police officer to require a driver to submit to an oral fluid analysis, regardless of the result of a test, if a police officer reasonably believe that an illicit drug has been consumed.

Clause 15: Section 7C amended (Liability to provide blood sample following oral fluid test)

Is amended to allow for a person to be taken for a blood test, if a police officer believes that the driver has a drug in their system, whether a test indicates it or not, or if a driver refuses an oral fluid test or analysis.

Amended to increase the relevant time to 5 hours.

Clause 16: Section 7D amended (Trace particle detection tests)

Is amended to include oral fluid in addition to blood.

Clause 17: Sections 8 amended (Liability for breath test as a result of conduct)

Removes terminology, “immediately preceding that time” to provide a police officer adequate time and opportunity to make a judgement whether to test, or not test, a driver. A police officer still needs to suspect driving has occurred, however the driver doesn't need to have been driving immediately prior to the officer forming the opinion. In circumstances where driving is dangerous and a police officer forms the opinion that the driver was drunk, then there is the power to require the driver to submit to a breath test or breath analysis.

Amends subsections of s8 to modernise terminology, for example replacing accident with the word crash.

Clause 18: Section 8A amended (Liability for oral fluid test as result of conduct)

Terminology amendments include the insertion of oral fluid, oral fluid analysis and replacing the word accident with crash. Further amendments mirror those that were inserted to s8 (clause 17).

There is also a section inserted (5A) that mirrors the current s8(6), which ensures consistency between breath testing/analysis and oral fluid testing/analysis. It provides the option for a driver to be oral fluid tested prior to being subjected to an oral fluid analysis.

Similarly, s8A(7) is inserted, mirroring the current s8(8), requiring a driver to follow all instructions given by a police officer.

Clause 19: Section 9 amended (Liability for medical examination where condition may not be due to alcohol)

Subsection 3A has been inserted to provide an avenue for a police officer to request a medical practitioner, who is carrying out a medical examination, to have a qualified person take a sample of blood as part of that medical examination.

The section is further amended by removing any reference to urine.

Clause 20: Section 10 amended (Enforcement of obligation to provide blood sample or submit to breath analysis or medical examination)

Subsections have been amended to include references to oral fluid analysis, which enables a driver to be subjected to the taking of oral fluid for analysis and/or being subjected to a medical examination which may include the taking of a sample of blood for analysis.

Reference to relevant time has been amended to 5 hours.

Subsection (4AB) has been inserted to provide clear direction that an election by a driver to have a blood sample taken must be made at that time. As relevant time is 5 hours there needs to be an immediate election, not an election some hours later within that timeframe.

Amendments have been made to broaden who may take a sample of blood from a driver. It will now include a qualified person, whose qualifications, as per the definition, will be prescribed in regulations.

Terminology has been amended, replacing accident with crash.

Clause 21: Section 10A amended (Blood samples to be provided in certain cases)

Amending terminology to replace the word accident with the more contemporary word, crash.

Subsection 10A(1B) has been inserted, providing police the option to require a driver, who has been arrested for an offence under section 4 (DUI), to supply a sample of blood for analysis.

Clause 22: Section 10B inserted

Section 10B (Subsequent testing and samples in certain cases) provides that a subsequent breath test/oral fluid test/breath analysis/or an oral fluid analysis can be conducted within the relevant time. This is in the event of equipment malfunction.

Includes amendments to refer to the relevant time of 5 hours.

Clause 23: Section 11 amended (Rights and obligations on completion of breath analysis or oral fluid analysis)

Subsection (1A) has been inserted to provide for a driver to elect to have a blood sample taken, following submitting to an oral fluid sample being taken for analysis.

Terminology has been amended to reflect 5 hours for relevant time.

Clause 24: Section 12 amended (Examination, &c., of persons incapable of consenting)

Terminology is amended to remove reference to urine and to indicate 5 hours for relevant time.

Clause 25: Section 13 amended (Duties of medical practitioners and nurses in relation to taking of blood samples, &c.)

Subsections are amended to reflect terminology changes, including removing reference to urine, reference to drugs in the blood and changes to a qualified person.

Subsection 3 has been replaced to reflect that a qualified person who takes a sample of blood is to comply with provisions within the legislation.

Replaces subsection (5) and (5A) with a single subsection (5). This removes the restrictions placed on the process of the taking of a blood sample, and having these prescribed in regulations to allow more flexible change to occur with the improvement in technology into the future.

Subsection 13(5B) is amended by including that the control sample may be given to the subject or the police officer who is present at the time of the taking of the sample.

Clause 26: Section 13A amended (Retention of blood sample during detention in custody)

Subsection 13A(4) has been repealed.

Subsection 13A(6) has been included. This inclusion provides that a control sample of blood, from a driver who was taken into custody, can be destroyed after a period of time, if not requested by the driver.

Clause 27: Section 13B amended (analysis of blood samples by approved analyst)

Subsection 13B(2) has been repealed and is replaced with a new subsection providing guidelines as to the requirements of reports relating to the analysis of samples, and the service of such reports on a driver from whom the sample was taken. This amendment intends to have all reports and paper work supplied to police who then must ensure that the defendant receives a copy.

Clause 28: Section 13C inserted

Section 13C (Analysis of saliva samples by approved analyst) is inserted. This section provides guidelines as to the taking and reporting of oral fluid for analysis. This section mirrors the process that has been established for the taking, recording and reporting on blood samples.

Clause 29: Section 14 amended (Offences under Division 2)

This section is amended to include failure or refuse to comply with a requirement to submit to an oral fluid test/analysis, as an offence.

Subsection 14(1B) and 14(1C) are repealed and replaced with subsection 14(1B) only. The new subsection replaces the complicated hinder conveyance rule with an escape from custody, and provides an offence mechanism if a driver escapes, or attempts to escape, or obstructs or hinders the testing/analysis process.

Terminology is amended to reflect 5 hours relevant time, removing references to urine and to include references to oral fluid analysis.

Subsection 14(3) is amended by adding an offence for failing, or refusing an oral fluid analysis.

A new subsection 14(8) and 14(9) is inserted to provide an offence if a driver consumes alcohol or drugs after a crash but prior to police attendance.

Clause 30: Section 15 amended (Identification of offenders)

This section is amended to include *date of birth* in the detail that police can request from a driver.

Clause 31: Section 17 amended (Penalties for drink-driving offences, &c.)

Amends reference to suspension of a driver's license in accordance with the *Vehicle and Traffic Act 1999*, preventing Magistrates from suspending licenses as an outcome of a conviction of a drink driving offence. Instead it allows for cancelling the license so the Licensing Registrar has the option of placing an Alcohol Interlock condition on any future applications for a driver's license.

Clause 32: Sections 18 and 18A substituted

Section 18 is repealed, this section provides as a sentencing option the requirement to attend a course. With the introduction of the Mandatory Alcohol Interlock Program and alternative sentencing options, this course has been made redundant.

Section 18A (Traffic infringement notice may be issued in certain circumstances) is inserted and provides the legislative framework for police to issue infringement notices for prescribed offences, which will be prescribed in regulations. This replaces the current breath analyser infringement notices that will be included in regulations.

Clause 33: Section 18B amended (Immediate disqualification in certain circumstances)

This amendment changes the name of an excessive drink driving notice to a road safety disqualification notice.

An offence against section 4, DUI, has been included as an offence for which a disqualification notice can be issued.

Subsections 18B(3) and 18B(4) have been replaced with subsections that provide provision for a restricted license to be cancelled if a disqualification notice is issued. The insertion of 18B(7) supports the legislative mechanism to suspend a restricted license.

Clause 34: Section 18C amended (Commencement of period of disqualification)

Amends terminology replacing Excessive Drink Driving Notice with Road Safety Disqualification Notice.

- Clause 35: Section 18D amended (Cancellation of road safety disqualification notice)**
- Amends terminology to reflect the change of name of Excessive Drink Driving Notice to a Road Safety Disqualification Notice.
- Clause 36: Section 19 amended (Special hardship orders)**
- Subsection (1A)(e) is amended to include a time frame, of 6 months, providing a definite time for “an unintentional failure to comply with and administrative requirement”, this is consistent with section 6(3A) (clause 10).
- Subsection (2) is amended to reflect the correct sections of other legislation which were changed previously but where amendments to this Act were not included in consequential amendments at the time.
- Clause 37: Section 19A amended (Driving while disqualified under this Act)**
- Subsection (2), (3) and (4) are replaced with an offence for drive whilst disqualified, stipulating the penalties that can be imposed.
- Clause 38: Section 20 amended (Concurrent offences not treated separately)**
- Similar to amendments at clause 36, s20 is amended to reflect the correct sections of other legislation which were changed previously but where this Act was not included in consequential amendments.
- Clause 39: Section 21 amended (Avoidance of certain provisions in contracts of insurance)**
- Amend terminology to remove reference to urine.
- Clause 40: Section 21A inserted**
- Section 21A - Prohibited analysis of blood or oral fluid, is inserted. This new section ensures that samples taken for the purpose of this legislation are to be used only for this legislation and cannot be cross referenced to other offences or crimes. This was a recommendation of the Tasmanian Institute of Law Enforcement Studies and is consistent with interstate legislation.
- Clause 41: Section 22 amended (Application of Division 1)**
- Terminology is amended to reflect the introduction of oral fluid analysis.
- Subsection 22(3) is inserted providing that certificates and reports can be a singular document.
- Clause 42: Section 23 amended (Statutory presumption with respect to breath analyses and blood tests, &c.)**
- This section has been amended to provide stronger boundaries for when this defence can be utilised.

Additionally it increases the time frame for this defence to 1 hour more than the relevant time as the legislation currently indicates (i.e. from 4 to 6)

Clause 43: Section 23A amended (Statutory presumptions with respect to prescribed illicit drugs).

Increases the time frame for this defence to 1 hour more than the relevant time (i.e. from 4 to 6).

Clause 44: Section 24 amended (Restrictions on admission of evidence of breath analysis)

Amends terminology to reflect the changes to qualified person and increase relevant time to 5 hours.

Clause 45: Section 25 amended (Evidence as to carrying out of breath analysis)

Amends the section to make it clear that prepared documents (certificates) are admissible in any court proceedings and are evidence of what the content indicates.

Clause 46: Section 25A amended (Evidence of matters related to refusal to submit to breath analysis).

Amends the section to make it clear that prepared documents (certificates) are admissible in any court proceedings and are evidence of what the content indicates.

Clause 47: Section 26 amended (Certificates and records of approved analyst and approved operators)

Amends terminology to reflect the abolishment of the Supervising Analyst and replacement with an Approved Analyst.

Amends the section to make it clear that prepared documents (certificates) are admissible in any court proceedings and are evidence of what the content indicates.

Clause 48: Section 27 amended (Certificate in relation to taking of blood samples)

Amends terminology to reflect the inclusion of a qualified person and remove the reference to urine.

Included is reference to “a person authorised by an approved analyst to receive the sample”, releasing the approved analyst from legislated administrative duties.

Amends the section to make it clear that prepared documents (certificates) are admissible in any court proceedings and are evidence of what the content indicates.

Clause 49: Section 28 amended (Certificates of analysis of blood samples).

Amends terminology to remove reference to urine.

Amends the section to make it clear that prepared documents (certificates) are admissible in any court proceedings and are evidence of what the content indicates.

Clause 50: Section 28A inserted

Section 28A (Certificates of analysis of oral fluid samples), provides for certificates relating to the taking and analysis of oral fluid.

Clause 51: Section 29 amended (Limitation on tendering of certificates, &c., in evidence)

Amends the section to provide for the completion, service and production in court, of certificates and reports relating to the taking of oral fluid, and making it clear that service has the same meaning as the *Acts Interpretation Act 1931*.

Clause 52: Section 30 amended (Evidence as to analyses, &c., inadmissible in certain proceedings).

Amends terminology to remove reference to urine and to include oral fluid.

Clause 53: Section 30A inserted

Section 30A (Costs of test, analysis or examination), provides for the costs of analysis of samples to be recouped upon conviction. This is similar to the provisions in the *Misuse of Drugs Act 2001*.

Clause 54: Section 31 amended (Regulations)

Amends terminology to remove references to the supervising analyst, replacing it with Approved Analyst, and inserting references to qualified persons.

Clause 55: Sections 32, 33 and 34 inserted

Section 32. (Protection from liability) provides protection from liability for police when they are performing duties in accordance with this Act.

Section 33. (Destruction of samples) provides for the destruction of samples after a period of time, post analysis and court appearance.

Section 34 (Savings and transitionals), ensures that there is no break in continuity between current practises and future practises upon proclamation of these amendments.

PART 3: MARINE SAFETY (MISUSE OF ALCOHOL) ACT 2006 AMENDED

Clause 56 – 60: Principal Act; Section 3 amended (Interpretation); Section 8 amended (Approved analysts and approved operators; Section 61 amended (Regulations); Schedule 1 amended (Evidentiary Certificates and Records).

The stated sections have been amended to reflect the removal of the supervising analyst.

PART 4: POLICE OFFENCES ACT 1935 AMENDED

Clause 61 & 62: Principal Act; Section 37K amended (Interpretation of Division)

Provides for an offence for which a road safety disqualification notice can be issued and adds grounds for a vehicle involved in an offence under the *Road Safety (alcohol & Drugs) Act 1970* to be clamped or confiscated in accordance with the provisions of the *Police Offences Act 1935*.

PART 5: RAIL SAFETY NATIONAL LAW (TASMANIA) ACT 2012 AMENDED

Clause 63 & 64: Principal Act; Section 10 amended (Testing for drugs and alcohol)

This legislation adopts some parts of the Act, and therefore needs to be amended to reflect the amendments to the *Road Safety (Alcohol and Drugs) Act 1970*.

PART 6 – VEHICLE AND TRAFFIC ACT 1999 AMENDED

Clause 65 – 69: Principal Act; Section 3 (Interpretation); Section 18 amended (Restricted driver licences); Part 3, Division 3B: Heading amended; Section 19C amended (Automatic suspension of licence for road safety disqualification notice).

The amendments to the *Vehicle and Traffic Act 1999* are to reflect the re naming of an Excessive Drink Driving Notice to a Road Safety Disqualification Notice.