

TASMANIA

**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL 2007**

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**ROAD SAFETY (ALCOHOL AND DRUGS)
AMENDMENT BILL 2007**

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

A BILL FOR

An Act to amend the *Road Safety (Alcohol and Drugs) Act 1970* and make consequential amendments to the *Vehicle and Traffic Act 1999*

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 2007*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

Road Safety (Alcohol and Drugs) Amendment Act 2007
Act No. of

s. 3

Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

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

3. Principal Act

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

4. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “breath test” in subsection (1):

“excessive drink-driving notice”
means a notice given in respect of an offence committed in the circumstances set out in section 18B(1);

- (b) by inserting the following definition after the definition of “foreign driver licence” in subsection (2):

“full licence” has the same meaning as in the *Vehicle and Traffic Act 1999*;

*No. 77 of 1970

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Act No. of

Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

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5. 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 the following subsection after subsection (2):

(2A) Where the driver of a vehicle that has been involved in an accident cannot be immediately identified, any person who was in the vehicle at the time of the accident becomes liable to submit to a breath analysis.

(b) by inserting in subsection (6) “(2A)” after “(2),”.

6. Section 10A amended (Blood samples to be provided in certain cases)

Section 10A of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) Where the driver of a vehicle that has been involved in an accident cannot be immediately identified, a police officer may require any person who was in the vehicle at the time of the accident to submit to the taking of a sample of blood for analysis.

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Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

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

Section 13 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (4):

(4A) Where regulations under this Act prescribe an amount of blood which constitutes a sample, less than that amount may be taken if a medical practitioner or a qualified nurse certifies that it was not possible to obtain the prescribed amount due to the medical condition of the patient at the time.

(4B) If a sample of blood that is less than the prescribed amount is taken in accordance with subsection (4A), that smaller sample is to be taken to be sufficient for the purposes of this Act.

(b) by omitting from subsection (6) “the police officer who requested that the sample be taken” and substituting “a police officer”.

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Act No. of

Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

s. 8

8. Section 13B amended (Analysis of blood and urine samples by approved analyst)

Section 13B(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “registered”;
- (b) by omitting from paragraph (b) “registered”.

9. Section 14 amended (Offences under Division 2)

Section 14(1A) of the Principal Act is amended by omitting “10A(1)” and substituting “section 10A(1) or (1A)”.

10. Section 17 amended (Penalties for drink-driving offences, &c.)

Section 17(1)(b) of the Principal Act is amended by omitting “10A(1)” and substituting “section 10A(1) or (1A)”.

11. Section 17B repealed

Section 17B of the Principal Act is repealed.

Road Safety (Alcohol and Drugs) Amendment Act 2007
Act No. of

s. 12

Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

12. Sections 18B, 18C, 18D and 18E inserted

After section 18A of the Principal Act, the following sections are inserted in Division 3:

18B. Immediate disqualification in certain circumstances

(1) If a police officer forms a belief on reasonable grounds that a person has –

(a) committed an offence under section 6 where it is alleged that the concentration of alcohol in the person's blood or breath (as the case requires) was –

(i) if the person holds a full licence or a foreign driver licence –

(A) 0.15 grams or more per 100 millilitres of blood; or

(B) 0.15 grams or more per 210 litres of breath; or

(ii) if the person does not hold a full licence or a foreign driver licence or holds a learner licence or provisional licence –

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Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

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(A) 0.07 grams or
more per 100
millilitres of
blood; or

(B) 0.07 grams or
more per 210 litres
of breath; or

(b) committed an offence that would
be a subsequent offence within
the meaning of section 17(1)(b) if
the person were convicted; or

(c) has failed or refused to submit to
a breath analysis or to the taking
of a sample of blood for
analysis –

any police officer may, as soon as
practicable after that belief has been
formed, give to the accused a notice,
known as an excessive drink-driving
notice.

(2) A person to whom an excessive drink-
driving notice is given is disqualified
from driving.

(3) An excessive drink-driving notice must
specify the fact that the accused is
disqualified from driving and the period
of that disqualification in accordance
with subsection (4).

(4) A person to whom an excessive drink-
driving notice is given is disqualified

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Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

from driving pursuant to that notice until the sooner of the following:

- (a) the charge has been determined by a court;
 - (b) the expiration of the minimum period after the notice is given, set out in Column 4 of the Table in section 17 –
 - (i) that corresponds to the breath or blood alcohol concentration in Column 2 of that Table that is stated in the notice; or
 - (ii) in the case of an offence against section 4 or 14(5) or failure to comply with a requirement made under section 10(4) or section 10A(1) or (1A), that corresponds to the reference to that offence or failure in Column 1 of that Table.
- (5) If, on the subsequent hearing of the charge, the accused is disqualified from driving, the court must take into account in fixing the period of disqualification the period of disqualification served under this section.

18C. Commencement of period of disqualification

A period of disqualification takes effect –

- (a) if the person is not subject to a current period of disqualification, licence suspension or ineligibility to hold a driver licence as a result of the accumulation of demerit points, as soon as the person is given the excessive drink-driving notice; or
- (b) if, at the time of being given the notice, the person is subject to a current period of disqualification, licence suspension or ineligibility to hold a driver licence as a result of the accumulation of demerit points, on the expiration of that period of disqualification, suspension or ineligibility.

18D. Cancellation of excessive drink-driving notice

- (1) The Commissioner of Police may cancel an excessive drink-driving notice by notifying (in writing) the person to whom the notice was given.
- (2) If the Commissioner of Police cancels a notice, he or she must cause a copy of the cancellation to be sent immediately to the Registrar of Motor Vehicles who must give effect to the cancellation.

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Part 2 – Road Safety (Alcohol and Drugs) Act 1970 Amended

- (3) If a person is disqualified from driving, in accordance with an excessive drink-driving notice, and is before a court for any reason in relation to the alleged offence, the court may make an order cancelling the notice if it is satisfied that the person would suffer severe and unusual hardship if the order were not made.
- (4) An order of the Magistrates Court under subsection (3) is final and conclusive and must be given effect to by the Registrar of Motor Vehicles.

18E. Appeal against excessive drink-driving notice

- (1) A person to whom a notice is given under section 18B(1) may appeal against that notice to the Magistrates Court on the ground that the notice will cause the person severe and unusual hardship.
- (2) A person who appeals under subsection (1) must, at least 14 days before the appeal is to be heard by the court, give written notice of the appeal (including particulars of the alleged severe and unusual hardship) to the Commissioner of Police and a registrar of the Magistrates Court.
- (3) In determining the appeal, the court must hear any relevant evidence tendered by

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the applicant or by the Commissioner of Police.

- (4) On an appeal under subsection (1), the court may make an order –
 - (a) confirming the notice; or
 - (b) cancelling the notice.
- (5) The Magistrates Court must not make an order under subsection (4) cancelling a notice unless it is satisfied that the applicant would suffer severe and unusual hardship if the order were not made.

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s. 13

Part 3 – Vehicle and Traffic Act 1999 Amended

**PART 3 – VEHICLE AND TRAFFIC ACT 1999
AMENDED**

13. Principal Act

In this Part, the *Vehicle and Traffic Act 1999** is referred to as the Principal Act.

14. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of “escort vehicle” the following definitions:

“**excessive drink-driving notice**” means a notice given in respect of an excessive drink-driving offence;

“**excessive drink-driving offence**” means an offence committed in the circumstances set out in section 18B(1) of the *Road Safety (Alcohol and Drugs) Act 1970*;

15. Section 18 amended (Restricted driver licences)

Section 18(2) of the Principal Act is amended as follows:

- (a) by omitting “Neither” and substituting “None”;

*No. 70 of 1999

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Act No. of

Part 3 – Vehicle and Traffic Act 1999 Amended

s. 16

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- (b) by omitting from paragraph (b) “points.” and substituting “points;”;
 - (c) by inserting the following paragraph after paragraph (b):
 - (c) a person who is disqualified from driving in accordance with an excessive drink-driving notice.

16. Part 3, Division 3B inserted

After section 19B of the Principal Act, the following Division is inserted in Part 3:

Division 3B – Excessive drink-driving offences

19C. Automatic suspension of licence for excessive drink-driving

- (1) If a person is disqualified from driving in accordance with an excessive drink-driving notice, his or her driver licence is suspended for the period of disqualification determined in accordance with the notice.
- (2) The suspension imposed by subsection (1) is in addition to any other penalty that the person may be liable to in respect of the excessive drink-driving offence.
- (3) A period of suspension under this section takes effect –

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Part 3 – Vehicle and Traffic Act 1999 Amended

- (a) if the person is not subject to a current period of disqualification, licence suspension or ineligibility to hold a driver licence as a result of the accumulation of demerit points, as soon as the person is given the excessive drink-driving notice; or
- (b) if, at the time of being given the notice, the person is subject to a current period of disqualification, licence suspension or ineligibility to hold a driver licence as a result of the accumulation of demerit points, on the expiration of that period of disqualification, suspension or ineligibility.

17. Section 24 amended (Licence to be suspended when demerit points reach prescribed limit)

Section 24 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) The Registrar, by notice in writing served on the holder of the licence, may withdraw a notice of licence suspension at any time before the suspension takes effect.

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Part 3 – Vehicle and Traffic Act 1999 Amended

s. 18

18. Section 48 amended (Miscellaneous document production requirements)

Section 48(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) the person of whom the request is made has been disqualified from driving; or