

DRAFT SECOND READING SPEECH

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Road Safety (Alcohol and Drugs) Amendment Bill 2017

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Madam Speaker, I move that the Bill now be read a second time.

The Bill contains amendments to the *Road Safety (Alcohol and Drugs) Act 1970* which are intended to enhance the operation of existing provisions and ensure that the legislation remains contemporary. The amendments embrace the many advancements in technology and science associated with alcohol and drug detection since the original Acts creation nearly fifty years ago. These amendments will contribute to improving road safety in this state.

Madam Speaker, in the forty-seven years since the commencement of the Act, there have been a number of significant measures introduced to combat the serious risks associated with drink and drug driving. Some of those more significant measures were:

- The introduction of zero alcohol limit for certain classes of drivers, in 1975;
- A reduction of the prescribed alcohol limit from 0.08 to 0.05, in 1983;
- The introduction of random breath testing (also known as RBTs), in 1983;
- The compulsory blood testing of drivers involved in crashes, in 1991;
- Oral fluid testing for illicit drugs in 2005; and
- On the spot disqualification for certain offences in 2007.

Since the introduction of testing for drugs in 2005, advancements in technology and science have developed to a level that oral fluid analysis is now considered as reliable as blood analysis. With these advancements, the taking of blood as the sole means of analysis is unnecessary. It is a time consuming and intrusive process that has been placing an increasing burden on our hospital staff.

These amendments introduce the power for a police officer to take an oral fluid sample from a driver, which can then be analysed in a laboratory, for the presence of illicit drugs. The process mirrors that of the breath analysis for the testing of alcohol. A driver will be able to be directed to submit to a breath test and an oral fluid test. Depending on the result, the driver can then be required to submit to a breath analysis or an oral fluid analysis. Although with the breath analysis there is an instant result, technology is not yet reliable enough, at this point in time, to provide an instant result for oral fluid analysis. Instead, it is intended that the oral fluid sample will be taken to Forensic Science Services Tasmania (FSST) for analysis in a process similar to that which currently exists with a blood samples. There will remain the option on completion of the breath analysis and/or the oral fluid analysis for a sample of blood to be taken for analysis as well.

However, because the analysis of oral fluid in a laboratory is now as reliable as the analysis of blood, this option will not be encouraged. Similar to what already occurs with persons charged with possession of illicit drugs, an amendment will allow a sentencing option of awarding the costs

of an analysis against an offender upon conviction. Due to the proven reliability of the breath analysis and oral fluid analysis, it is expected that the impact on hospitals, doctors and nurses, who are required to take samples of blood will be significantly reduced.

It is also made clear that if a driver has the option to request a sample of blood be taken for analysis, then that option needs to be made then and there to the relevant police officer, not some hours later. The alternative, which is not an option, would be to detain a driver in custody until the expiration of the relevant time.

Madam Speaker, these amendments go further towards reducing the impact on hospitals, doctors and nurses by providing the option of having blood samples taken by a qualified person. Qualified person will be prescribed and defined in Regulations, and it is intended to include phlebotomists, in addition to qualified doctors and nurses.

Amendments also allow for a medical practitioner, performing a medical examination, to direct a suitably qualified person take a sample of blood for analysis from a person incapable of consenting to the taking of the sample.

Madam Speaker, in 1970 when this legislation was first introduced, drink driving was not viewed by many of the public with the condemnation it receives now. The manual technology was new and difficult to operate, and the law was considered by some, to be controversial and an impingement on people's rights. The processes and equipment technology were also not as proven nor as reliable and an abundance of safe guards were inserted into the legislation to ensure the integrity of the process. Today is a totally different story. The technology is well advanced, dramatically improved and simple to operate. It is also widely accepted that drink and drug driving presents a significant danger to the Tasmanian Community.

One of the original safeguards in the Act was the oversight of the Supervising Analyst.

With advances in technology and the introduction of accreditation of devices by the National Association of Testing Authorities, Australia, the Supervising Analyst's role is redundant. The Bill recognises this fact and removes the role. Responsibilities that were previously overseen by the Supervising Analyst, that are not redundant, have been reallocated to Approved Analysts.

The number of people tested has increased significantly since the inception of the Act. For alcohol use alone, according to the then Department of Police's annual report in 1973, 4,189 drivers were tested for alcohol consumption. The 2015/2016 annual report indicates that 469,610 drivers were random breath tested, alone, for alcohol consumption. This has impacted the resources required at FSST. The number of Approved Analysts have increased along with the number of suitably trained technicians. Amendments reflect this by moving the approval for analysts from the Governor to the Minister as the current prescribed qualifications and experience negate the need for regal approval. Also, technicians are qualified and capable of analysing samples, however in the current environment there is no scope for this to occur. Amendments allow for technicians to assist in the analysis of samples under the supervision of Approved Analysts.

The processes around the delivery of samples to FSST has been amended. The quantity of samples that are now provided for analysis has created unnecessary administrative requirements for an Approved Analyst. The amendments intend to improve the efficiency of the delivery, receipt, recording and reporting on samples, whilst ensuring evidentiary obligations are

maintained. It is the intention to prescribe the process of the taking of blood and oral fluid for analysis in regulations to provide flexibility as technology advances, ensuring that Tasmania stays in line with these advances.

There are amendments to be introduced that allow for the destruction of blood and oral fluid samples once a case has been completed, with the option to prescribe, in regulations, circumstances when this is appropriate. This is extended to control samples that are held by police for a person who is held in custody for more than 24 hours. There is currently no legislation that permits for the destruction of such samples.

Madam Speaker, terminology used in the Act has been the subject of a number of proposed amendments. For example, changing the word accident to crash, to ensure it's consistent with other current traffic legislation. Removing reference to urine as there are now more reliable methods of testing for substances and replacing saliva with oral fluid. Additionally, the Bill also renames an Excessive Drink Driving Notice to a Road Safety Disqualification Notice to better reflect its purpose.

Madam Speaker, there are amendments that clarify what is meant by driving, this concept has been the subject of a number of legal arguments relating to at what point a person is driving and at what point they become liable to a breath test or drug test (oral fluid test). These amendments ensure that drivers, police and the legal fraternity are clear on when a person is a driver. Included are conditions around learner drivers, where both the learner license holder and the supervising driver are liable to submit to a test.

When a driver becomes liable to submit to a test, analysis, or to providing a sample of blood, there is a set time police have to facilitate what is required. This is referred to in the Act as relevant time. This time frame is currently 3 hours, which can, in country areas, expire prior to the beginning of the required test, analysis or taking of a blood sample. This Bill extends that time to 5 hours.

In other jurisdictions around Australia this time ranges from 2 hours in New South Wales to 8 hours in South Australia. Five hours is not considered unreasonable for a population as diverse as Tasmania's. This amendment will provide police with a time frame that will ensure investigations are thorough and important alternative duties, such as patient care and the clearing of roads, are still attended to, thus providing a safe environment for all motorists.

There are amendments to simplify when relevant time commences. In the current legislation this is very complicated with different starting times due to circumstances (as a result of a crash, as a result of a random breath test, or as a result of conduct such as a traffic offence). Under most circumstances relevant time will begin at the last act of driving, however there are some circumstances where it is not possible to determine this with accuracy, therefore relevant time begins when the driver is first found by police.

Following on from the extension of relevant time, the amendments include the power for a police officer to direct a person to provide a sample of blood when they have been arrested for driving under the influence. Bypassing a breath test, oral fluid test, breath analyses or oral fluid analysis.

Madam Speaker, proposed amendments also provide that a person who has become liable must comply with police instructions, and it is an offence not to. This provides clear and precise legislation for both police and drivers.

An additional arrest power has been included for a person who is driving whilst disqualified pursuant to the Act. The power already exists for the offence, however, only if disqualified under the *Vehicle and Traffic Act 1999* or the *Traffic Act 1925*.

Madame Speaker, a proposed amendment inserts a section to enable police to take keys of a vehicle being driven by and alleged offender. This power currently exists under the *Traffic Act 1925*, and will clarify that this can also occur for offences, and offenders against this Act. This section also enables police to be able to move a vehicle to a safer place without incurring unnecessary costs to the offender. The option to impound is still available, however in most circumstances this is not necessary and moving a vehicle off the street to a safer location is sufficient. It is not appropriate or safe, for an offending driver to move a vehicle to a safer, location if it is identified that they are affected by alcohol or drugs.

Madam Speaker, new categories for drivers to have zero blood alcohol content have been included. This will apply to a driver of a vehicle carrying explosives and a driver who has been previously charged with negligent, reckless or dangerous driving when also charged with drive under the influence. A time frame has also been inserted on an expired driver's license, that clarifies a driver is considered unlicensed after 6 months of expiry of the license, which results in zero blood alcohol content.

For most of the driving offences, the driving must be in a public place. This becomes complicated when the offender after being asked to pull over, moves the vehicle onto private property (to stop their vehicle). This Bill provides police with the power to pursue, whether on private or public property, a person they believe is liable for a test, analysis or a medical examination. The amendment is similar to that which exists in the *Misuse of Drugs Act 2001* stipulating that the pursuit must be immediate. This proposed amendment supports community concerns around the current issues associated with drivers evading police.

Technical amendments include providing for subsequent breath tests to ensure a reading that is accurate, and thereby not inconveniencing a driver by requiring unnecessary breath analysis. Additionally, the amendments allow for subsequent testing where there is equipment error.

Madam Speaker, there are amendments that facilitate a more efficient way of operating, which will reduce delays for police and motorists by amending procedural functions. These amendments include:

- o removing the limitation placed on police to perform one duty when a vehicle is intercepted;
- o enabling police to direct or require a driver to submit to a breath test who, on reasonable grounds, they believe was driving whilst disqualified under this Act;
- o clarifying that the authority to direct a person, who is liable to submit to a breath analysis, medical examination or blood test, may be delegated from one police officer to another; and
- o creating an offence for failing or refusing to submit to an oral fluid test (OFT) when the liability to submit is as a result of conduct.

There are also amendments that realign and improve administrative functions by:

- o reflecting the correct sections of other legislation which were changed previously but not included in consequential amendments at that time;
- o simplifying the interpretation and application of the 'drink pattern' process and restricting its application only to the result of a reading from a blood sample;
- o consolidating and refining administrative requirements including combining the certificates and forms required by regulation into one document;
- o ensuring that these documents and their content are admissible in court as evidence;
- o clarifying that the certificates and documentation used in court proceedings may be served on a person by way of normal mail to their last known address; and
- o deleting the outdated reference to the type of specimen tube in which blood is required to be collected.

Madam Speaker, regulations will be drafted once the legislation has passed. The regulations will give effect to the prescribed entities relating to oral fluid analysis, qualified persons for the taking of blood samples, qualifications and functions of approved analysts, qualifications of approved operators, labelling for blood samples, infringement notice offences and the destruction of samples.

The Bill will become law on a day or days to be proclaimed to allow time for agencies to adjust policies and procedures to support the amendments and for the public to be fully informed of these important changes.

I commend the Bill to the House.