

## FACT SHEET

### ***Road Safety (Alcohol and Drugs) Amendment Bill 2017***

The Government has introduced legislation into Parliament to make several miscellaneous amendments to the *Road Safety (Alcohol and Drugs) Act 1970*.

The amendments are intended to enhance the operation of the current provisions and ensure Tasmanian legislation remains contemporary, embracing the advancements in technology and science that contribute to road safety. In the development of the amendments, consultation was undertaken within the Department of Police, Fire and Emergency Management, other government agencies, along with the Royal Automobile Club of Tasmania, the Road Safety Advisory Council and the Law Society of Tasmania.

The *Road Safety (Alcohol and Drugs) Amendment Bill 2017* amends the *Road Safety (Alcohol and Drugs) Act 1970* to:

- Modify the legislation to provide flexibility to support advancements in technology, now and into the future, by authorising the use of oral fluid as means of analysis for prescribed illicit drugs prior to, and in some circumstances, instead of, taking blood samples.
- Amend the Act to extend the three-hour limit for relevant time for the testing for alcohol or drugs to five hours in all cases. This amendment would have the time limit commencing at the 'relevant act of driving' unless this cannot be established due to circumstances, whereupon, it then reverts to the time of a requirement for testing being made by a police officer.
- Include in the Act a provision that clarifies the powers of police when attempting to intercept and test drivers. The wording reflects that which is used in the *Misuse of Drugs Act 2001*. This will mitigate the serious concerns with drivers evading police.
- Amend the Act to reflect that police can arrest without warrant for the offence of drive under the influence (DUI), of alcohol or drugs, on private property.
- Clarify when a driver is in custody, for the purposes of the offences of hinder conveyance and escape from custody.
- Amend the Act to allow the issuing of an Excessive Drink Driving Notice (EDD Notice) for the charge of driving under the influence and that an EDD Notice cancels a restricted licence.
- Increase road safety by including the following categories of drivers whose blood alcohol content must be zero: the driver of a vehicle conveying dangerous goods, as defined by the *Dangerous Goods (Road and Rail Transport) Act 2010*; a driver with prior convictions for reckless, negligent and dangerous driving; and drivers who hold "no alcohol in blood" conditions on their drivers licence.
- Amend the Act to clarify what is considered driving, provide clear parameters for supervisory drivers when instructing a learner driver, and provide an offence for

drivers that deliberately consume alcohol or illicit drugs after a crash, and prior to police locating them to perform duties in accordance with the Act.

- Include provisions to allow police officers to issue infringement notices for offences prescribed in regulations.
- Amend the Act to provide for the movement of vehicles, once stopped, to a safer, more appropriate location.
- Abolish the position of the Supervising Analyst which has become redundant, with those relevant duties to be carried out by Approved Analysts.
- Change the level of approval for a breath analysing instrument and the appointment of Approved Analysts to be Ministerial.
- Amend the Act to allow for the taking of a blood sample by a qualified specimen collector (phlebotomist), in addition to medical practitioners and qualified nurses.
- Amend the Act to allow the analysis of blood to be undertaken by technical officers, under the supervision of an Approved Analyst. Also, remove the implied interpretation that the same Approved Analyst who receives a sample must be the analyst who analyses and reports on the sample, and then is also responsible for having a copy of the report served on the subject.
- Include a sentencing option whereby Forensic Science Services Tasmania (FSST) can recover costs for analysis, upon conviction, similar to that provided for in the *Misuse of Drugs Act 2001*.
- Limit the extent to which samples gathered for road safety purposes can be analysed in relation to DNA. This section aligns with the legislative provisions in Victoria, New South Wales, Western Australia and Queensland.
- Include an amendment that authorises the destruction of samples after analysis, and judicial processes are complete, unless otherwise directed.
- Prevent a Magistrate from 'suspending' a driver's licence. The licence must be 'cancelled' which ensures, when an offender reapplies for a licence, the alcohol interlock condition can be placed on their licence. As a result of such programs and alternative sentencing options the mandated requirement for drink-drivers to attend a prescribed course as a sentencing option has been repealed.
- Enable more efficient practices by amending procedural functions that include:
  - enabling a driver to be directed to undertake more than one preliminary breath test;
  - removing the limitation placed on police to perform only one function when a vehicle is intercepted;
  - enabling police who, on reasonable grounds, believe someone was driving whilst disqualified under this Act, to direct/require a driver to submit to a breath test;

- providing the ability for a police officer to direct a person, who appeared to be driving under the influence of alcohol or drugs, to submit to a blood test;
  - clarifying that the authority to direct a breath analysis, medical examination or blood test may be delegated from one police officer to another;
  - enabling a direction for a subsequent analysis, or test, in the case of instrument error;
  - providing that a person, who fails or refuses a breath analysis, and declines the offer to submit to a blood test, ends the process with no further recourse for a blood test at a later time;
  - enabling a medical practitioner to direct another qualified person to obtain a blood sample from a patient who is incapable of consenting;
  - removing the implied restrictions placed on the process of taking and the delivery of blood samples to FSST, whilst ensuring that the continuity of the exhibit is maintained;
  - improving the process of providing a prisoner with their control blood sample at the time of release from custody; and
  - including 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.
- Realign and improve current administrative functions by:
  - indicating that the defence provision of failing to renew a licence, may not be relied on in relation to a drivers licence, that has been expired for longer than 6 months;
  - reflecting the correct sections of other legislation which have been amended previously but not included in consequential amendments at that time;
  - simplifying the interpretation and application of the 'drink pattern' process (s. 23 - Statutory presumptions with respect to breath analyses and blood test);
  - consolidating and refining administrative requirements including combining certificates/forms required by regulation into one document;
  - ensuring that said documents/certificates and their content are admissible in Court as evidence;
  - 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;
  - removing the duplication of the service of blood analysis results; and
  - deleting reference to the type of specimen tube in which blood is required to be collected.
- Modify terminology to ensure it is contemporary and clear by:
  - removing doubt as to what constitutes 'reasonably believes' when assessing if it is reasonable to suppose a driver has consumed drugs and refuses to submit to an OFT;
  - removing the words 'immediately preceding', for the purpose of assessing if a person drove after consuming alcohol/drugs;
  - providing legislation that is consistent and supports contemporary practices by deleting any reference to the taking of urine, and replacing the word 'accident' with 'crash'; and
  - changing the name of and Excessive Drink Driving Notice to a Road Safety Disqualification Notice.

- Amend the *Police Offences Act 1935* to extend the clamping of vehicles driven by persons who are apprehended for offences against the Act (*Road Safety (Alcohol and Drugs) Act 1970*).
- Consequential amendments to *Marine Safety (Misuse of Alcohol) Act 2006*, *Rail Safety National Law (Tasmania) Act 2012* and the *Vehicle and Traffic Act 1999*.

Regulations will be drafted once the legislation has passed to give effect to the prescribed entities.

The Bill will become law on proclamation.