

Road Safety (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 declares that the purposes of the Bill are to amend the **Road Safety Act 1986**—

to require drivers of large vehicles to carry their licences and to have zero blood alcohol concentration (BAC) at all times while driving or in charge of the vehicle

to increase the period of notice required for the attendance at court of a breathalyzer operator

to clarify the meaning of subsequent offence

to allow a court to reduce the period in which an assessment report must be obtained prior to a licence restoration application

to remove the offence of failing to undergo a preliminary breath test

to make miscellaneous minor amendments

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed except for specified sections which are to come into operation or to be taken to have come into operation on specified dates.

Clause 3 declares that the **Road Safety Act 1986** is called the Principal Act.

Clause 4 inserts various definitions in the Principal Act mainly for the purpose of amplifying the meaning of “**large vehicle**”. It also effects a consequent repeal of section 7 (7) of the Principal Act because the definitions of “**prime mover**” and “**semi-trailer**” in that section are now being transferred to section 3 of the Principal Act.

Clause 5 introduces the requirement for drivers of large vehicles to carry their licence at all times while driving or in charge of the vehicle. Sub-clause 5 (2) excludes these drivers from the provisions of section 59 which allow 7 days for production of a licence.

Clause 6 substitutes a new section 21 (1) (b) in the Principal Act to clarify the intent of that provision, namely, that a person who is required to obtain a licence restoration order from the Magistrates’ Court because of a disqualification for a drink driving offence must be relicensed as a probationary driver unless the regulations provide otherwise.

Clause 7 repeals sections 28 (8), (9) and (10) of the Principal Act because the substance of those provisions is now being included in the new sections 28A and 28B.

Clause 8 inserts new sections 28A and 28B. Section 28A makes it clear that a suspended licence or permit is of no effect and that the holder is disqualified from obtaining another one during the period of suspension, whether it occurred as a result of a court decision, a decision of the Roads Corporation or by operation of the Act. Section 28B makes it an offence for a disqualified person to apply for or obtain a licence or permit and declares that one so obtained is of no effect.

Clause 9 substitutes a new section 48 (2) into the Principal Act to make it clear that where a person is found guilty but released on a bond for a first drink driving or related offence a further offence will incur the penalties provided for a “subsequent” offence. This amendment is intended to negate the decision of the Supreme Court in *Hewitt v. Harms* (1989) 10 MVR 63.

Clause 10 repeals the offence of “failing” to undergo a preliminary breath test while still retaining the offence of “refusing” to undergo such a test. Section 55 (1) of the Principal Act continues to provide for persons who fail to undergo a preliminary breath test to be required to undergo a breathalyzer test.

Clause 11 enables the court hearing a licence restoration application in exceptional circumstances to reduce the requirement for production of a report not less than 12 months old about the applicant’s usage of alcohol.

Clause 12 brings drivers and persons in charge of large vehicles under section 52 of the Principal Act which makes them subject to a zero BAC requirement.

Clause 13 extends to 28 days the period of notice required for the attendance of a breathalyzer operator in court unless the court orders that a shorter period of notice be given.

Clause 14 removes an anomaly under which a person convicted of a previous drink driving offence can be released on a bond for a second offence if the previous offence was under an earlier law or the law of another State, but not if it was under the Principal Act.

Clause 15 amends the drink driving infringement notice provisions in section 89C of the Principal Act in consequence of the introduction of zero BAC for drivers of large vehicles. Sub-sections (2) and (3) introduce greater consistency in other parts of section 89C.

Clause 16 provides minor drafting corrections in the Principal Act.

Clause 17 provides that the amendment made by section 9 applies only to offences committed on or after the commencement of that section and the section 13 amendment applies only to a hearing commencing more than 28 days after the commencement of that section.