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**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (DRINK DRIVING) LEGISLATION AMENDMENT
BILL 2010**

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Transport**

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Overview of amendments

The amendments in the bill are intended to improve ACT road safety outcomes in relation to drink driving. The principal changes made by the bill are as follows:

- (a) applying a zero alcohol concentration to special drivers instead of the existing less than 0.02 g of alcohol per 100mL blood;
- (b) applying the zero alcohol concentration to a wider range of people, including driving instructors, people who are supervising learner drivers and , heavy vehicle driver assessors;
- (c) amending the definition of ‘repeat offender’ in the *Road Transport (Alcohol and Drugs) Act 1977* so that only people who have not previously been found guilty of a drink driving offence are regarded as first offenders under the Act and to ensure that the concessional treatment given to first offenders (such as lower fines, shorter period of licence disqualification and access to restricted licences) is not available to people who are found guilty again of a drink driving offence;
- (d) requiring an alcohol awareness course to be completed by a person before a restricted or provisional licence may be issued to the person by the road transport authority;
- (e) introducing a requirement that a police officer suspend a person’s licence as soon as the person is caught exceeding the prescribed concentration of alcohol applying to that person by 0.05g or more;
- (f) preventing high-range first offenders for a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977* from obtaining a restricted licence.

The bill also makes a range of minor or technical amendments to the *Road Transport (Alcohol and Drugs) Act 1977* to:

- (a) simplify and streamline the processes for prescribing breath testing equipment, the authorising of police officers to carry out breath tests, appointing analysts and approving laboratories;
- (b) comply with the requirements of the national measurements legislation by making it clear that a concentration of alcohol expressed as X grams of alcohol per 100mL of blood is equivalent to a concentration of alcohol expressed as X grams of alcohol per 210L of breath;
- (c) modernise the processes for collecting, storing and analysing blood samples;
- (d) update or remove outdated provisions, including sentencing provisions that are no longer required because of the *Crimes (Sentencing) Act 2005*.

Structure of explanatory statement

Amendments are made to 7 pieces of the road transport legislation. To accommodate the interrelated nature of many of the amendments, this explanatory statement is structured on a thematic basis rather than a clause-by-clause basis.

An index to clause numbers mentioned in this explanatory statement is included for the assistance of readers.

Formal provisions

Clause 1 provides that the name of the bill, when enacted, will be the *Road Transport (Drink Driving) Legislation Amendment Act 2010*.

Clause 2 provides for the commencement of the Act. Apart from three provisions, the amendments commence by commencement notice. The three provisions are clause 3, clause 4 and clause 7. Clause 4 updates an outdated term in the definition of ‘special driver’ in section 4B of the *Road Transport (Alcohol and Drugs) Act 1977* (see below). The other two clauses are ancillary to the amendment. Clause 3 commences the provision that indicates the legislation being amended is the *Road Transport (Alcohol and Drugs) Act 1977*. Clause 7 defines the term ‘public passenger vehicle’ which is the term used in the amendment inserted by clause 4.

The amendments of the *Road Transport (Driver Licence) Regulation 2000*, and the related amendments of the *Road Transport (Driver Licensing) Act 1999* and the *Road Transport (Offences) Regulation 2005*, about requirements for an alcohol awareness course to be completed before a restricted or provisional licence may be issued by the road transport authority have a default 12-month commencement period. This is to allow enough time for the courses to be established. The remaining provisions have a 6-month default commencement. In effect, if the remaining amendments have not commenced within 6 months after the Act is notified on the Legislation Register, the amendments will commence automatically the day after the 6-month period ends.

Clause 3, clause 75, clause 79, clause 81, clause 99, clause 106 and clause 109 are at the beginning of parts 2 to 8 of the bill and name the legislation being amended by each of those parts. For example, clause 3 provides that part 2 of the bill amends the *Road Transport (Alcohol and Drugs) Act 1977*.

Special drivers

• ***Road Transport (Alcohol and Drugs) Act 1977***

Section 4B of the Act defines the term ‘special driver’. Special drivers have a lower prescribed concentration of alcohol either because they have less overall driving experience (for example, learner and provisional drivers) or because they are professional drivers with special responsibilities (for example, taxi drivers and drivers transporting dangerous goods or substances).

Clause 4 amends the definition of ‘special driver’ to substitute a new section 4B (1) (f) (iv). The existing provision refers to the driver of a public vehicle within the meaning of section 158 of the *Road Transport (General) Act 1999*. That section was repealed on the commencement of the *Road Transport (Third-Party Insurance) Act 2008*. The substituted provision refers to the driver of a public passenger vehicle. This clause commences on the notification of the Act (see clause 2 above).

Clause 5 replaces existing section 4B (1) (f) with an amended section 4B (1) (f) and adds new paragraphs (g) to (j).

The amendment expands the meaning of ‘special driver’ to include the following:

- the driver of a vehicle required to carry a sign, marking or placard under the recently commenced *Dangerous Goods (Road Transport) Act 2009*;
- a person who is a heavy vehicle learner driver;
- a driving instructor who is with a driver for the purposes of driver instructor or assessment;
- a heavy vehicle driver assessor who is with a driver for the purposes of driver assessment;
- anyone else (for example, a parent or friend) supervising a learner driver.

The amendment also omits from the definition the driver of a Commonwealth vehicle.

Clause 6 omits section 4B (3) to (5) and substitutes a new subsection (3) which defines terms for the amended section relating to driver instruction and assessment by reference to the *Road Transport (Driver Licensing) Regulation 2000*. The omission of subsections (3) and (4) and the definition of ‘Commonwealth vehicle’ in subsection (5) relate to the omission by clause 5 of the driver of a Commonwealth vehicle from existing section 4B (1) (f). The amendment also omits the existing definition of ‘heavy motor vehicle’ in section 4B (5) which is the other term defined by the subsection. This because the substance of the definition is subsumed into new paragraphs (f) (ii) and (iii). Also, the amendment removes a discrepancy between the use of the term ‘heavy vehicle’ in existing section 4B (1) (f) (iii) and the definition of ‘heavy motor vehicle’.

Clause 7 inserts a new definition of ‘public passenger vehicle’ for the purposes of the amendment made by clause 4.

The inclusion within the meaning of ‘special driver’ of people teaching or assessing learner drivers and people assessing a heavy vehicle driver’s skill, and hence having a lower alcohol limit apply to them, is to ensure that people teaching or assessing these drivers model behaviour consistent with the message drinking and driving do not mix. It also assists them to exercise the skill and concentration required to teach another person to drive or to assess a person’s driving skills.

The driver of a Commonwealth vehicle is omitted from the definition of ‘special driver’ because it is a category of driver for which the Territory has no special responsibility to regulate unlike, for example, drivers of public passenger vehicles and heavy vehicles.

Clause 67 consequentially inserts a definition of ‘heavy vehicle’ into the Act’s dictionary for the purposes of new section 4B (1) (g).

- ***Road Transport (Driver Licensing) Regulation 2000***

Clause 85, clause 86 and clause 87 consequentially amend the provisions in the regulation requiring learner drivers to be accompanied by a person who holds a full car licence or a full licence of a higher class, to use the term ‘driving supervisor’

which is also used in new section 4B (1) (j) of the *Road Transport (Alcohol and Drugs) Act 1977*.

- ***Road Transport (General) Act 1999***

Clause 100 substitutes new sections 58 and 58A for existing sections 58 and 58A of the Act. These sections are about the production of driver licences and the giving of names and addresses. The substituted section 58 has an updated section heading to make it clear that the section applies to drivers of vehicles and riders of animals and to add a new requirement that a driver or rider can be required by a police officer or authorised person to state the driver's or rider's date of birth. Existing section 58A applies to people instructing heavy vehicle learners. Substituted section 58A extends the section to people instructing, supervising or assessing learners and to people assessing the skills of heavy vehicle drivers and adds a new requirement that a person to whom the section applies may be required to state the person's date of birth.

- ***Road Transport (Offences) Regulation 2005***

Clause 112 consequentially amends the regulation consequent on the amendment of section 21 (5) of the *Road Transport (Driver Licensing) Regulation 2000* by clause 87.

Clause 113 amends the regulation consequent on amended sections 58 and 58A of the *Road Transport (General) Act 1999*.

Prescribed concentration of alcohol

- ***Road Transport (Alcohol and Drugs) Act 1977***

At present, a special driver is subject to an alcohol limit of less than 0.02g of alcohol per 100mL of blood and all other drivers are limited to less than 0.05g of alcohol per 100mL of blood. This is because of the definition of 'prescribed concentration' in the dictionary to the Act. Therefore, if a special driver has an alcohol concentration of 0.02g or more, the driver commits an offence against section 19 of the Act which creates an offence of a driver having a concentration of alcohol that is 'equal to or more than the prescribed concentration'. Similarly, any other driver who has an alcohol concentration of 0.05g or more commits an offence.

Under the amendments, a special driver must have a zero alcohol concentration. The existing offence formulation in section 19 does not work in this context because an offence would be committed if the driver had a zero alcohol concentration because he or she would have a concentration 'equal to' the prescribed concentration. Therefore, the new definition of prescribed concentration in new section 4C provides that the prescribed concentration for a special driver is 'more than 0g of alcohol' and for any other driver '0.05g or more of alcohol'.

Clause 8 inserts new sections 4C and 4D into the Act and remakes existing section 4C, which is about the meaning of 'level' of alcohol concentration, as new section 4E.

New section 4C brings the definition of ‘prescribed concentration’ of alcohol into the body of the Act and new section 4D, which is dealt with in the next section below, explains how alcohol concentrations may be expressed.

The definition of ‘prescribed concentration’ in new section 4C provides that the prescribed concentration for a special driver is more than 0g of alcohol in 100mL of blood or 210L of breath. The concentration of alcohol for any other driver is 0.05g or more of alcohol in 100mL of blood or 210L of breath. Effectively, a special driver will exceed the prescribed concentration if he or she has any alcohol in his or her blood or breath.

As is noted above, the clause also remakes existing section 4C (which is about levels of alcohol concentration) as new section 4E. The concept of levels is used in the offence provisions, and relates to the alcohol concentration range in the person’s blood or breath when the person was detected committing an offence under the Act. In simple terms, the higher the level, the greater the concentration of alcohol in the person’s breath or blood. Level 1 is where the alcohol concentration is less than 0.05g in either 100mL of blood or 210L of breath and level 4 is where the alcohol concentration is greater than 0.15g in either 100mL of blood or 210L of breath. Two substantive changes are made to the section. First, the specific references to ‘blood alcohol concentration’ are changed to ‘alcohol concentration’. This is because, under new section 4D (see the next part of this explanatory statement below), alcohol concentrations may be expressed in terms of either grams of alcohol per 100mL of blood or grams of alcohol per 210L of breath. Second, the existing level 1 is presently expressed as being a concentration of ‘0.02g or more but less than 0.05g’. With the permissible alcohol concentration for special drivers being changed to zero, the specific reference to 0.02g is omitted so that the item refers to an alcohol concentration of ‘less than 0.05g’.

Clause 27 remakes section 19 of the Act. This section creates the central offence in the Act of a person being a driver with the prescribed concentration of alcohol. The section is remade to update its terminology to reflect the amendments of the definition of ‘prescribed concentration’ (see the discussion above at the beginning of this part of the explanatory statement), to reflect how the prescribed concentration may be expressed (see new section 4D and the part of this explanatory statement below about how alcohol concentrations may be expressed) and to refer to ‘analyst’ rather than ‘approved analyst’ (see the part of this explanatory statement below dealing with the appointment of analysts). The opportunity has been taken to bring the section more closely into line with current drafting practice.

Clause 29 inserts a new section 21A into the Act to create a defence for special drivers for what might be termed ‘innocently’ consumed alcohol. The section applies if a special driver is charged with an offence against section 19 (Prescribed concentration in blood or breath) and the concentration of alcohol is not more than 0.02g in 100mL of the driver’s blood or 210L of the driver’s breath. It is a defence if the special driver proves that the concentration of alcohol in the person’s blood or breath was caused by—

- (a) the consumption of an alcoholic beverage that formed part of a religious observance; or

(b) the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

The new section includes as an example of a substance for paragraph (b) food or medicine that includes alcohol.

The defendant has the burden of proof because the defence arises from matters peculiarly in the defendant's knowledge. Under the Criminal Code, section 60, a legal burden of proof on a defendant must be discharged on the balance of probabilities.

Clause 11, clause 27, clause 28 and clause 50 substitute new provisions for various provisions of the Act to update references to 'equal to' the prescribed concentration to 'the prescribed concentration' and to bring other concepts in these provisions into line with the new terminology of the amending bill.

Clause 49 is consequential on the amendment made by clause 50.

Clause 51, clause 52, clause 53 and clause 54 consequentially amend section 42A (Effect of noncompliance—analysis of body sample) and section 42B (Effect of noncompliance—refusal to give sample of breath) to bring their terminology and structure into line with the amendments of section 42 (Effect of noncompliance—analysis of breath or blood) made by clauses 49 and 50.

Clause 68 and clause 70 consequentially updates the dictionary definitions of 'level' and 'prescribed concentration'.

- ***Road Transport (Driver Licensing) Regulation 2000***

Clause 83 consequentially updates the 'Z' driver licence code for a 0.02 alcohol limit in the *Road Transport (Driver Licensing) Regulation 2000* to a zero alcohol requirement.

Clause 84, clause 88, clause 89, clause 90, clause 91, clause 94 and clause 95 omit notes about 0.02g alcohol limit for special drivers from the regulation. The notes are not updated to reflect the zero alcohol limit for special drivers because they relate to only some kinds of special drivers.

How alcohol concentrations may be expressed

The *Road Transport (Alcohol and Drugs) Act 1977* currently refers to the measurement of blood alcohol concentration in terms of grams of alcohol per 100mL of blood. Consequent on changes to the *National Measurement Regulations 1999* (Cwlth), many newer breath testing machines record and report breath analysis in terms of grams of alcohol per 210L of breath in addition to grams of alcohol per 100mL of blood. The results are equivalent however they are expressed.

Clause 8 inserts a new section 4D which authorises an analysis of a concentration in a person's blood or breath to be expressed in terms of grams of alcohol per 100mL of blood or grams of alcohol per 210L of breath.

Clause 10 (see new section 5A), **clause 11, clause 27 and clause 28** substitute various new provisions which refer to alcohol in both blood and breath consequent on new section 4D.

Clause 30, clause 31, clause 33, clause 34, clause 35 and clause 36 amend other references in current provisions consequent on a prescribed concentration being able to be expressed in terms of grams of alcohol per 210L of breath.

Repeat offenders

Clause 9 replaces existing section 4D of the *Road Transport (Alcohol and Drugs) Act 1977*, which defines the terms ‘first offender’ and ‘repeat offender’ for the Act, with new section 4F.

Higher penalties apply to a person who is a repeat offender. Also, a repeat offender is not eligible to apply for, or be issued with, a restricted licence: see the *Road Transport (General) Act 1999*, existing section 67 (3) (a) and new section 67 inserted by clause 104. This position is not changed by the bill but see clause 104, new section 67A (2) and (3) of the *Road Transport (General) Act 1999*, for a new limitation on the issue of restricted licences to first offenders who exceed the applicable alcohol concentration by 0.05g or more.

The term ‘disqualifying offence’ is defined in the dictionary and means an offence against sections 19, 22, 23 or 24 or another provision prescribed by regulation. Currently, no other offences have been prescribed. The penalty for these offences includes disqualification from being able to apply for or hold a driver licence.

One particular effect of the new definition of ‘repeat offender’ is to ensure that a person is only ever to be entitled to one restricted licence for a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977*. As the definition of ‘repeat offender’ currently stands, a person who has been convicted or found guilty of a disqualifying offence and who is subsequently convicted or found guilty of what is termed a ‘relevant offence’ (see below) after a 5-year period is a first offender for both offences and is able to apply for a restricted licence in relation to the disqualifications for both offences. A restricted licence is a concession to recognise that disqualification may cause undue hardship but it is to be authorised in exceptional circumstances only: see the *Road Transport (Driver Licensing) Regulation 2000*, section 47 (1) and the criteria in subsection (2).

New section 4F (1) provides that a person who is convicted or found guilty of a disqualifying offence will be a first offender for that offence if the person is not a repeat offender for the offence.

New section 4F (2) explains the concept of a repeat offender in relation to a disqualifying offence. Under proposed section 4F (2) (a), a repeat offender for a disqualifying offence is a person who has already been convicted or found guilty of a ‘relevant offence’ that was committed before the disqualifying offence was committed, whether or not the person had been convicted or found guilty of the relevant offence when the person committed the disqualifying offence.

New section 4F (2) (b) deals with the situation where a person is convicted or found guilty of a disqualifying offence and is concurrently convicted of one or more relevant offences. If one or more of those relevant offences were committed before the disqualifying offence was committed, the person will be a repeat offender in relation to the disqualifying offence.

The inclusion of the words ‘whether or not the person had been convicted or found guilty of the relevant offence’ in section 4F (2) (a) and ‘concurrently with being convicted or found guilty’ in section 4F (2) (b) are intended expressly to exclude a common law principle of statutory construction for repeat offender provisions. The essence of the principle is that a law which imposes a higher penalty on repeat offenders should be interpreted as applying only to offences committed after being convicted the first time.

The principle is sometimes known as Lord Coke’s canon of statutory construction and is said to date from the seventeenth century. The principle has been considered and applied judicially in Australia, including in the ACT Magistrates Court decision in *Warry v Hill* CC 2002/9296-9297.

Lord Coke’s principle of construction is apparently based on the deterrent effect of a conviction and is as follows:

‘The theory is that the appropriate lesson will have been learnt on the first or subsequent occasion upon which the offender is dealt with by the court, and he or she, having suffered the punishment, will then be deterred from offending in like manner again. The objective of deterrence, based upon escalating periods of actual imprisonment, would be open to grave doubt, if, when before a court for the first time, an offender would be liable to incarceration for a period in excess of that applicable for a first finding of guilt, simply because he or she then stood charged with more than one property offence which happened to be joined on separate informations. The justification for increasing the term of imprisonment on the second finding of guilt would be missing as the offender would not have been previously subjected to punishment aimed at deterrence. There would be no opportunity for the multiple offender, not previously charged, to become aware of the certainty of the severity of punishment for the proscribed criminal behaviour.’
(See *Schluter v Trenerry* [1997] NTSC 102.)

In the seventeenth century, when there were no means of mass communication or ready access to the law by means such as the Legislation Register to inform the community of its legal rights and obligations, it may well have been the case that there was little opportunity for people to become aware of the severity of punishment if a person reoffended. The deterrent effect of repeat offender provisions may have depended very largely on their impact on the particular offenders to whom they applied (specific deterrence) rather than their effect on the community at large (general deterrence). The situation is very different these days, as community access to information about legislation and sentencing generally has improved markedly even in the thirteen years since *Schluter* was decided. Awareness that drink driving is an offence is an essential part of the knowledge test for all learner drivers and the penalties for drink driving offences are well publicised.

New section 4F (3) is a transitional provision. It applies to a person convicted or found guilty of a disqualifying offence that was committed before clause 9 commences. The person will be a repeat offender only if the person:

- was convicted or found guilty of a relevant offence in the 5 year period before being convicted or found guilty of the disqualifying offence; or
- is convicted or found guilty of one or more relevant offences concurrently with being convicted or found guilty of the disqualifying offence, and one or more of the relevant offences were committed before the disqualifying offence.

The effect of section 4F (3) (a) is to preserve the current 5 year time frame for taking previous convictions into account during the transition from the current scheme to the new scheme. In section 4F (3) (b), the ‘repeat offender’ principle of statutory construction is expressly excluded by the inclusion of the words ‘concurrently with being convicted or found guilty’.

New section 4F (5) defines the term ‘relevant offence’. Under existing section 4D a person is a repeat offender for a disqualifying offence if the person commits what is termed a ‘relevant offence’. As the section stands, a relevant offence is a disqualifying offence, an offence in another Australian jurisdiction that corresponds to a disqualifying offence, an offence of culpable driving whether or not it involved alcohol, certain offences against the *Road Transport (Safety and Traffic Management) Act 1999* about reckless, dangerous and menacing driving and certain offences against the *Road Transport (Driver Licensing) Act 1999* about driving or fraudulently applying for a driver licence while disqualified or after licence suspension, cancellation or refusal and contravention of conditions of a restricted licence.

The definition of ‘relevant offence’ is amended so that it is a disqualifying offence, a corresponding disqualifying offence or a culpable driving offence involving impairment by alcohol or a drug. The omitted offences are not impairment based offences and are not considered appropriate in the context of disqualifying offences which relate to driving while impaired by alcohol or a drug.

Clause 66 and clause 71 amend the dictionary to update the definitions of ‘first offender’ and ‘repeat offender’ by replacing references to existing section 4D with references to new section 4F.

Screening devices and breath analysis instruments

• *Road Transport (Alcohol and Drugs) Act 1977*

Existing section 5 provides for the Minister to approve breath analysis instruments and screening devices.

Clause 10 inserts new sections 5 and 5A which provide for screening devices and breath analysis instruments to be prescribed by regulation.

New section 5 inserts a new definition of a ‘screening device’ as a device that is designed to analyse a sample of a person’s breath for the presence of alcohol.

New section 5A inserts a new definition of ‘breath analysis instrument’. A breath analysis instrument is an instrument that can analyse a sample of a person’s breath to record the concentration of alcohol in a person’s breath either in grams per 100mL of blood or per 210L of breath, and that is suitable for use in analyses under part 2 of the Act.

The clause also inserts a new section 5B which provides that a regulation may make provision in relation to the testing and maintenance of screening devices and breath analysis instruments. No regulations are made by the bill for this purpose. The intention is that the regulations will relate to the major testing of devices and instruments and not the check-testing mentioned in the *Road Transport (Alcohol and Drugs) Regulation 2000*, schedule 1, item 6.

Clauses 15, clause 19, clauses 40 and 41, clauses 43 to 45, clause 56, clause 64 and clause 73 consequentially amend references in the Act to ‘approved breath analysis instrument’ and ‘approved screening device’ to ‘breath analysis instrument; and ‘screening device’ because such instruments and devices are no longer approved as such but are prescribed by regulation.

Clause 60, clause 62, clause 65 and clause 72, respectively, consequentially omit the existing definitions of ‘approved breath analysis instrument’ and ‘approved screening device’ from the Act’s dictionary and insert new definitions of ‘breath analysis instrument’ and ‘screening device’ to reflect the new terminology used in the Act.

- ***Road Transport (Alcohol and Drugs) Regulation 2000***

Clause 76 inserts new sections 2 and 3 into the regulation to prescribe 2 screening devices and a breath analysis instrument for the Act.

Clause 77 consequentially updates the heading to schedule 1 of the regulation to omit a reference to a breath analysis instrument that is no longer used.

Authorisation of breath analysis instrument operators

- ***Road Transport (Alcohol and Drugs) Act 1977***

Existing section 6 (1) of the *Road Transport (Alcohol and Drugs) Act 1977* provides for the chief police officer to authorise a police officer to carry out breath analyses if the police officer has completed a course of instruction approved by the Minister to the satisfaction of the chief police officer. Under section 6 (4), an authorisation is a notifiable instrument.

Clause 10 inserts new sections 6 and 6A in substitution for existing section 6 (1). The other provisions inserted by this clause are dealt with separately below.

New section 6 provides that the chief police officer may authorise a police officer to carry out breath analyses for the Act if the chief police officer considers the police officer is suitably qualified to carry out breath analysis. The present requirement for the Minister to approve courses is considered to be unnecessary and is omitted.

The existing requirement for authorisation of breath analysis instrument operators has become unwieldy with over 80 separate authorisation instruments currently notified on the Legislation Register. Accordingly, the requirement for an authorisation to be a notifiable instrument is omitted and new section 6A instead requires the chief police officer to keep a register of authorised operators. The purpose of the provision is to ensure that information about the police officers who are authorised to carry out breath analyses is up to date and publically accessible. The register must be available for public inspection, free of charge, during normal business hours on any business day. For the privacy of police officers, the register need only contain an authorised operator's service number.

The Act currently uses the term 'approved operator' for a police officer who is authorised by the chief police officer under existing section 6 (1).

Clauses 12 to 14, clauses 16 to 18, clause 26, clause 39 and clause 42 consequentially amend references to 'approved operator' in the Act to 'authorised operator' to better reflect the terminology of new section 6 (1). Clause 13 also remakes existing section 12 (3) (a) to bring it more closely into line with current drafting practice.

Clause 62 and clause 63, respectively, consequentially omit the existing definition of 'approved operator' from the Act's dictionary and insert a new definition of 'authorised operator'.

Clause 74 consequentially repeals the legislative instruments made under existing section 6 (1) of the Act which relate to the authorisation of police officers to carry out breath analyses. (Clause 58 inserts a new section 106 which provide that despite the repeal of the instruments by clause 74, a police officer who was an approved operator under a repealed instrument is taken to be an authorised operator for a transition period of 6 months. This period is to allow the register to be set-up in an orderly manner.)

- ***Road Transport (Alcohol and Drugs) Regulation 2000***

Clause 78 consequentially amends a reference to 'approved operator' in the *Road Transport (Alcohol and Drugs) Regulation 2000* to 'authorised operator' to better reflect the terminology of new section 6 (1) of the Act.

Appointment of analysts and approval of laboratories

Existing section 6 (2) and (3) of the *Road Transport (Alcohol and Drugs) Act 1977* provide for the Minister to appoint analysts and to approve laboratories. Under section 6 (4), an appointment and an authorisation is a notifiable instrument.

Clause 10 inserts new sections 7 and 7A in substitution for existing section 6 (2) and (3). New section 7 provides for the road transport authority to appoint analysts, and new section 7A provides for the road transport authority to approve laboratories, for the purposes of the Act. Currently the appointment of analysts and approval of laboratories is a function exercised by the Minister. Under the amended provisions this is a function of the road transport authority which is a more appropriate entity to make the appointments.

The requirement for appointments and approvals to be notified on the Legislation Register is removed to bring these provisions more closely into line with current drafting practice for such matters and, in the case of the appointment of analysts, to assist with their personal security.

Clauses 20 to 22, clauses 24 and 25, clause 27 and clause 48 substitute new provisions about blood samples and other matters which use the new terminology of ‘analyst’ rather than the current term ‘approved analyst’. The use of the term ‘analyst’ better reflects the terminology of new section 7. The current term ‘approved laboratory’ is retained in the amendments.

Clause 59 and clause 60, respectively, insert a new definition of ‘analyst’ into the Act’s dictionary and omit the existing definition of ‘approved analyst’.

Clause 61 substitutes a new definition of ‘approved laboratory’ to reflect new section 7A.

Clause 74 consequentially repeals the legislative instruments made under existing section 6 (2) and (3) of the Act which relate to the appointment of analysts and the approval of laboratories. (Clause 58 inserts new sections 107 and 108 which provide that despite the repeal of the instruments by clause 74, a person who was an approved analyst under a repealed instrument is taken to be an analyst, and a laboratory that is an approved laboratory is an approved laboratory under new section 7A (see clause 10), for a transition period of 6 months. This period is to allow new appointments and approvals to be made in an orderly manner.)

Taking and analysis of body and blood samples

The *Road Transport (Alcohol and Drugs) Act 1977* currently provides that a body or blood sample must be divided and placed into 2 separate containers. If the person from whom the sample is taken is incapable of giving or refusing consent to the sampling procedure, both samples are placed in a one-way box for collection by an approved analyst. If the person is regarded as capable of consenting, the person is given one sealed container and the other sealed container is placed in the one-way box for collection by the approved analyst. These provisions are out of step with modern practices for handling evidential material and biohazardous material (blood). Most people who are handed a sample of their blood would not be aware of how to protect and preserve the sample for analysis to ensure its evidential integrity should it be required as evidence in any subsequent legal proceedings, or how to dispose of it safely.

Clause 20 amends section 15, which deals with taking blood samples from people in custody. It replaces existing subsections (7) to (9) with new sections (7) and (8). The new provisions require the sample taker to—

- put the sample of blood into a single container;
- label it with essential details such as the sample taker’s name, the tested person’s name, the date and time the sample was taken;

- seal the container with a tamper-evident seal marked with a unique identifying number; and
- place the container into a one-way box.

The police will then arrange for the sample to be collected from the one-way box by an analyst.

The unique identifying number mentioned in new section 15 (7) will be recorded on the documentation relating to the sample that is given to the tested person under section 15A and in any evidentiary certificates relating to the sample.

Clause 21 amends section 15AA, which deals with taking samples from people in hospital. The amendments in clause 21 mirror the amendments in clause 20.

Clause 22 inserts replacement sections 15A and 15B, which deal with analysis of blood samples.

New section 15A explains what must happen to a sample of blood collected under sections 15 or 15AA once an analyst has collected the sealed container from the one-way box. Section 15A (2) provides that the analyst must arrange for an approved laboratory to analyse the sample to work out the blood alcohol concentration as soon as practicable. Section 15A (3) applies where a police officer has reasonable cause to suspect that a driver has a medicine or drug other than alcohol in the person's body, or that the person's behaviour is affected by a medicine or drug other than alcohol. In such cases, the police officer may ask the analyst to work out whether one or more medicines or drugs are present in the sample and if so, in what quantity, concentration or other measurement they are present. Section 15A (4) requires the analyst to comply with the request so far as practicable.

Section 15A (5) to (7) deal with setting aside part of the sample for possible future analysis. The analyst is required to take reasonable care to ensure that part of the sample is preserved in the event of a request by the tested person to send the sample for independent analysis at the tested person's expense. The cost of the further testing, since it is being done at the tested person's request, will be at the tested person's expense. In general, the tested person will have 1 year to make such a request, unless the Director of Public Prosecutions has requested the laboratory to retain the sample for a longer period. If the tested person does request that part of the sample be made available, it must be sent to the nominated laboratory as soon as practicable.

The requirement for an analyst to take 'reasonable care' to ensure that part of the sample is preserved, rather than, for example, of ensuring that a part of the sample is kept for later analysis, reflects a variety of situations which might affect such a requirement. The quantity remaining is dependant on the quantity of blood taken and whether tests for one or more medicines or drugs, in addition to ascertaining alcohol concentration, are carried out.

New section 15B deals with blood analysis statements. It requires a police officer to give a tested person a statement, as soon as practicable after a blood analysis is carried out under section 15A. The blood analysis statement must contain the following details:

- when and where the sample was taken;
- the unique identifying number on the tamper-evident seal;
- the results of the analysis;
- where the remainder of the sample is being held;
- that the person will be notified if the Director of Public Prosecutions requests that the sample be held past the 1 year period;
- the person's right to request that part of the sample be sent for independent analysis at the person's expense.

Clause 23 and clause 24 amend section 16, which deals with taking body samples from certain drivers in situations where a police officer believes that the person may have a drug other than alcohol in his or her body, or that the person's behaviour does not arise from, or does not arise wholly from, the presence of alcohol. The section applies to drivers involved in accidents, drivers suspected of committing a culpable driving offence and drivers suspected of driving under the influence of intoxicating liquor or a drug. The amendments replace subsections (7) to (9) with new subsection (7) to (8), which mirror new section 15 (7) and (8) (see clause 20 above) and consequentially amend subsection (2) to include a reference to medicine in the context of a drug other than alcohol.

Clause 25 omits existing section 16A and substitutes a new section 16A, section 16B and section 16C.

New section 16A explains what must happen to a body sample collected from a person under section 16. New section 16A is substantially in line with new section 15A, but without a requirement to determine the concentration of alcohol in the body sample, other than a sample of blood.

New section 16B has the effect of allowing the Director of Public Prosecutions to request the laboratory to keep the preserved part of a sample collected from a person under the Act, pending finalisation of any legal proceedings against the tested person.

New section 16C explains when the preserved part of a sample may be destroyed. If the preserved part of the sample has not been sent to a nominated laboratory at the request of the tested person at the end of 1 year, and the Director of Public Prosecutions has not requested under new section 16B that it be kept, then the preserved part of the sample must be destroyed.

Clause 46 substitutes a new section 41 (1) (d), which provides for evidentiary certificates by a doctor or nurse who takes a blood sample or body sample from a person under the Act, to update terminology and remove duplication within section 41 (see clause 47 below). The amendments ensure that the evidentiary certificates cover the processes for taking blood, placing it into a container, labelling the container as

required, sealing the container with a tamper-evident seal marked with a unique identifying number and placing the container in a one-way box.

Clause 47 omits section 41 (1) (f) which is subsumed into substituted section 41 (1) (d).

Clause 48 makes consequential amendments to the evidentiary certificate provisions in section 41 (1) (h), which provides for evidentiary certificates by analysts. The amendments ensure that the evidentiary certificates state that the person was an analyst, the person analysed the sample at an approved laboratory, the sample was labelled and sealed as required with a tamper-evident seal marked with a unique identifying number, that the seal did not appear to have been interfered with, the analysis that was undertaken and its results and that the analysis was accurate.

Clause 69 inserts a new definition of ‘medicine’ for the purposes of the new sections 15A, 16 and 16A. The definition also applies to new section 21A which is about a defence for special drivers with a low concentration of alcohol.

Transitional provisions—Alcohol and Drugs Act

Clause 58 inserts a new part 21 (Transitional) into the *Road Transport (Alcohol and Drugs) Act 1977*.

New section 105 provides that the part commences on the commencement of section 10 of the amending Act. The section relates to screening devices and breath analysis instruments, the authorisation of breath analysis instrument operators, the appointment of analysts and the approval of laboratories.

New sections 106 to 108 preserve existing authorisations of breath analysis instrument operators, appointments of analysts and approvals of laboratories for a transitional period of 6 months to ensure that there is no hiatus in these matters when clause 10 commences and to allow for the orderly remaking of authorisations, appointments and approvals.

New section 109 provides that regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the new Act. It also provides that a regulation may modify part 21 (including in relation to another territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in the part. A modifying regulation has effect despite anything elsewhere in the new Act or another territory law. This is a standard transitional provision which is designed to deal with unforeseen contingencies.

New section 110 (1) provides that the part expires 2 years after the day it commences.

New section 110 (2) provides that the part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies. This declaration ensures that the transitional effect of the part continues despite its expiry.

Repeal of redundant provisions

- ***Road Transport (Alcohol and Drugs) Act 1977***

Clause 32 repeals sections 29 and 30. Section 29 provides that the court may, instead of ordering a convicted person to pay fine or sentencing the person to imprisonment, make a rehabilitation program order. This option is available to the court under the *Crimes (Sentencing) Act 2005*. Section 30 gives the court a power to reduce the amount of a financial penalty to be paid by a convicted person if the person complies with a good behaviour order. However, the section's operation is contingent on section 29 as it stood before it was amended by the *Sentencing Legislation Amendment Act 2006*. The section no longer deals with financial penalties and the remission of financial penalties is a function of the Executive under the *Crimes (Sentence Administration) Act 2005*. As such, these provisions are redundant.

Clause 38 repeals section 38 which provides that the powers of a court in relation to penalties are in addition to any other powers of the court. The section is unnecessary because section 9 (1) of the *Crimes (Sentencing) Act 2005* provides that the penalty a court may impose for an offence is the penalty provided under that Act or any other territory law.

Clause 55 repeals part 8 (Rehabilitation programs). The part is comprised only of section 44 which provides for the Minister to approve a program of therapy or education for the rehabilitation of people suffering from alcohol dependence. Consequent on amendments made by the *Sentencing Legislation Amendment Act 2006*, the issue is now dealt with as part of a good behaviour order under the *Crimes (Sentencing) Act 2005*.

Clause 57 repeals section 46 which creates an offence of escaping from the custody of a police officer if the person has been taken into custody under certain provisions of the Act. The *Crimes Act 1900*, section 160 has an offence of escape from lawful arrest and other forms of custody. It has a higher and more relevant penalty.

- ***Road Transport (General) Regulation 2000***

Clause 107 omits schedule 1, part 1.1 consequent on the repeal of part 8 of the *Road Transport (Alcohol and Drugs) Act 1977* (see clause 55). The repealed part relates to the administrative review of decisions under part 8.

- ***Road Transport (Offences) Regulation 2005***

Clause 111 omits schedule 1, part 1.3, item 15 consequent on the repeal of section 46 of the *Road Transport (Alcohol and Drugs) Act 1977* (see clause 57).

Alcohol Awareness Courses

- ***Road Transport (Driver Licensing) Act 1999***

Clause 80 amends section 28 of the *Road Transport (Driver Licensing) Act 1999* which provides the regulation-making power for the driver licensing system. New section 28 (2) (s) is inserted to provide for regulations to require a person convicted or found guilty of a disqualifying offence to complete a course, approved by the road

transport authority, about the effects of alcohol, including its effects on driving and health.

- ***Road Transport (Driver Licensing) Regulation 2000***

Clause 96 inserts new Division 3.13 (new sections 73A to 73I) into the regulation. The effect of the provisions is that a person who is convicted or found guilty of a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977* must complete a course approved by the road transport authority before the person can be issued a restricted licence or a probationary licence. The following are disqualifying offences:

- exceeding the prescribed blood alcohol concentration;
- refusing to provide a breath sample;
- refusing a blood test;
- driving under the influence of intoxicating liquor or a drug.

New sections 73C to 73F provide for the consequences of a person to whom the new division applies not completing an alcohol awareness course. They give effect to the policy objective that all people who are found to have committed a drink driving offence must complete such a course to obtain or retain a driver licence

New section 73A makes it clear that the requirement to attend an alcohol awareness course applies only to people who commit a disqualifying offence on or after the day new section 28 (2) (s) of the *Road Transport (Driver Licensing) Act 1999* commences. That section provides the authority for regulations to require drink drivers to attend an approved course.

New section 73B defines terms for the new division.

New section 73C (1) applies to a person who is found guilty (but not convicted) of a disqualifying offence, who is not disqualified from holding or obtaining a driver licence, and who has not completed an alcohol awareness course in the 12-month period prior to the date of the finding of guilt. New section 73C (2) provides that the person must complete an alcohol awareness course within 6 months after being found guilty of the disqualifying offence. New section 73C (3) provides that if the person fails to complete the course and provide the road transport authority with written evidence that the course has been completed, within the 6 month period, the authority must suspend the person's driver licence. New section 73C (4) provides that the road transport authority must end the suspension if the person subsequently provides written evidence that they have completed an alcohol awareness course (within the period commencing 12 months before the date of the finding of guilt).

New section 73D deals with the situation where a person is convicted, or found guilty, of a disqualifying offence, who is disqualified from holding or obtaining a driver licence, is not eligible for a restricted licence and has not completed an alcohol awareness course in the 12-month period prior to the date of the conviction or finding of guilt. At the end of a period of disqualification, a person is able to be issued a probationary driver licence (see section 52 of the regulation). New section 73D (2) and (3) requires the person to complete an alcohol awareness course before the end of

the period of disqualification and before the person is issued with a probationary licence. However, new section 73D (4) provides that the road transport authority must issue a probationary licence if the person subsequently provides written evidence that they have completed an alcohol awareness course (within the period commencing 12 months before the date of the conviction or finding of guilt).

Section 73E deals with the situation where a person is convicted or found guilty of a disqualifying offence, is disqualified from holding or obtaining a driver licence, the Magistrates Court makes an order authorising the issue of a restricted licence to the person and the person has not completed an alcohol awareness course in the 12-month period prior to the date of the conviction or finding of guilt. The section provides that the road transport authority cannot issue a restricted licence to the person until the person has completed and provided written evidence of the completion of an alcohol awareness course.

Section 73F deals with the situation of a person to whom section 73E applies but who is not issued a restricted licence and who does not do an alcohol awareness course. The person may be issued with a probationary licence only if the person completes an alcohol awareness course.

In practice, when people are committing a drink driving offence are caught by police they will be provided with information about the requirement that all people convicted, or found guilty, of drink driving must complete an alcohol awareness course. They will be encouraged to consider completing an appropriate course before their court case is heard as this will enable them to apply for a restricted or probationary licence in a timely way. Ultimately, it will be up to the offender when they complete the course, but they will not, unless exempted, be eligible to apply for a driver licence until the course is completed.

New sections 73G and 73H enable the road transport authority to exempt a person from the requirement to complete an alcohol awareness course, on application by the person. However the road transport authority can only grant such an exemption where it is satisfied that there are exceptional circumstances to justify the exemption.

New section 73I provides for the road transport authority to approve an alcohol awareness course about the effects of alcohol, including its effects on driving and health. It is anticipated that more than one type of course may be approved, in order to cater for the needs of different types of drink driving offenders. For example, it may be appropriate to have a different course content and structure for first offenders and repeat offenders and for low range and high range offenders. Corrections and health expertise will be utilised in determining course content and provision.

Clause 92 and clause 93 consequentially amend the regulation to insert notes about the requirement to undertake an alcohol awareness course in the provisions of the regulation about the issue of restricted and provisional licences.

Clause 97 amends section 87 which deals with the circumstances in which the road transport authority can cancel, suspend or vary a driver licence, to include, as a new ground for taking this action, that a person has failed to complete an alcohol awareness course as required under new section 73C.

Clause 98 inserts definitions of terms used in the new provisions about alcohol awareness courses into the regulation's dictionary.

- ***Road Transport (General) Regulation 2000***

Clause 108 consequentially amends the regulation to provide for review by the ACT Civil and Administrative Tribunal of a refusal by the road transport authority under new section 73G (1) (b) of the *Road Transport (Driver Licensing) Regulation 2000* to give an exemption from the requirement to complete an alcohol awareness course.

Immediate licence suspension

- ***Road Transport (General) Act 1999***

Clause 101 amends the Act to update the heading to division 4.2 and to insert new sections 61A to 61F. The purpose of the provisions is to allow a police officer to issue an immediate licence suspension notice to a person for drink driving offences in certain circumstances.

New section 61A inserts definitions used in division 4.2. Key concepts defined in this section include:

- *automatic disqualification provision* - this concept is important for understanding who is not eligible to apply for a restricted licence while subject to a period of automatic driver licence disqualification).
- *immediate suspension notice* and *suspension notice* - this is a notice given to a driver by a police officer in relation to an immediate suspension offence.
- *immediate suspension offence* and *suspension offence* - in essence, this is an offence under section 19 of the *Road Transport (Alcohol and Drug) Act 1977* where the person is over the applicable limit by 0.05g of alcohol or more, or any of the offences in sections 22 to 24 of the Act, or an offence prescribed for the definition of disqualifying offence in the *Road Transport (Alcohol and Drug) Act 1977* or an offence against section 31 (3) of the *Road Transport (Driver Licensing) Act 1999* (which is about automatic disqualification for repeat offenders for driving while not holding (and never having held) an Australian driver licence) or section 32 (3) of that Act (which is about automatic disqualification for an offence of driving or fraudulently applying for a driver licence while disqualified, or after licence suspension, cancellation or refusal).

New section 61B provides for the immediate suspension of a driver's licence where a police officer believes on reasonable grounds that a person has committed an immediate suspension offence. Subsection 61B (1) requires a police officer who believes on reasonable grounds that a person has committed an immediate suspension offence to give the person an immediate suspension notice for the offence.

The notice must contain the details set out in subsection 61B (2), including among other matters information about the effect of the suspension notice on the person's driver licence, the person's right to drive a vehicle in the ACT, and right of the person to apply to the Magistrates Court for a stay of the suspension notice.

Subsection 61B (3) provides that a suspension notice has effect when it is served on the person. In most cases, a person will be given a suspension notice shortly after the person has undergone a breath analysis to confirm that a person has exceeded the alcohol concentration for the person by 0.05g or more.

Subsection 61B (4) sets out the consequences of being served with a suspension notice. These consequences are that a person's driver licence is suspended; the person must surrender the licence to a police officer at the time, or if that is not possible, do so as soon as practicable; the person must not drive in the ACT; and the person cannot apply for or be granted a restricted licence during the suspension period.

Section 61B (5) explains that a suspension notice ceases to have effect when any of the following things happen:

- the notice is stayed by order of the Magistrate's court;
- the proceeding for the relevant suspension offence is withdrawn or discontinued;
- the offence is dealt with by a court.

It should be noted that the power to issue a suspension notice is not discretionary: the language in section 61B (1) directs a police officer to issue the notice once the officer has formed a reasonable belief as to the existence of certain facts.

The power to issue a suspension notice is an administrative sanction, in that it does not depend upon on judicial determination of guilt. Similar powers of immediate licence suspension for intermediate to high-range drink driving offenders are found in road safety legislation in Victoria, New South Wales and South Australia¹, while Queensland is reviewing its immediate licence suspension provisions with a view to applying them to offenders with a blood alcohol concentration of 0.1g or more.² There are many other provisions in the road transport legislation that also provide for a suspension or cancellation of a driver licence or other right, permit, authority or entitlement other than by order of a court. Examples of these provisions include:

- demerit point suspensions under section 18 of the *Road Transport (Driver Licensing) Act 1999*;
- driver licence or vehicle registration suspension for non-payment of infringement notice penalties under section 44 of the *Road Transport (General) Act 1999*;
- suspension of a driver licence on medical grounds under section 87 (1) (d) or (e) of the *Road Transport (Driver Licensing) Regulation 2000*.

Immediate licence suspension addresses a potentially road safety risk, by removing a driver from the road immediately (rather than having the person continue to drive until the matter is dealt with by the court) and delivers an immediate consequence of drink-driving to the offender. It will also reduce any incentive for the offender to delay having the matter dealt with by the court and would, in fact, provide an

¹ Section 51 of the *Road Safety Act 1986* (Vic); section 205 of the *Road Transport (General) Act 2005* (NSW) and section 47IAA of the *Road Traffic Act 1961* (SA).

² *Drink Driving in Queensland: a discussion paper*, Department of Transport and Main Roads, Queensland, 2010, pages 45-46.

incentive to have the matter dealt with at least within the minimum disqualification period for the particular offence.

The importance of an immediate sanction was highlighted in the discussion paper on the *Road Transport (Alcohol and Drugs) Act 1977* released in mid-2008 and which stated follows:

‘The effectiveness of immediate licence suspension is also supported by a recent study of drivers in 46 US states, which has shown that immediate suspension of licence has a strong deterrent effect on repeat offenders. In particular, drivers with BAC [blood alcohol concentration] levels just above the prescribed limit who had had their licences suspended were 5% less likely than those who had not to be involved in a fatal accident. Conversely, drivers who did not have their licence suspended were much more likely to be convicted of a further drink driving offence. The study concluded that:

“the effectiveness of a deterrence policy appears to be more strongly affected by... the speed by which punishment is applied after the offending behaviour.”³.

New section 61C provides that it is an offence to fail to surrender the person’s driver licence when required to do so.

New section 61D provides that the police must return surrendered driver licences to the road transport authority as soon as practicable. This is a standard provision which enables the road transport authority to keep the driver licence register up to date.

New section 61E deals with applications to the Magistrates Court for an order to stay the operation of a suspension notice. In essence, it is a ‘machinery’ provision that details the processes for making and filing applications, the notification of parties, the role of the registrar and the filing of documents by the police and the applicant.

New section 61F deals with deciding applications for stay orders. Subsection 61F (1) provides that the Court may hear and decide an application for a stay order, and can either confirm the suspension notice, stay the operation of the suspension notice or make any other order it considers appropriate. Subsection 61F (2) places limits on the Court’s power to stay a suspension order. It provides that the Court must not stay a suspension order unless it is satisfied that there are exceptional circumstances exist to justify the stay order. Subsection 61F (3) sets out the matters the Court must take into account when deciding if exceptional circumstances exist. These matters include the risk to other road users, the applicant’s need for a licence and the strength of the prosecution case.

Section 61F (4) makes it clear that a person cannot use a stay-order hearing to determine his or her guilt or innocence for the immediate suspension offence, or the imposition or level of a penalty for the offence. The purpose of this limitation is to ensure that stay order hearings are not used to undermine or bypass normal criminal justice processes.

³ Wagenaar, A, and Maldonado-Molina, M, ‘Effects of Drivers’ License Suspension Policies on Alcohol-related Crash Involvement: Long-Term Follow up in 46 States’, (2007), *Alcohol: Clinical and Experimental Research*, Vol 31, No. 8, pp 1399 – 1406.

Clause 102 remakes existing section 64 consequent on the list of provisions in existing section 64 (2) being moved to the new definition of ‘automatic disqualifying provision’ in new section 61A (see clause 101).

Clause 105 inserts new definitions of the following terms into the dictionary:

- automatic disqualification provision;
 - immediate suspension notice;
 - immediate suspension offence;
 - special driver;
 - suspension notice;
 - suspension offence.
- ***Road Transport (Alcohol and Drugs) Act 1977***

Clause 37 inserts a new section 35 into the Act which provides that the period for which the person is disqualified from holding or obtaining a driver licence under the Act, including any minimum disqualification period, must be reduced by the period that the person’s driver licence was suspended under the *Road Transport (General) Act 1999*, section 61A. However, the disqualification period is not reduced if, on hearing the charge for the immediate suspension offence, a court is satisfied that the person did not comply with the immediate suspension notice. This provision ensures that a person is not, in effect, required to serve a double period of inability to drive.

- ***Road Transport (Offences) Regulation 2005***

Clause 114 and clause 115 consequentially amend the regulation consequent on new section 61B of the *Road Transport (General) Act 1999* to include a short description (see section 75 of the *Road Transport (General) Act 1999*) for the offence created by new section 61B and to consequentially amend the short description for another offence.

Limitations on issue of restricted licences

- ***Road Transport (General) Act 1999***

Section 66 of the Act deals with the effects of a person being disqualified from holding or obtaining a driver licence. Under existing section 66 (6) the person is not eligible to apply for, or be issued with, another driver licence, other than a restricted licence, during the period of disqualification. Existing, section 66 (7) provides that a person is not eligible to apply, or be issued with a restricted licence if section 67 applies to the person or the person is disqualified from holding or obtaining an Australian driver licence in another jurisdiction.

Existing section 67 sets out the limitations on the issue of a restricted licence for an automatic disqualification provision mentioned in existing section 64 (2). However, it does not apply to a disqualification under section 32 of the *Road Transport (Alcohol and Drugs) Act 1977* (‘the A&D Act’), which relates to first offenders under the A&D Act exceeding the prescribed alcohol concentration, because of the definition of ‘special disqualification provision’ in existing section 67 (1) which provides that

section 67 does not apply to a disqualification under section 32 of the A&D Act. It is because of this exception in relation to section 32 of the A&D Act that a first offender for an offence against section 19 of the A&D Act can obtain a restricted licence.

Section 66 (6) and (7) and section 67 are restructured by the amendments. In particular, section 67 is broken-up into a series of provisions each of which deals with a particular case only. However, there is only one substantive change to these provisions. It relates to first offenders exceeding the prescribed alcohol concentration under the A&D Act. New section 67A (2) and (3) prevents the issue of a restricted licence if such a person exceeds the alcohol concentration applicable to the person by 0.05g or more.

Clause 103 substitutes a new section 66 (6) and new section 66A for existing section 66 (6) and (7) and brings these provisions more closely into line with current drafting practice. The note at the end of existing section 67 about other provisions of the road transport legislation that limit the issue of restricted licences is remade as note 2 to new section 66 (6).

The first element of existing section 66 (7) is that a person is not eligible to apply for, or be issued with, a restricted licence if existing section 67 applies. This element is built into the beginning of new section 66 (6): 'Subject to any other provision of this division' because clause 104 breaks-up existing section 67 into a series of provisions.

The second element of existing section 66 (7) is that a person who is disqualified from holding or obtaining an Australian driver licence in another jurisdiction is not eligible to apply for, or be issued with, a restricted licence. This element is remade as new section 66A.

Clause 104 substitutes new sections 67 to 67C for existing section 67.

New section 67 provides that a repeat offender under an automatic disqualification provision (see new section 61A inserted by clause 101) is not eligible to apply for, or be issued with, a restricted licence. This reflects existing section 67 (3) (b).

Existing section 67 does not apply to first offenders under the A&D Act who exceed the prescribed alcohol concentration under that Act. This is because of the exclusion of section 32 of the A&D Act from the definition of 'special disqualification provision' in existing section 67 (1). Under existing section 67 (3) (a) any other first offender under an automatic disqualification provision is not eligible to apply for, or be issued with, a restricted licence for the minimum disqualification period applying for the offence.

New section 67A deals with first offenders under an automatic disqualification provision.

As noted above, a first offender who exceeds the prescribed concentration of alcohol applicable to the person under the A&D Act is able to be issued with a restricted licence because of the exclusion of section 32 from the meaning of 'special disqualification provision' in existing section 67 (1) of the *Road Transport (General) Act 1999*.

New section 67A (2) and (3) applies to such a person but only so as to prevent the issue of a restricted licence if the person exceeds the alcohol concentration applicable to the person by 0.05g or more: ie a special driver with an alcohol concentration of 0.05g or more and any other driver with an alcohol concentration of 1.0g or more. While a low-range first offender may have genuinely attempted to remain within the alcohol concentration limit, but failed to accurately judge their level of sobriety, a high-range offender is much less likely to have been unaware that he or she was 'over the limit' when making the decision to drive.

New section 67A (4) and (5) provide that a first offender is not eligible to apply for, or be issued with, a restricted licence until the end of the minimum period of disqualification applying to the person under the automatic disqualification provision, other than section 32 of the A&D Act, in relation to the offence (whether or not the period is expressed to be such a minimum period). This reflects existing section 67 (3) (b).

New section 67B provides that a person who is disqualified from holding or obtaining a driver licence until a court orders otherwise is not eligible to apply for, or be issued with, a restricted licence. This reflects existing section 67 (4).

New section 67C provides that a person who is the holder of a restricted licence and who is disqualified from holding or obtaining a driver licence because of being convicted of found guilty of a offence against the law of any jurisdiction is not eligible for a restricted licence for the remainder of the period for which the person was originally disqualified. This reflects existing section 67 (5).

- ***Road Transport (Driver Licensing) Regulation 2000***

Clause 82 updates the notes to section 45 (2) of the regulation about people who are not eligible to apply for or be issued with a restricted licences consequent on the amendments made by clause 103 and clause 104.

Update of Road Transport (Offences) Regulation 2005

Clause 110 updates the subsection references in items 10 to 12 of part 1.3 of schedule 1 to bring them into line with the numbering of the subsections as they are in section 23 of the *Road Transport (Alcohol and Drugs) Act 1977*.