

1991

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by the Authority of
Mr Terence Connolly MLA
Attorney General)

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1991

OUTLINE

The *Motor Traffic (Alcohol and Drugs) Act 1977* (the Principal Act) provides for the detection of persons who drive motor vehicles after consuming alcohol or drugs, for approval of breathalysers and measures for the treatment and rehabilitation of persons found guilty of offences under its provisions.

The *Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1991* amends the Principal Act to enable the Minister to approve breathalyser instruments generically, by type, by a notice published in the Gazette. The amendments complement the introduction of a hi-tech automatic breathalyser, Dräger Alcotest 7110, in the Territory. Procedural amendments in the Bill require a person to supply, at the request of a police officer, samples of his or her breath sufficient for carrying out breath analysis and exempt the breath tests carried out at a police station from the requirement to keep them not readily apparent to members of the public.

The other amendments in the Bill include providing for a written statement in the form of a print out issuing from an approved breathalyser after a test to be evidence of the matters contained in it and treating the breathalysers already approved under the Principal Act to be deemed to have been approved under the amendments.

FINANCIAL IMPLICATIONS

These amendments do not have cost implications. The funds for the purchase of the Dräger Alcotest 7110 were provided to the Territory by the Commonwealth.

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1991

CLAUSE NOTES

Clause 1: Short Title

Clause 1 contains the short title.

Clause 2: Principal Act

Clause 2 defines the "Principal Act" as the Motor Traffic (Alcohol and Drugs) Act 1977.

Clause 3: Interpretation

Clause 3 amends subsection 4(1) of the Principal Act by omitting the definition of the term "approved breath analysing instrument" and substituting a new definition. This amendment defines the term to mean an instrument of a type approved, or deemed to have been approved, by the Minister under subsection 5(1) of the Principal Act.

Clause 4: Approval of instruments

Clause 4 omits subsection 5(1) of the Principal Act and substitutes a new subsection. This amendment enables the Minister to approve a breathalyser instrument generically, by type, through a notice published in the Gazette.

Clause 5: Breath analysis

Clause 5 amends subsection 12(1) of the Principal Act and requires a person taken into custody under the provisions of the Principal Act to provide, at the request of a police officer, samples of his or her breath sufficient for breath analysis.

PARLIAMENTARY COUNSELLOR

Clause 6: Precautions for privacy

Clause 6 adds a new subsection 13(2) which provides that subsection 13(1) of the Principal Act does not apply where a breath analysis is carried out at a police station. Subsection 13(1) of the Principal Act requires the approved operator carrying out a breath analysis to take all reasonably practicable steps to ensure that it is not readily apparent to members of the public that the breath analysis is carried out.

Clause 7: Refusal to provide breath samples for analysis

Clause 7 amends section 22 of the Principal Act by omitting "a sample" (wherever occurring) and substituting "samples". Section 22 of the Principal Act makes it an offence for a person to refuse to provide a sample of his or her breath for analysis. This amendment reconciles this penal provision with the amendment in clause 5.

Clause 8: Certificate evidence

Clause 8 amends section 41 of the Principal Act by omitting paragraph (1)(aa); subparagraphs (1)(a)(iiia) and (iiib), (1)(b)(iiia) and (iiib); and subsections (3) and (4). These amendments are consequential to the amendment in clause 4.

This clause also omits the words "prima facie" and "and of the facts on which they are based" wherever occurring in the Principal Act. These words do not add to, or detract from, the standard or burden of proof otherwise required for establishing evidence under the relevant provisions of the Principal Act.

Another amendment in this clause inserts a new paragraph 1(ba). The new paragraph provides that a written statement which is a print out from an approved breathalyser, is evidence of the matters stated in it.

Clause 9: Schedule

Clause 9 repeals Schedule 2 to the Principal Act. This amendment is also consequential to the amendment in clause 4.

Clause 10: Saving

Clause 10 inserts a new section and provides that a type of an instrument already approved under the Principal Act should be deemed to have been approved under the amendments. This amendment provides for the application of subsection 27(1) of the Interpretation Act 1967 to such approvals. Subsection 27(1) of the Interpretation Act provides that where a person is conferred with a power to make, grant, or issue any instrument, that person has the further power, unless contrary intention appears, to repeal, rescind, revoke, amend or vary such an instrument.