

New South Wales

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The principal object of this Bill is to amend the *Road Transport (Safety and Traffic Management) Act 1999* (the **Principal Act**) to prohibit drivers who are the holders of learner licences or provisional licences from driving with any alcohol present in their blood.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999

Schedule 1 [4] inserts proposed section 9 (1A) into the Principal Act to make it an offence for a person who is the holder of a learner licence or a provisional licence to drive or attempt to drive a motor vehicle while there is present in the person's blood a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 100 millilitres of blood (the *novice range prescribed concentration of alcohol* (see **Schedule 1 [13]**)). The proposed offence is punishable by a maximum penalty of 10 penalty units (currently \$1,100), in the case of a first offence, or 20 penalty units (currently \$2,200), in the case of any subsequent offence.

Such a person will also be liable for an offence under the existing section 9 (1), (2), (3) or (4) of the Principal Act if found guilty of driving or attempting to drive a motor vehicle while there is present in the person's blood a concentration of alcohol that exceeds the novice range prescribed concentration of alcohol.

Schedule 1 [8] sets out a defence to the new offence provided for in proposed section 9 (1A). It is a defence to the new offence if the defendant proves that the presence in the defendant's blood of the novice range prescribed concentration of alcohol at the time that the person is alleged to have committed the offence was not caused by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance, such as Holy Communion),
- (b) the consumption or use of any other substance (for example, food or medicine containing alcohol) for the purpose of consuming alcohol.

Schedule 1 [1], [2], [3] and [5] make consequential amendments to sections 8 and 9 of the Principal Act.

Schedule 1 [6] makes a consequential amendment to section 10 of the Principal Act, extending the application of that section to the offence under proposed section 9 (1A). Section 10 enables a court to convict a defendant who is charged with an offence under section 9, involving prescribed concentrations of alcohol, with a lesser offence under that section if the more serious offence is not established but the less serious offence is established.

Schedule 1 [7] makes a consequential amendment to section 11 of the Principal Act extending the offences to which the section applies to the offence under proposed section 9 (1A). Section 11 provides that a defendant cannot plead as a

defence that he or she had a concentration of alcohol in his or her blood that was greater than the concentration of alcohol specified for the offence with which he or she is charged.

Schedule 1 [9] makes a consequential amendment to section 14 of the Principal Act extending the application of the section to the novice range prescribed concentration of alcohol. Section 14 authorises a police officer to arrest and detain a person after a breath test if the test indicates that the person had any one of the prescribed concentrations of alcohol in his or her blood or if the person refuses to undergo a breath test.

Schedule 1 [10] makes a consequential amendment to section 32 of the Principal Act extending the application of section 32 to the offence under proposed section 9 (1A). Section 32 facilitates the admission into evidence in proceedings for an offence under section 9 of the alcohol concentration in the defendant's breath or blood, as revealed by a breath test or blood analysis.

Schedule 1 [11] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [12] inserts a transitional provision into the Principal Act. The effect of this provision is that legal proceedings for offences committed before the commencement of the proposed amendments will continue to be determined under the law as it stood before that commencement.

Schedule 1 [14] removes an unnecessary definition from the Dictionary to the Principal Act.

Schedule 2 Amendment of other Acts

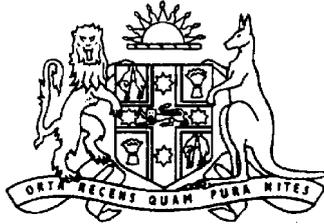
Schedule 2.3 sets out proposed amendments to the *Road Transport (General) Act 1999*.

Schedule 2.3 [1] and [2] amend section 25 of the *Road Transport (General) Act 1999*. The proposed amendments provide for the automatic disqualification of novice drivers convicted of offences under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999* (as inserted by **Schedule 1 [4]**).

Schedule 2.3 [3] and [4] amend the *Road Transport (General) Act 1999* in relation to interlock driver licences. In particular, the amendments enable a court that convicts a person of an offence under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999* to order the suspension of the person's disqualification from holding a driver licence if the person participates in an interlock program.

Schedule 2.3 [5] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.1 and 2.2 make consequential amendments to section 353A of the *Crimes Act 1900* and section 134 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, respectively, relating to the power of a court to order persons found guilty of certain offences to submit to the taking of identification particulars. The proposed amendments will extend the offences in relation to which such orders may be made to offences under proposed section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999*.



Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003

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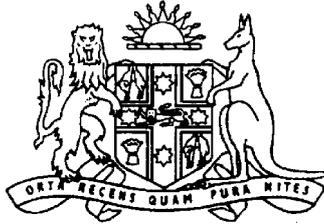
| | Page |
|---|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20 | 2 |
| 4 Amendment of other Acts | 2 |
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No. , 2003

A Bill for

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* to prohibit learner drivers and provisional licence holders from driving with any alcohol present in their blood; and for other purposes.

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|---|----------|
| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Road Transport (Safety and Traffic Management) Amendment (Alcohol) Act 2003</i> . | 3 4 |
| 2 Commencement | 5 |
| This Act commences on a day or days to be appointed by proclamation. | 6 7 |
| 3 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20 | 8 9 |
| The <i>Road Transport (Safety and Traffic Management) Act 1999</i> is amended as set out in Schedule 1. | 10 11 |
| 4 Amendment of other Acts | 12 |
| The Acts specified in Schedule 2 are amended as set out in that Schedule. | 13 14 |

**Schedule 1 Amendment of Road Transport (Safety and
Traffic Management) Act 1999**

(Section 3)

[1] Section 8 Interpretation

Omit section 8 (1) and (2).

[2] Section 8 (3) (a)

Omit the paragraph. Insert instead:

- (a) if the person is the holder of a learner licence, or the holder of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, for motor vehicles of a class that includes that motor vehicle, or

[3] Section 8 (3) (d)

Omit the paragraph.

[4] Section 9 Presence of prescribed concentration of alcohol in person's blood

Insert before section 9 (1):

(1A) Offence—novice range prescribed concentration of alcohol

If a person is the holder of a learner licence, or of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, in respect of a motor vehicle, the person must not, while there is present in his or her blood the novice range prescribed concentration of alcohol:

- (a) drive the motor vehicle, or
(b) occupy the driving seat of the motor vehicle and attempt to put the motor vehicle in motion.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

[5] Section 9 (1) (c), (2) (c), (3) (c) and (4) (c)

Insert “(other than a provisional licence or a learner licence issued under the *Road Transport (Driver Licensing) Act 1998*)” after “driver licence” wherever occurring.

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| [6] Section 10 Alternative verdicts for lesser offences | 1 |
| Insert after section 10 (3): | 2 |
| (4) Alternative verdict for lesser offence in prosecution of learner licence holders or provisional licence holders | 3 |
| | 4 |
| If, on a prosecution of a person for an offence under section 9 (1), (2), (3) or (4), relating to driving a motor vehicle or to occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, the court is satisfied that, at the time the person drove the motor vehicle or occupied the driving seat and attempted to put the motor vehicle in motion: | 5 |
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| (a) the person was the holder of a learner licence, or of a provisional licence issued under the <i>Road Transport (Driver Licensing) Act 1998</i> , in respect of the motor vehicle, and | 11 |
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| (b) there was not present in the person's blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol, the low range prescribed concentration of alcohol or the special range prescribed concentration of alcohol, | 15 |
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| but that there was present in the person's blood the novice range prescribed concentration of alcohol, the court may convict the person of an offence under section 9 (1A). | 20 |
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| [7] Section 11 Presence of higher concentration of alcohol not defence | 23 |
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| Insert before section 11 (1): | 25 |
| (1A) It is not a defence to a prosecution for an offence under section 9 (1A) if the defendant proves that, at the time he or she did the act referred to in section 9 (1A) (a) or (b), there was present in the defendant's blood a concentration of alcohol of 0.02 grammes or more in 100 millilitres of the defendant's blood. | 26 |
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| [8] Section 11A | 1 |
| Insert after section 11: | 2 |
| 11A Defence for offence relating to novice range prescribed concentration of alcohol | 3 4 |
| It is a defence to a prosecution for an offence under section 9 (1A) if the defendant proves that, at the time the defendant did the act referred to in section 9 (1A) (a) or (b), the presence in the defendant's blood of the novice range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following: | 5 6 7 8 9 10 |
| (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance), | 11 12 |
| (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol. | 13 14 15 |
| [9] Section 14 Arrest following failed breath test | 16 |
| Insert before section 14 (1) (a): | 17 |
| (a1) it appears to the officer from a breath test carried out under section 13 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's blood a concentration of alcohol of more than zero grammes in 100 millilitres of the blood and the officer has reasonable cause to believe the person is the holder of a learner licence, or of a provisional licence issued under the <i>Road Transport (Driver Licensing) Act 1998</i> , in respect of the motor vehicle concerned, or | 18 19 20 21 22 23 24 25 26 27 |
| [10] Section 32 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 9 | 28 29 |
| Insert before section 32 (2) (a): | 30 |
| (a1) in the case of an offence under section 9 (1A)—zero grammes of alcohol in 100 millilitres of the defendant's blood, or | 31 32 33 |

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| [11] Schedule 2 Savings, transitional and other provisions | 1 |
| Insert at the end of clause 1 (1): | 2 |
| <i>Road Transport (Safety and Traffic Management)</i> | 3 |
| <i>Amendment (Alcohol) Act 2003</i> , but only to the extent that it | 4 |
| amends this Act | 5 |
| [12] Schedule 2 | 6 |
| Insert at the end of the Schedule, with appropriate Part and clause | 7 |
| numbers: | 8 |
| Part | 9 |
| Provisions consequent on enactment of | 10 |
| Road Transport (Safety and Traffic | 11 |
| Management) Amendment (Alcohol) | 12 |
| Act 2003 | 12 |
| Definitions | 13 |
| In this Part: | 14 |
| <i>amending Act</i> means the <i>Road Transport (Safety and Traffic</i> | 15 |
| <i>Management) Amendment (Alcohol) Act 2003</i> . | 16 |
| Amendments not to apply to offences occurring before | 17 |
| commencement of amendments | 18 |
| (1) Proceedings for offences committed, or alleged to have been | 19 |
| committed, before the commencement of Schedule 1 to the | 20 |
| amending Act are to be determined as if the amending Act had | 21 |
| not been enacted. | 22 |
| (2) Accordingly, the law (including any relevant provision of this | 23 |
| Act) that would have been applicable to the proceedings had | 24 |
| the amending Act not been enacted continues to apply to the | 25 |
| proceedings as if the amending Act had not been enacted. | 26 |
| [13] Dictionary | 27 |
| Insert in alphabetical order in clause 1: | 28 |
| <i>novice range prescribed concentration of alcohol</i> means a | 29 |
| concentration of more than zero grammes, but less than 0.02 | 30 |
| grammes, of alcohol in 100 millilitres of blood. | 31 |

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill
2003

Amendment of Road Transport (Safety and Traffic Management) Act 1999 Schedule 1

[14] Dictionary, clause 1

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Omit the definition of *provisional licence*.

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| Schedule 2 Amendment of other Acts | 1 |
| (Section 4) | 2 |
| 2.1 Crimes Act 1900 No 40 | 3 |
| Section 353A Power to search person, make medical examination, take photograph, finger-print or palm-print | 4 |
| Insert “(1A),” after “section 9” in section 353A (7) (c) (i). | 5 |
| 2.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103 | 6 |
| Section 134 Orders for the taking of identification particulars | 7 |
| Insert “(1A),” after “section 9” in section 134 (5) (c) (i). | 8 |
| 2.3 Road Transport (General) Act 1999 No 18 | 9 |
| [1] Section 25 Disqualification for certain major offences | 10 |
| Insert “(1A),” after “section 9” in paragraph (c) (iv) of the definition of <i>convicted person</i> in section 25 (1). | 11 |
| [2] Section 25 (2) (a) and (3) (a) | 12 |
| Insert “(1A),” after “section 9” wherever occurring. | 13 |
| [3] Section 25A Interpretation | 14 |
| Insert before paragraph (a) in the definition of <i>alcohol-related major offence</i> : | 15 |
| (a1) an offence under section 9 (1A) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> , | 16 |
| | 17 |
| [4] Schedule 1A Interlock participation and disqualification compliance periods | 18 |
| Insert “(1A),” after “section 9” in item 4 of Column 1. | 19 |
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[5] Schedule 2 Savings, transitional and other provisions

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Insert at the end of clause 1 (1):

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*Road Transport (Safety and Traffic Management)
Amendment (Alcohol) Act 2003*, but only to the extent that it
amends this Act

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