

Act No. 96 of 1990

TRAFFIC (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Traffic Act 1909 with respect to:

- (a) the taking and analysis of blood samples from drivers; and
- (b) the sale, purchase and use of radar detecting devices and radar jammers; and
- (c) permissible driving hours and speed limits for certain vehicles and drivers; and
- (d) the permissible blood alcohol concentration for certain drivers.

The Bill makes related amendments to the provisions of the Crimes Act 1900 dealing with the admissibility in criminal proceedings of certificates prepared for the purposes of the Traffic Act 1909 and to the provisions of the Transport Administration Act 1988 dealing with the taking and analysis of blood and urine samples from railway workers.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Traffic Act 1909.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Transport Administration Act 1988.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 6 is a validation of certain regulations concerning permissible driving hours for coach drivers, to make it clear that those regulations apply to such drivers equally, whether or not a particular coach is a heavy motor vehicle.

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SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO THE TAKING AND ANALYSIS OF BLOOD SAMPLES**Samples to be taken by nurses in certain cases**

Section 4F requires a blood sample to be taken from a person who has been admitted to hospital after a road accident. At present the section requires the sample to be taken by the medical practitioner attending the person at the hospital. Schedule 1 (1) mends the section so as to require the sample to be taken by a suitably qualified registered nurse in a case where a medical practitioner is not present to attend the person concerned. The nurse in such a case is given the same legal indemnities as a doctor in the same circumstances.

Schedule 1 (2) (a) and (3) (b) make consequential amendments.

Procedure after sampling

When a blood sample is taken at a hospital under section 4F, the provisions of section 4G currently require the sample to be divided into three parts. One part is given to the person who provided the sample. The other two parts may be used for analysis. In practice, only one of these latter samples has been used for analysis, the other being retained for use in case the first is lost or stolen or adversely affected in some way. Due to developments in methods of analysis and secure storage of samples, the second sample is now considered unnecessary. Schedule 1 (2) (b) and (c) accordingly amend section 4G so that the section will provide for a sample to be divided into only two parts instead of three.

Testing of hospital blood sample for drugs

Blood samples taken at a hospital following a road accident are routinely tested for the presence of alcohol, but are not tested for other drugs. Under the Act at present, the only occasions on which a blood sample is tested for the presence of a drug other than alcohol are when the sample is taken following the arrest of a motorist under section 5AA. Schedule 1 (2) (d)-(f) amend section 4G so as to enable a police officer to require a blood sample taken at hospital following a road accident to be tested for other drugs as well as alcohol, but only when the accident was not attended by police or where, for some other reason, there opportunity for police to require the person from whom the sample was taken to undergo a sobriety test.

Schedule 1 (3) (a) and (c) make consequential amendments to section 5AB, allowing results of an analysis undertaken in accordance with section 4G (as mended) to be given in evidence in a prosecution for driving under the influence of drugs.

Degree of accuracy of analysis

Schedule 1 (4) inserts a new section 17C, dealing with the interpretation of the result of an analysis of blood or urine carried out for purposes of the Principal Act. The scientific equipment and methods used in carrying out such an analysis produce a result that is reliable only to a particular degree of accuracy. The effect of the new section is to allow a certificate attesting to the result of an analysis to state the result in terms of a minimum concentration of alcohol or drugs present in the sample concerned. The specified minimum concentration is arrived at by subtracting from the figure produced by the analysis an amount representing the greatest error that can be produced by the proper employment of the analytical equipment and methods used. This minimum figure

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is taken to be the actual figure. The driver is thus given the benefit of any doubt that may arise from limitations on the degree of accuracy of the analysis.

SCHEDULE 2—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO RADAR DETECTORS AND JAMMERS

Schedule 2 (1) amends section 2 to insert definitions of “radar detecting device” and “radar jamming device”.

Schedule 2 (2) inserts new sections 4AD and 4AE. Under proposed section 4AD, it is an offence:

- (a) to buy or sell these devices or offer them for sale; or
- (b) to drive or stand a motor vehicle on a public street if the vehicle has one of these devices fitted or if one of these devices is being carried in the vehicle.

Under proposed section 4AE, police can demand immediate surrender of a device involved in a contravention of proposed section 4AD. If the device is on sale, it can be required to be surrendered at the point of sale. If the device is fitted to a motor vehicle and difficult to remove immediately, police can require the device to be surrendered at an appointed time and place. Similarly, officers of the Roads and Traffic Authority who, while inspecting a vehicle for any reason, come across such a device may serve a notice on the owner of the vehicle requiring its surrender to police. In addition, a court which finds an offence proven with respect to a device can also order the surrender of the device.

SCHEDULE 3—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO DRIVING HOURS AND SPEED LIMITS APPLYING TO CERTAIN VEHICLES AND DRIVERS

Driving hours for coach drivers

The intent of clause 6, and of the amendments made to section 3 by Schedule 3 (1), is to remove any doubt that regulations may be made with respect to driving hours, mandatory rest periods and associated requirements for drivers of coaches (as defined in section 2) whether or not they are heavy motor vehicles, and that regulations already made for that purpose are valid.

Speed limits

Schedule 3 (2) amends section 4A to make it clear that the heavy penalties provided by the Act for exceeding the speed limit by more than 45 kilometres per hour apply equally whether the speed limit concerned is fixed by the Act itself, or by a road sign, or by regulations relating to particular vehicles or drivers (for example, in relation to learner drivers or drivers of heavy motor vehicles or coaches).

Schedule 3 (3) makes a consequential amendment.

SCHEDULE 4—AMENDMENT OF TRAFFIC ACT 1909 IN RELATION TO PERMISSIBLE CONCENTRATION OF ALCOHOL

Schedule 4 (1) amends section 4E, which regulates the blood alcohol content of drivers. The 0.02 limit that now applies to learners, provisional licensees and unlicensed

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drivers is extended by the amendment to a wider class of drivers. The persons affected are:

- (a) any person under 25 years of age, unless the person has held a licence (apart from a learner's licence) for at least 3 years; and
 - (b) drivers of public passenger vehicles (i.e. buses, taxis and private hire cars); and
 - (c) drivers of coaches and heavy motor vehicles; and
 - (d) drivers of vehicles carrying radioactive substances and dangerous goods.
- Schedule 4 (2) makes a consequential amendment (for consistency of expression).

SCHEDULE 5—AMENDMENT OF TRANSPORT ADMINISTRATION ACT 1988, SCH. 4 (RAILWAY STAFF—ALCOHOL OR OTHER DRUGS)

Schedule 4 to the Transport Administration Act 1988 makes provision for the testing of blood and urine samples from railway workers for alcohol and other drugs in cases where they are engaged in work affecting the safety of the public. Schedule 5 to the Bill contains amendments similar to those contained in Schedule 1 in relation to motorists. The amendments:

- (a) provide for the taking of a blood or urine sample by an appropriately qualified registered nurse in cases where there is no medical practitioner in attendance at the material time (Schedule 5 (1)-(4) and (6)); and
- (b) specify the circumstances in which a blood or urine sample taken at hospital after an accident may be tested for drugs other than alcohol (Schedule 5 (5)) and prevent the giving of evidence in relation to a sample that has been analysed in other circumstances (Schedule 5 (7)).

SCHEDULE 6—AMENDMENT OF CRIMES ACT 1900

Schedule 6 amends section 414A of the Crimes Act 1900 to provide that a certificate, prepared in accordance with either the Traffic Act 1909 or the Transport Administration Act 1988, to the effect that the presence of drugs (other than alcohol) was detected in the analysis of a blood sample obtained following a road accident, or of a blood or urine sample from a railway worker, is not admissible in proceedings under the Drug Misuse and Trafficking Act 1985 as evidence of the use or administration of a prohibited drug within the meaning of that Act.
