

Road Traffic Amendment (Blood Alcohol Content) Bill 2019

Explanatory Memorandum

OVERVIEW

The purpose of the *Road Traffic Amendment (Blood Alcohol Content) Bill 2019* (Bill) is to amend the *Road Traffic Act 1974* (RTA) to replace the existing practice of retrospective calculation of blood alcohol levels (back calculation). The Bill proposes to remove the back calculation process. To replace this process, a rebuttable presumption is added with the effect that a person's blood alcohol content (BAC) at the time of evidentiary testing, is taken to have been the BAC at the time of driving, in the absence of proof to the contrary. These provisions are colloquially known as 'what you blow is what you go'.

PART 1 - PRELIMINARY

CLAUSE 1 – SHORT TITLE

This clause sets out the short title of the Act – the *Road Traffic Amendment (Blood Content) Act 2018* (BAC Act).

CLAUSE 2 – COMMENCEMENT

This clause provides that the BAC Act will come into operation as follows:

- a) Part 1 on the day that the Act receives Royal Assent.
- b) The rest of the Act – on the 28th day after that day.

PART 2 – ROAD TRAFFIC ACT 1974 AMENDED

CLAUSE 3 – ACT AMENDED

This clause provides that Part 2 of the Bill amends the RTA.

CLAUSE 4 – SECTION 71 REPLACED

This clause will delete current section 71 of the RTA, removing the back calculation requirement, and replace it with a new provision containing the rebuttable presumption. The effect of the presumption is that if the accused is proven to have had a specific BAC within a certain period of time after driving, the reading will be presumed to be the BAC at the time that the person was driving. The accused may rebut the presumption by providing proof to the contrary.

- 1) New section 71(1) establishes that the rebuttable presumption will apply to driving instructors, this applies to offences against section 62B of the RTA.
 - a) New section 71(1)(a) establishes that the presumption will apply to the results of a blood or urine test taken within 12 hours after the time of the instructor was providing instruction. This applies in cases where the police officer believes the

person may have been the instructor of a motor vehicle which may have been an immediate or proximate cause of serious bodily harm or death of a person, as provided for in section 66(8B) (of the RTA).

- b) New section 71(1)(b) establishes that, in any other case, the presumption will apply to the results of a test which occurred within four hours of the time that the driver was providing instruction.
- 2) This clause establishes the rebuttable presumption for all other drivers, for offences against the following section of the RTA relating to drink driving provisions,
- 63. Driving under the influence of alcohol,
 - 64. Driving with blood alcohol content of or above 0.08,
 - 64AA. Driving with blood alcohol content of or above 0.05,
 - 64A. Certain persons driving with blood alcohol content of or above 0.02, and
 - 64AAA. Certain persons driving with any blood alcohol content.
- a) New section 71(2)(a) establishes that the presumption will apply to the results of a blood or urine test that was taken within 12 hours where the police officer believed the person may have been the driver of a motor vehicle. This applies in cases where the accused was the driver of a motor vehicle may have been an immediate or proximate cause of serious bodily harm or death of a person, as provided for in section 66(8B) (of the RTA).
- b) New section 71(1)(b) establishes that, in any other case, the presumption will apply to the results of a test which occurred within four hours of the time that the driver was driving or attempting to drive.

CLAUSE 5 – SECTION 110 INSERTED

This clause inserts a savings provision after section 109 that applies to cases where a sample was provided prior to the commencement of the BAC Act.

Proposed new section 110(1) defines the meaning of the terms **commencement day** and **former Act** for the purposes of this provision.

Proposed new section 110(2) provides that where a person provided a sample prior to the commencement of the BAC Act, the provisions of the RTA that applied when the sample was taken shall continue to apply. This prevents the retrospective application of the new provisions in this Bill.

PART 3 – AMENDMENTS TO OTHER ACTS

Clauses 6 - 9 are minor administrative amendments to repeal a number of unproclaimed provisions from other amendment Acts. These provisions should be deleted as they have become redundant owing to the passage of time.

CLAUSE 6 – ACT AMENDED

This clause establishes that the relevant Act to be amended is the *Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act 2015*.

CLAUSE 7 – SECTION 9 DELETED

The effect of this clause is the deletion of section 9 of the *Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act 2015*. Section 9 is now redundant and can be removed.

CLAUSE 8 – ACT AMENDED

This clause establishes that the Act to be amended is the *Road Traffic Legislation Amendment Act 2016*.

CLAUSE 9 – SECTION 64 DELETED

The effect of this clause is the deletion of section 64 of the *Road Traffic Legislation Amendment Act 2016*. Section 64 is redundant and can be repealed.