

Road Traffic Amendment (Blood Alcohol Content) Bill 2018

Drink-driving is a key factor in around one in five fatal crashes and one in 10 serious injury crashes in Western Australia. The impact of these crashes is far-reaching. Alcohol-related crashes are estimated to have cost the Western Australian community \$3.6 billion over the last 10 years. The McGowan government is continuing to tackle drink-driving to make our roads safer for all Western Australians and visitors to our State.

The Road Traffic Amendment (Blood Alcohol Content) Bill 2019 strengthens WA's road safety laws by removing an outdated and unnecessary practice to calculate a driver's blood alcohol content (BAC) and finally brings WA into line with the rest of Australia. The Bill closes a loophole that has allowed some drink-drivers to manipulate the system and escape conviction or higher penalties. It sends a strong message to drink-drivers to stop playing Russian roulette on our roads.

The current laws, providing for retrospective BAC calculation, date back more than 40 years. Previously, the laws were considered necessary because alcohol breath testing equipment was usually located in key 24-hour police stations in the metropolitan area and larger towns. The interval between apprehension and testing could mean that a driver's blood alcohol level at the time of the alleged offence could be lower than the BAC level recorded at the time of the evidentiary breath test. Today, breath analysis equipment used by the WA Police Force provides a more accurate measurement of the BAC at the time of the alleged offence than the back calculation method. The back calculation practice can also be manipulated by an accused drink-driver. When a driver is tested, they nominate the time of their last alcoholic drink. A drink-driver can manipulate the calculation by lying, and reduce the severity of the charge or avoid a charge altogether. If the time cannot be ascertained, a time which produces a result most favourable to the driver must be used. So the current process is set up to favour the drink-driver.

Research conducted by the Curtin Monash Accident Research Centre (C-MARC) in 2012 found that the back calculation process resulted in an estimated 20 per cent of drivers avoiding charges altogether. The C-MARC report concluded that the back calculation process favours drink-drivers and should be removed in WA. No other State or Territory in Australia uses back calculation.

This Bill will remove the back calculation process from the *Road Traffic Act 1974* and replace it with a rebuttable presumption. This means that when an accused is recorded in an evidentiary test as having a specific BAC within a certain period after driving, the reading will be presumed to be the BAC at the time that the person was driving. The driver's reading from their evidentiary test will be the one used in court. This rebuttable presumption strikes a fair balance between road safety and fairness by allowing a defence in appropriate circumstances. That is, when the court is satisfied by expert evidence based on blood analysis that the blood alcohol level of the driver at the time of the offence was actually lower than that alleged by the prosecution.

These amendments will also make drink-driving tests more operationally efficient for the WA Police Force. WA police will no longer have to do a complicated, time-consuming back calculation based on information provided by an alleged drink-driver.

For our police, the process will be simpler, clearer and more efficient. By closing a loophole that allowed drink-drivers to avoid the legal consequences of their actions, these amendments will allow the WA Police Force to bring the full force of the law against those who drink and drive.

Pursuant to standing order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to any intergovernmental or multilateral agreements to which the Government of the State is a party; nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table the Explanatory Memorandum.