



LEGISLATIVE COUNCIL

REPORT
OF
STANDING COMMITTEE
ON
LEGISLATION
IN RELATION TO THE
ROAD TRAFFIC AMENDMENT
BILL (No 2) 1990

Presented by the Hon Garry KELLY (CHAIRMAN)

DECEMBER 1990

COMMITTEE MEMBERS

Chairman: Honourable Garry Kelly MLC
Members: Honourable John Caldwell MLC
Honourable Cheryl Davenport MLC
Honourable Peter Foss MLC
Honourable Derrick Tomlinson MLC

CLERK TO COMMITTEE

Ms Jan Paniperis

Address:
Parliament House
Perth WA 6000
Telephone 222 7222

ROAD TRAFFIC AMENDMENT BILL (NO 2) 1990

1. The Committee met to consider this Bill on 6 occasions and heard from 14 witnesses.
2. The Committee was pleased to have received 26 written submissions which contained a wide cross-section of opinion, from those in the medical profession supporting the Bill to those in the liquor industry opposing any change in the existing law. The RAC and the Traffic Board of Western Australia provided substantial reports to the Committee as did the Liquor Industry of WA and the WA Alcohol and Drug Authority.
3. The Committee acknowledges all these submissions and is grateful for the input which they were able to give to the Committee's deliberations.
4. It was clear to the Committee on reviewing all submissions that the divergence in opinion evidenced would not mean an easy task of reconciliation and determination on whether the permissible blood alcohol concentration (BAC) should be lowered from 0.08% to 0.05%.
5. Much of the evidence given to the Committee, especially with respect to support of the 0.08% limit, is of a statistical nature.
6. The methodology of the statistical analysis which leads to a conclusion that the BAC should be lowered has been questioned by persons well qualified in statistics. It was indicated to the Committee that much of the laboratory and experimental evidence was not directly related to studies on the effects of alcohol on driving related performance but was more related to studies dealing with simple reaction time tasks.
7. It is not disputed that research on BAC should be encouraged but the adoption of a more systematic and uniform reporting system for experimental reports of a statistical nature in this field needs to be encouraged.
8. After hearing from statisticians supporting both sides of the argument, the Committee reached the consensus that the statistical evidence did not support a lower BAC. Any decision on this matter would therefore need to be a political one and should be taken in the interests of the greater community good.
9. The Committee was also not prepared to be swayed by the proposition that there is a need for a uniform road code across Australia. This may indeed be required, but it was not within the Committee's ambit of discussion.
10. Much of the opposition to the Bill is also related to the proposed extended period of probation for inexperienced drivers. It was explained to the Committee that the rationale for this extended period was to separate as far as practical the two learning experiences of learning to drive and learning to drink.
11. The Committee accepted the wisdom of separating these two learning experiences and after general discussion on the matter, the Chairman, in an endeavour to reach agreement, proposed the following compromise:
 - (a) For the first 3 years (probation plus 2 years) the BAC shall not exceed 0.02%.
 - (b) For a person having attained the age of 20 years but not the age of 25 years the BAC shall not equal or exceed 0.05%.

(c) For a person having attained the age of 25 years the BAC shall not equal or exceed 0.08%.

12. This means that there is no requirement for an extension of the period that inexperienced drivers must spend on probation, but imposes a requirement that such drivers not equal or exceed a BAC of 0.02% for the 2 years following probation. This would be achieved by amending Section 64A of the Road Traffic Act 1974 which reads:-

"64A A person who, being the holder of a driver's licence issued on probation, drives or attempts to drive a motor vehicle while the percentage of alcohol in his blood equals or exceeds 0.02 per centum commits an offence.

Penalty : \$100.00"

13. The Committee could not reach agreement on the proposed compromise and resolved to remit the Bill back to the House for its consideration.

LEGISLATIVE COUNCIL

A BILL

FOR

AN ACT to amend the *Road Traffic Act 1974* and for related purposes.

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Road Traffic Amendment Act (No. 2) 1990*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

No. 85—1

A74085/7/90

Principal Act

3. In this Act the *Road Traffic Act 1974** is referred to as the principal Act.

5 [*Reprinted as approved 19 July 1983 and amended by Acts Nos. 95 and 102 of 1984, 54 and 89 of 1985, 78 of 1986, 121 of 1987, and 11, 16 (as amended by Act No. 46 of 1989), 32, 49 and 57 of 1988.]

Section 5 amended

4. ~~Section 5 of the principal Act is amended in subsection (1) by inserting before the definition of "vehicle" the following definition—~~

10 ~~" "unrestricted licence" means a driver's licence that is not issued on probation;—"~~

Section 45 amended

5. ~~Section 45 of the principal Act is amended—~~

(a) ~~in subsection (1)—~~

15 (i) ~~in each of paragraphs (a) and (c), by deleting "one year" and substituting the following—~~

~~" 3 years—";~~

(ii) ~~in paragraph (c), by deleting "issued on probation" and "so issued", and~~

20 (iii) ~~in paragraph (d), by deleting "18" and substituting the following—~~

~~" 20—";~~

(b) ~~by repealing subsection (1a);~~

(c) ~~in subsection (3)—~~

25 (i) ~~by deleting "one year" and substituting the following—~~

~~" 3 years "~~,

(ii) ~~by deleting "paragraph (c) of subsection (1) and subsection (4) of this section" and substituting the following—~~

~~" subsections (1) (c), (4) and (5) of this section and of section 51 (4) (b) and (5) (b) ", and 5~~

~~(iii) by deleting "issued on probation";~~

~~(d) in subsection (4) —~~

~~(i) in paragraph (a), by deleting "18" and substituting the following—~~

~~" 20 "~~;

10

~~(ii) in paragraph (b), by deleting "issued on probation"; and—~~

~~(iii) in paragraph (b), by deleting "one year" and substituting the following—~~

~~" 3 years "~~;

15

~~(e) by repealing subsection (5) and substituting the following subsection—~~

~~" (5) Where—~~

~~(a) a person—~~

~~(i) has been the holder of a valid driver's licence for a period of, or for periods amounting in the aggregate to, 2 years; and~~

~~(ii) has attained the age of 19 years; and—~~

5 (b) ~~the Board is satisfied that the person has not been convicted of any offence prescribed by regulations for the purposes of this subsection that was committed since the person first became the holder of a driver's licence;~~

5 ~~the Board may, notwithstanding subsection (1) and section 51 (4), issue to that person an unrestricted licence or, where that person is the holder of a driver's licence issued on probation, order that the driver's licence shall be deemed to be an unrestricted licence and for the purposes of this Act an order so made shall have effect accordingly. "; and-~~

~~(d) in subsection (6), by deleting "The provisions of subsection (4) of this section" and substituting the following-~~

10 ~~"Subsections (4) and (5) "~~.

Section 51 amended

~~6. Section 51 of the principal Act is amended-~~

(a) ~~in subsection (1) (a) (iii), by inserting after "62," the following-~~

15 ~~" 64AA, "~~,

(b) ~~in subsection (4)-~~

(i) ~~in paragraph (a), by deleting "18" and substituting the following-~~

~~" 20 "~~;

20 (ii) ~~in paragraph (b), by deleting "issued on probation"; and~~

(iii) ~~in paragraph (b), by deleting "one year" and~~

~~substituting the following—~~

~~“ 3 years ”, and~~

~~(c) in subsection (5)—~~

~~(i) in each of paragraphs (a) and (b), by deleting “one year” and substituting the following—~~ 5

~~“ 3 years ”,~~

~~(ii) in paragraph (b), by deleting “issued on probation” and “so issued”, and~~

~~(iii) in paragraph (c), by deleting “18” and substituting the following—~~

~~“ 20 ”,~~

5

6. Section 51 of the principal Act is amended in subsection (1) (a) (iii), by inserting after “62” the following —

“64AA, “ . ”.

Section 53 amended

6A. Section 53 of the principal Act is amended in subsection (4) by

(a) inserting after the words “place of abode” the words “and where it is relevant to the offence, his age”; and

(b) inserting after the penalties the following:

“Where the particular which is refused or falsely given is the person’s age and is requested in connection with a suspected offence under section 64AA, the penalty shall be the same as for a conviction of an offence under that section. ”.

Section 63 amended

7. Section 63 of the principal Act is amended by repealing subsection (6) and substituting the following subsection—

5 ~~" (6) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 64 or 64AA or, where, at the time of the alleged offence, he was a person to whom section 64A applied, an offence against that section."~~

10 (6) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 64 or, where, at the time of the alleged offence, he was a person to whom the section applied, an offence against section 64AA or 64A. "

Section 64 amended

8. Section 64 of the principal Act is amended by repealing subsection (4) and substituting the following subsection—

15 ~~" (4) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 64AA or where, at the time of the alleged offence, he was a person to whom section 64A applied, an offence against that section."~~

20 (4) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 64AA or 64A where, at the time of the alleged offence, he was a person to whom the respective section applied. "

Section 64AA inserted

25 9. After section 64 of the principal Act the following section is inserted—

Driving with 0.05% blood alcohol content

30 ~~64AA. (1) A person who has not attained the age of 25 years who drives or attempts to drive a motor vehicle while the percentage of alcohol in his blood equals or exceeds 0.05 per centum commits an offence.~~

(2) A person convicted of an offence against this section is

liable to a fine of not less than \$200 or more than \$500.

(3) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 64A where, at the time of the alleged offence, he was a person to whom that section 5 applied. "

Section 64A amended

10. Section 64A of the principal Act is amended—

(a) by inserting after the section designation "64A." the subsection designation "(1)"; 10

(b) by deleting "A person who, being the holder of a driver's licence issued on probation," and substituting the following—

" Except as provided in subsection (2), a person who ";

and

15

(c) ~~" (2) This section does not apply to a person who holds or has previously held an unrestricted licence or who has, during a period of 3 years or more, been authorised to drive a motor vehicle under the law in force in another State or country or in a Territory. "~~ 20

(c) " (2) This section does not apply to a person who has been authorised to drive for a period of, or for periods amounting in the aggregate to, 3 years or more.

(3) In subsection (2) -

"authorised to drive" means authorised to drive a 25 motor vehicle -

(a) as the holder of a valid driver's licence; or

(b) under the law in force in another State or

country

or in a territory; or

(c) under both paragraph (a) and paragraph (b)
at the same time. " "

Section 66 amended

- 5 11. Section 66 of the principal Act is amended in subsection (2) by deleting paragraphs (a) and (aa), and "or" between those paragraphs, and substituting the following paragraph—

~~" (a) a person having provided a sample of his breath for a preliminary test—~~

10

~~(i) it appears to a member of the Police Force that the preliminary test indicates that the percentage of alcohol present in the blood of the person equals or exceeds 0.05; or~~

~~(ii) it appears to a member of the Police Force that the preliminary test indicates that there is alcohol present in the blood of the person and the member of the Police Force has reasonable grounds to believe that the person does not hold, and has not previously held, an unrestricted licence and has not, during a period of 3 years or more, been authorised to drive a motor vehicle under the law in force in another State or country or in a Territory; 10"~~

" (a) a person having provided a sample of his breath for a preliminary test —

(i) it appears to a member of the Police Force that the preliminary test indicates that the percentage of alcohol present in the blood of the person equals or exceeds 0.08;

(ii) it appears to a member of the Police Force that the preliminary test indicates that the percentage of alcohol present in the blood of the person equals or exceeds 0.05 and the member of the Police Force has reasonable grounds to believe that the person has not attained the age of 25 years; or 5

(iii) it appears to a member of the Police Force that the preliminary test indicates that there is alcohol present in the blood of the person and the member of the Police Force has reason to believe that the person has not been authorised to drive (as defined in section 64A (3)) for a period of, or for periods amounting in the aggregate to, 3 years or more; " 10
15

Section 70 amended

12. Section 70 of the principal Act is amended in subsection (1) by inserting after "64" the following—

" , 64AA "

Section 98 amended

20

12A. Section 98 of the principal Act is amended by inserting after subsection (1) the following subsection—

" (1a) In any prosecution or proceedings for an offence against this Act an averment in the complaint as to the age of the alleged offender shall be deemed to be proved in the absence of proof to the contrary. " 25

Section 102 amended

13. Section 102 of the principal Act is amended in subsection (7) by deleting "section 103" and substituting the following—

sections 45(5)(b), 48 and 103 ".

Transitional

~~14. The principal Act shall apply in relation to a person who was the holder of a driver's licence at any time before the commencement of sections 5 and 6 of this Act as if those sections had not been enacted.~~

Justices Act consequentially amended

15. Section 171BJ of the *Justices Act 1902** is amended by repealing subsection (2) and substituting the following subsection—

10 " (2) Without limiting subsection (4), the making of an enforcement order does not constitute a conviction in respect of an alleged offence except that, if section 102 of the *Road Traffic Act 1974* is prescribed for the purposes of section 171BD of this Act, the making of an enforcement order or the payment, before an enforcement order is made, of the amount outstanding under this Part constitutes a conviction in respect of the alleged offence for the purposes of sections
5 45(5)(b), 48 and 103 of that Act. "

[*Reprinted as approved 9 November 1984 and amended by Acts Nos. 87 of 1982, 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986, 65 of 1987 and 27, 38, 49 and 70 of 1988.]

Review of Amendments

16. (1) A review of the amendments made by this Act and of their effect on the operation and effectiveness of the principal Act shall be carried out as soon as practicable after 1 September 1994.

(2) The review required by subsection (1) shall be carried out by the Traffic Board constituted under section 6 of the principal Act.

(3) When the Traffic Board has carried out the review required by subsection (1) it shall prepare a report based on the review and submit that report to the Minister administering the

provisions of the principal Act that are affected by the amendments.

(4) As soon as practicable after receiving the report submitted under subsection (3) but in any case not later than 31 October 1994 the Minister shall cause the report to be laid before each House of Parliament. " 5