

# **Land Transport (Road Safety Enforcement) Amendment Bill**

Government Bill

As reported from the Transport and Industrial Relations  
Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Land Transport (Road Safety Enforcement) Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The bill amends the Land Transport Act 1998 (the Act) and the Transport Act 1962 to address problems with four areas of road safety enforcement:

- evidential breath-testing
- certificates of accuracy for speed-measuring devices
- certificates of accuracy for weighing devices
- fines for speeding offences in temporary speed limits areas.

There have been recent challenges in the courts regarding the accuracy of evidential breath-testing devices. The bill will ensure that evidential breath-testing will remain a viable enforcement tool in New Zealand. The bill provides that the accuracy of evidential breath-testing taken on devices that have a certificate of compliance will not be able to be contested.

Provisions concerning certificates of accuracy for speed-measuring devices and for weighing devices correct legislative oversights in the

Act. Anomalies exist between the Act and other Acts which set speeding offences (the Transport Act 1962, the Transit New Zealand Act 1989 and the Local Government Act 1974). Fixed speed cameras in affected areas have stopped being used until the legal basis for the certificate of accuracy is clarified. An anomaly also exists between the Act and the Road User Charges Act 1977 concerning weighing devices.

The bill extends the right to people who, after an evidential breath-test, are shown to have over 600 micrograms of alcohol per litre of breath to elect to have a blood test. Currently only people who test between the applicable limit but not more than 600 micrograms of alcohol per litre of breath have the right to elect a blood test.

Currently the transport legislation is inconsistent in relation to the maximum fines for speeding offences in temporary speed limit area zones. The bill resolves this confusion by confirming the maximum penalty level of \$1,000 that applies under regulation 137 of the Traffic Regulations 1976.

### **Committee's consideration**

We agree that the bill is required to remove anomalies between the Act and the Transport Act 1962 and to ensure that questioning the accuracy of evidential breath-testing devices does not compromise road safety.

We are concerned that we had only one week to hear evidence and consider the bill. National and ACT do not agree that the bill should be passed in such haste. Six submissions were received on the bill. National and ACT are concerned that potential submitters have not been given sufficient opportunity to make submissions and that we have been unable to scrutinise the bill effectively.

We acknowledge that evidential breath-testing is an essential component of the Police's enforcement policies to ensure road safety. National and ACT support the provisions relating to evidential breath-testing but do not accept the argument that these provisions had to be rushed through the House to prevent drink-driving during the Christmas holiday period, as these provisions do not come into force until 21 January 2002. We emphasise that evidential breath-testing of people suspected of drink-driving will still occur over the holiday period.

National and ACT do not support the retrospective provisions in Clause 15. We are not convinced that these proposals are necessary. Clause 15 contains savings provisions relating to the use of certificates of accuracy under section 146 and section 147 of the Act in proceedings for offences committed in the period between 1 March 1999 and the commencement of the bill. The Ministry of Transport believes these proposals are necessary for the effective administration of the law to avoid the cost to the Police of flying an expert to give evidence in courts around New Zealand

While this issue is not within the scope of the bill, we and a number of submitters, are concerned about the inconsistent approach to temporary speed limit signs around the country. These signs are at times left erected when the road works to which they pertain have concluded. This encourages motorists to disregard the signs, which ultimately results in reduced safety on the roads. We would like to see much tougher action taken against contractors who do not follow the guidelines set in relation to temporary signs.

### **Commencement (clause 2)**

We recommend an amendment to clause 2(1) to ensure the consequential amendments in clause 14 relating to drink-driving come into force on 21 January 2002.

### **Defences (clause 5)**

In clause 5, we recommend an amendment to section 64(2) to include section 77 and new section 75A. Section 64(2) says that it is not a defence to proceedings for an offence if the provisions in sections 68 to 75 are not strictly complied with, as long as they are reasonably complied with.

### **Evidential breath-testing devices (clause 8)**

New section 75A, inserted by clause 8, provides for conclusive certificates of compliance for evidential breath-testing devices.

We recommend an amendment to new section 75A(5) of the Act, inserted by clause 8, so that a notice is only required for each kind of evidential breath testing device, not each approved device.

We also recommend an amendment to new section 75A(6)(b) and (6)(c) to change the relevant period to the period of service that began or begins and the date the certificate of compliance is issued.

### **Mandatory 28-day suspension of driver licence in certain circumstances (clause 10)**

We recommend new section 95(1A)(b), inserted by clause 10, be amended to add protection for the defendant by adding the words ‘and must not be given’ after the word ‘required’.

### **Temporary speed limits – fines under Traffic Regulations 1976 (clause 13)**

We recommend an amendment to clause 13 to ensure the ability to make regulations under sections 167 and 218 of the Act is not limited.

### **Consequential amendments (clause 14)**

We recommend an amendment to clause 14 to allow the Police to use the existing suspension notice for driving at a speed exceeding the speed limit by more than 50 kilometres per hour for one month after the new suspension notice comes into force.

### **Saving and transitional provision relating to certificates of compliance (clause 16)**

We recommend an amendment to clause 16 to enable the Minister of Police to make a *Gazette* notice under new section 75A on the commencement of the clause.

### **Conclusion**

We recognise the important role both breath-testing and speed cameras play in reducing the road toll. It is important the law is clear and unambiguous. We have noted our concern that the bill was not introduced earlier so that an appropriate period of time could have been spent on scrutinising the bill, and thus facilitating drink-driving provisions being implemented prior to the Christmas holiday season, as the Minister of Transport indicated in his introductory speech.

## **Appendix**

### **Committee process**

The Land Transport (Road Safety Enforcement) Amendment Bill was referred to the committee on 29 November 2001. We received and considered 6 submissions from interested groups and individuals. We heard 1 submission. Hearing of evidence took 32 minutes and consideration took 5 hours 21 minutes.

We received advice from the Ministry of Transport, the Land Transport Safety Authority, the New Zealand Police and the Institute of Environmental Science and Research.

### **Committee membership**

Harry Duynhoven (Chairperson)

Belinda Vernon (Deputy Chairperson)

Peter Brown

Phil Heatley

Willie Jackson

Simon Power

H V Ross Robertson

Hon Tariana Turia

Penny Webster

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**Land Transport (Road  
Safety Enforcement) Amendment**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

~~*(Subject to this Act.)*~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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Hon Mark Gosche

# Land Transport (Road Safety Enforcement) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the Land Transport (Road Safety Enforcement) Amendment Act 2001.
- (2) In this Act, the Land Transport Act 1998<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1998 No 110

### Part 1 Preliminary provisions

#### 2 Commencement

- (1) **Sections 4(1), (2), and (4), (and) 5 to 10, and 14(1), (3), (4), and (5)** 10  
come into force on **21 January 2002**.
- (2) The rest of this Act comes into force on the day on which this Act receives the Royal assent.

**3 Purpose**

The purpose of this Act is to improve road safety enforcement by—

- (a) removing the defence of error or possible error in the result of an evidential breath test and ensuring that an evidential breath test is conclusive, but subject to safeguards to protect the rights of defendants: 5
- (b) enabling certificates of accuracy for distance-measuring devices, speed-measuring devices, approved vehicle surveillance equipment, and tuning forks to be admitted as evidence in proceedings for speeding offences against any bylaws or enactment, other offences against the principal Act, and offences against the Road User Charges Act 1977: 10
- (c) enabling certificates of accuracy of weighing devices to be admitted as evidence in proceedings for any road user charge offence as well as for offences against the principal Act: 15
- (d) confirming that fines of up to \$1,000 may be prescribed for offences relating to temporary speed limits on roads controlled by road controlling authorities and for other offences under the Traffic Regulations 1976. 20

**Part 2****Substantive amendments and related provisions****4 Interpretation**

- (1) Section 2(1) of the principal Act is amended by inserting, after the definition of **carriage**, the following definition: 25  
“**certificate of compliance** means a certificate given under **section 75A** by a person authorised by the Science Minister”.
- (2) Section 2(1) of the principal Act is amended by repealing the definition of **conclusive evidential breath-testing device**. 30
- (3) Section 2(1) of the principal Act is amended by omitting from the definition of **speed limit** the words “the Transport Act 1962 or the rules”, and substituting the words “this Act, the Transport Act 1962, the Local Government Act 1974, the Transit New Zealand Act 1989, or the rules”. 35
- (4) Section 2(2) of the principal Act is amended by inserting, after the words “for any purpose specified in subsection (1)”, the words “or in **section 75A(5)**”.



## 5 Defences

### New (unanimous)

(1) Section 64(2) of the principal Act is amended by omitting the expression “sections 68 to 75”, and substituting the expression “sections 68 to **75A**, and 77”.

(2) Section 64(4)(a) of the principal Act is amended by inserting, after the words “the breath screening test”, the words “or evidential breath test”. 5

## 6 New section 70A inserted

The principal Act is amended by inserting, after section 70, the following section: 10

### “70A Right to elect blood test

“(1) If the result of a person’s evidential breath test appears to be positive, the person has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in section 77(3)(a) (which sets out the conditions of the admissibility of the test), to elect to have a blood test to assess the proportion of alcohol in his or her blood. 15

“(2) This section is for the avoidance of doubt.”

## 7 Who must give blood specimen at places other than hospital or surgery 20

Section 72(1)(b) of the principal Act is amended by omitting the words “(other than a test carried out by means of a conclusive evidential breath-testing device that indicates that the proportion of alcohol in the person’s breath exceeds 600 micrograms of alcohol per litre of breath)”. 25

## 8 New section 75A inserted

The principal Act is amended by inserting, after section 75, the following section:

### “75A Certificates of compliance for evidential breath-testing devices 30

“(1) An evidential breath-testing device must be supported by a certificate of compliance given under this section by a person authorised for the purpose by the Science Minister.

- “(2) At any trial or defended hearing for an offence involving excess breath alcohol recorded by the device, the prosecution must produce to the court a certified copy of the certificate of compliance. The certification must be given by a person authorised for the purpose by the Commissioner and must state that the copy is a true copy of the original certificate. 5
- “(3) Subject to **subsection (4)**, a certificate of compliance or a certified copy of it that is produced under **subsection (2)** is for all purposes conclusive evidence of the matters stated in the certificate, and neither the matters stated in the certificate nor the manufacturer’s specifications for the device concerned may be challenged in any court proceedings or be called into question by any court. 10
- “(4) In the absence of proof to the contrary, a document purporting to be a certificate of compliance or a certified copy of a certificate of compliance— 15
- “(a) must be treated as such a certificate or certified copy; and
- “(b) is conclusive evidence of the sufficiency of the authority of the person who signed the document. 20
- “(5) After consultation with the Minister and the Minister of Justice, the Minister of Police must, by notice in the *Gazette*, specify for each (*approved*) kind of evidential breath-testing device the matters that are required to be stated in a certificate of compliance. 25
- “(6) Without limiting **subsection (5)**,—
- “(a) in the case of any kind of evidential breath-testing device approved after the commencement of this section, the notice under **subsection (5)** must be given in conjunction with the notice approving that kind of device: 30
- “(b) a notice under **subsection (5)** must specify the maximum period of service for the relevant kind of device, and must require a certificate of compliance to specify the (*relevant period of service*) date on which that period began or begins: 35
- “(c) a notice under **subsection (5)** must specify the maximum period permitted between the date on which a certificate of compliance is issued and the date by which a test result must be obtained, and must require a certificate of 40

compliance to specify the (*relevant period*) date on which the certificate of compliance was issued:

- “(d) a notice under **subsection (5)** must require a certificate of compliance to include a statement to the effect that the device is being maintained within the manufacturer’s specifications.” 5

**9 Presumptions relating to alcohol testing**

- (1) Section 77(3)(a) of the principal Act is amended—
- (a) by omitting the word “immediately”, and substituting the words “without delay”: 10
  - (b) by omitting the word “sufficient” in both places where it appears, and substituting in each case the word “conclusive”.
- (2) Section 77(5) of the principal Act is repealed.

**10 Mandatory 28-day suspension of driver licence in certain circumstances** 15

- (1) Section 95 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) If an enforcement officer believes on reasonable grounds that a person has undergone an evidential breath test and has been found to have a breath alcohol concentration exceeding 800 micrograms of alcohol per litre of breath,— 20
- “(a) the enforcement officer must give the person a notice under subsection (1)(a) even though the person has the right under **section 70A** to elect to have a blood test; and 25
  - “(b) a further notice is not required and must not be given under subsection (1)(a) if the person undergoes a blood test and is found to have a blood alcohol concentration exceeding 160 milligrams of alcohol per 100 millilitres of blood.” 30
- (2) Section 95 of the principal Act is amended by adding the following subsection:
- “(8) The suspension of a person’s driver licence in the circumstances referred to in **subsection (1A)** ceases to have effect when the result of the blood test (if any) is notified to the person if— 35
- “(a) the blood test shows that he or she had a blood alcohol concentration of, or less than, 160 milligrams of alcohol per 100 millilitres of blood; and

“(b) the result of the blood test is notified to the person before the close of the 28-day suspension period.”

- 11 Evidence of testing and accuracy of speed-measuring devices, etc** 5
- Section 146(1) of the principal Act is amended by omitting the words “an offence against this Act”, and substituting the words “a speeding offence against any bylaws or enactment, any other offence against this Act, or an offence against the Road User Charges Act 1977”.
- 12 Evidence of accuracy of weighing devices and sites** 10
- Section 147 of the principal Act is amended by inserting in subsections (1) and (7), after the words “an offence against this Act”, the words “or an offence against the Road User Charges Act 1977”.
- 13 Fines under Traffic Regulations 1976** 15
- (1) Despite sections 77(1)(q) and 199(1)(d) of the Transport Act 1962, the power conferred by ~~(sections 167)~~ sections 167(1)(h) and 218 of the Land Transport Act 1998 to amend the Traffic Regulations 1976 includes, and is declared always to have included, power to prescribe in those regulations fines not exceeding ~~(\$1,000)~~ the relevant maximum fine specified in section 167(1)(h). 20
- (2) **Subsection (1)** is for the avoidance of doubt.
- 14 Consequential amendments**
- (1) Section 19B of the Summary Proceedings Act 1957 is consequentially amended by repealing subsection (1), and substituting the following subsection: 25
- “(1) If a person undergoes an evidential breath test under section 69 of the Land Transport Act 1998 and the test is positive, but the person who underwent the test does not advise an enforcement officer within 10 minutes of being advised of the matters specified in section 77(3)(a) of the Land Transport Act 1998 that the person wishes to undergo a blood test, an enforcement officer may sign and serve on the person a summons in a form prescribed for the purposes of this section.” 30
- (2) The Transport Act 1962 is consequentially amended— 35

- (a) by omitting from section 77(1)(q) the expression “\$100”, and substituting the expression “\$1,000”;
- (b) by omitting from section 199(1)(d) the expression “\$500”, and substituting the expression “\$1,000”.
- (3) The First Schedule of the Summary Proceedings Regulations 1958 (SR 1958/38) is consequentially amended— 5
- (a) by omitting from form 5B the first asterisk that appears on the form;
- (b) by omitting the words “\*The result of that evidential breath test, being a test carried out by means of a conclusive evidential breath-testing device, indicated that the proportion of alcohol in your breath exceeded 600 micrograms of alcohol per litre of breath.” 10
- (4) Clause 8 of the Transport (Breath Tests) Notice (No 2) 1989 (SR 1989/389) is consequentially revoked. 15
- (5) Schedule 3 of the Land Transport (Offences and Penalties) Regulations 1999 (SR 1999/99) is consequentially amended by inserting in the form, after item 2, the following item:
- “2A If a blood sample has been taken, the suspension will cease to have effect when you are notified of the result of the blood test, but only if— 20
- the blood test shows that you had a blood alcohol concentration of, or less than, 160 milligrams of alcohol per 100 millilitres of blood; and
  - the result of the blood test is notified to you before the close of the 28-day suspension period.” 25

**New (unanimous)**

- (6) Notices in the form set out in Schedule 3 of the Land Transport (Offences and Penalties) Regulations 1999 that were printed before the date of commencement of **subsection (5)** may be used for 1 month beginning on that date for the purposes of suspending a person’s driver licence under section 95 of the principal Act on the grounds of exceeding the applicable speed limit by more than 50 kilometres per hour. 30

**15 Savings relating to certificates of accuracy**

- (1) This section applies to an alleged offence if— 35

- (a) the offence was committed on or after 1 March 1999 and before the commencement of this Act; and
- (b) the offence is a speeding offence against any bylaws or enactment, any other offence against the principal Act, or an offence against the Road User Charges Act 1977; and 5
- (c) the proceedings for the offence are heard by a court on or after the commencement of this Act.
- (2) Certificates may be given under section 146 or section 147 (as amended by this Act) for the purposes of proceedings to which this section applies, and the certificates are admissible in evidence accordingly, as if this Act were in force during the period specified in **subsection (1)(a)**. 10
- 16 Saving and transitional provision relating to certificates of compliance** 15
- (1) For the purposes of **section 75A(5)** of the principal Act, any consultation carried out by the Minister of Police before the commencement of this Act for the purpose of preparing the first notice under that provision, being consultation with the Minister of Transport and the Minister of Justice, must be treated as having been carried out under that provision. 20
- (2) Despite **section 2(1)**, persons may be appointed, *(and)* certificates may be issued, and notices may be given for the purposes of **section 75A** of the principal Act at any time on or after the commencement of this section. 25
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**Land Transport (Road Safety  
Enforcement) Amendment**

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**Legislative history**

26 November 2001

Introduction (Bill 173-1)

29 November 2001

First reading and referral to Transport and Industrial  
Relations Committee

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