

TRANSPORT AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

This Bill amends the Transport Act 1962.

Clause 1 relates to the Short Title and commencement. *Clauses 8 and 9* (relating to the payment of motor spirits duty and mileage tax into the National Roads Fund) will be deemed to have come into force on 1 April 1971, and *clause 10* (relating to refunds of motor spirits duty) will be deemed to have come into force on 1 October 1971. The other provisions will come into force on the passing of the Act.

Clause 2 gives effect to that part of recommendation (4) in the report of the Road Safety Committee 1971 (Parliamentary Paper I.17) relating to the breath testing and subsequent blood testing of uninjured persons where the driver of a motor vehicle involved in an accident cannot be identified.

The clause provides that where an accident involving a motor vehicle has occurred and a constable or traffic officer has good cause to suspect that any person in the motor vehicle would, if he was the driver, have committed an offence relating to driving after consuming alcohol but the person who was the driver cannot be identified, the constable or traffic officer may require that person to undergo a breath test and, if that test is positive, a subsequent blood test.

Clause 3 provides that a specimen of blood required to be taken under the present section 58B of the principal Act may be taken in any hospital by a registered medical practitioner or by any nurse or other person employed by the Hospital Board who is authorised in the normal course of his duties to take blood.

Clause 4 gives effect to the following recommendations of the Road Safety Committee:

- (a) Recommendation (1) that specimens of blood be taken from persons injured in motor accidents who are treated at or admitted to hospitals, and that analyses of those specimens be made for research purposes. Instead of amending the Hospitals Act 1957 to give effect to this recommendation, appropriate provision appears in subsection (9) of the new section 58D substituted by this clause.
- (b) Recommendation (2) that specimens of blood be taken from every driver examined or treated at a hospital as a result of a motor accident, and that the specimen be made available upon request by an enforcement officer who has good cause to suspect that the driver has breached one of the laws relating to driving after drinking alcohol.
- (c) The provision of recommendation (4) relating to the taking of blood specimens from victims of road accidents taken to hospital where it is not possible to identify the driver.
- (d) The provision of recommendation (4) relating to the protection from liability of Hospital Boards and persons taking blood specimens, except on the ground of negligence.

For this purpose this clause substitutes a new section 58D for the present section 58D of the principal Act. The new section provides as follows:

- (a) *Subsection (1)* re-enacts the present section 58D, which relates to the breath testing and blood testing under the existing sections 58A and 58B of persons who are in hospitals or medical practitioners' surgeries.
- (b) *Subsection (2)* requires blood specimens to be taken from the driver of a motor vehicle involved in an accident who is in a hospital for treatment or observation as a result of the accident, and from all persons in the vehicle who are in a hospital for treatment or observation if the person who was the driver cannot be identified.
- (c) *Subsection (3)* provides that the specimen of blood may be taken by any registered medical practitioner or by any nurse or other person employed by the Hospital Board who is authorised in the normal course of his duties to take blood.
- (d) *Subsection (4)* provides that, as in the case of specimens of blood taken under the present section 58B, each specimen of blood is to be divided into 2 parts and placed in separate containers, which are to be sealed.
- (e) *Subsection (5)* provides that a constable or traffic officer who has good cause to suspect that the person from whom the specimen of blood was taken had committed an offence against one of the laws relating to driving after drinking alcohol may obtain from the hospital the specimen of blood taken.
- (f) *Subsection (6)* applies the relevant provisions of the present section 58B of the principal Act as to the procedure to be followed when a specimen of blood taken under that section is delivered to a constable or traffic officer, the evidence as to the method of taking and the sealing of the specimen, the delivery of the specimen to an analyst for analysis, the delivery of part of the specimen on request to an analyst nominated by the defendant, the evidence of the analysis made and the effect of that analysis, and other incidental matters.
- (g) *Subsection (7)* makes it an offence for any person from whom a specimen of blood is required to be taken under this section to fail or refuse to allow a specimen to be taken.
- (h) *Subsection (8)* allows specimens of blood to be taken from accident victims for research purposes.
- (i) *Subsection (9)* protects Hospital Boards and persons taking specimens of blood against civil or criminal proceedings except on the ground of negligence.

Clause 5 prescribes the penalty for the offence against the new section 58D (7) of failing or refusing to permit a specimen of blood to be taken under that section. It is the same penalty as that for an offence against the present section 58C of refusing to provide a specimen of blood when required to provide a specimen under section 59B, that is, imprisonment for a term not exceeding 3 months or a fine not exceeding \$400 or both, and the defendant must be disqualified for a period of at least 6 months unless for special reasons the Court orders otherwise.

Clause 6 gives effect to recommendation (9) of the report of the Road Safety Committee that the Court may direct a convicted driver to undergo a defensive driving course conducted by an instructor approved for this purpose by the Secretary.

Clause 7 enables effect to be given to recommendation (5) of the report of the Road Safety Committee relating to seat belts.

The clause enables regulations to be made under section 77 of the principal Act—

- (a) Requiring motorcars and other classes of vehicles specified in the regulations to be fitted with seat belts of approved types.
- (b) Requiring that in the case of vehicles first registered on or after 1 July 1972 the seat belts shall be approved three-point lap and diagonal belts or harnesses.
- (c) Authorising the Secretary to approve different types where it is not practicable to fit a three-point lap and diagonal belt or harness.
- (d) Requiring persons 15 years of age or over occupying a seat fitted with a seat belt to wear the belt when the vehicle is moving forward.
- (e) Authorising the Secretary to exempt persons and vehicles from the requirements of the regulations.

Clause 8: By section 187 of the principal Act, all money received as motor spirits duty (at present 18.1 cents per gallon), less the expenses of collection, is payable as to 17.1 cents into the National Roads Fund and as to 1 cent into the Consolidated Revenue Account.

The effect of this clause, which is retrospective to 1 April 1971, is that the whole of the money received as motor spirits duty, less the expenses of collection, is to be paid into the National Roads Fund.

Clause 9: By section 190 of the principal Act, mileage tax is similarly apportioned between the National Roads Fund and the Consolidated Revenue Account.

The effect of this clause, which is also retrospective to 1 April 1971, is that the whole amount of mileage tax received, less the expenses of collection, is to be paid into the National Roads Fund.

Clause 10: Under section 188 (6) of the principal Act, the amount of the refund of duty in respect of motor spirits used in any vessel is the full amount of 18.1 cents per gallon in the case of motor spirits used in commercial vessels and 14.8 cents per gallon in the case of motor spirits used in any other vessel.

The effect of this clause is that the refund will be the full amount of 18.1 cents per gallon in respect of motor spirits used in any vessel. This amendment is retrospective to 1 October 1971.

Hon. Mr Gordon

TRANSPORT AMENDMENT (NO. 2)

ANALYSIS

Title	
1. Short Title and commencement	5. Penalty for refusing to allow specimen of blood to be taken
2. Breath tests	6. Defensive driving course
3. Taking of specimen of blood	7. Regulations as to seat belts
4. Special provisions for persons in hospital or under medical treatment	8. Payment of motor spirits duty into National Roads Fund
	9. Payment of mileage tax into National Roads Fund
	10. Refund of motor spirits duty

A BILL INTITULED

An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Transport Amendment Act (No. 2) 1971, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).
- 10 (2) Sections 8 and 9 of this Act shall be deemed to have come into force on the 1st day of April 1971.
- (3) Section 10 of this Act shall be deemed to have come into force on the 1st day of October 1971.
- (4) Except as provided in subsections (2) and (3) of this
15 section, this Act shall come into force on the date of its passing.

*Reprinted 1967, Vol. 3, p. 2309

Amendments: 1968, No. 48; 1969, No. 8, 137; 1970, No. 136

2. Breath tests—(1) Section 58A of the principal Act (as enacted by section 5 of the Transport Amendment Act 1970) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where—

“(a) An accident has occurred involving any motor vehicle; and

“(b) A constable or traffic officer has good cause to suspect that any person in the motor vehicle would, if he was the driver, have committed any of the offences specified in subsection (1) of this section but the constable or traffic officer is unable to ascertain which of the persons in the motor vehicle at the time of the accident was the driver,—

the constable or traffic officer may require that person to provide forthwith a specimen of his breath for a breath test.”

(2) Section 58A of the principal Act (as so enacted) is hereby further amended—

(a) By inserting in paragraph (a) of subsection (2), after the words “subsection (1)”, the words “or subsection (1A)”:

(b) By inserting in paragraph (b) of subsection (2), after the words “subsection (1)”, the words “or subsection (1A)”:

(c) By inserting in paragraph (c) of subsection (2), after the words “this section”, the words “or, as the case may be, would if he was the driver at the time of the accident have committed such an offence”:

(d) By inserting in subsection (4), after the words “subsection (1)”, the words “or subsection (1A)”

3. Taking of specimen of blood—Section 58B of the principal Act (as enacted by section 5 of the Transport Amendment Act 1970) is hereby amended by adding the following subsection:

“(16) Any specimen of blood may be taken under this section in any hospital within the meaning of the Hospitals Act, 1957 by any registered medical practitioner or by any nurse or other person employed by the Hospital Board and authorised in the normal course of his duties to take blood. In any such case, the provisions of subsections (1), (2), (4), (5), and (13) of this section and of subsection (1) of section 58c of this Act shall apply as if the references in those subsections to a registered medical practitioner were references to a person authorised pursuant to this subsection to

take a specimen of blood or, as the case may require, the person by whom the specimen of blood was taken pursuant to this subsection."

4. Special provisions for persons in hospital or under
5 medical treatment—The principal Act is hereby further amended by repealing section 58b (as enacted by section 5 of the Transport Amendment Act 1970), and substituting the following section:

10 "58b. (1) Subject to the provisions of this section, no person who is in a hospital or a registered medical practitioner's surgery or other place for the purpose of receiving medical care or treatment shall be required under section 58A or section 58B of this Act to provide a specimen of breath or to permit a specimen of blood to be taken, unless the constable
15 or traffic officer first notifies the registered medical practitioner in immediate charge of the care or treatment of that person and the registered medical practitioner is satisfied that the giving or taking of such a specimen would not be prejudicial to the proper care or treatment of that person.

20 "(2) Notwithstanding anything in any other Act or in any rule of law; where—

"(a) Any person is received in any hospital for examination or treatment as a result of an accident involving any motor vehicle; and

25 "(b) The registered medical practitioner in immediate charge of the examination or treatment of that person believes that—

"(i) That person was the driver of the motor vehicle at the time of the accident; or

30 "(ii) That person, being a person appearing to be of or over the age of 15 years, was in the motor vehicle at the time of the accident but it is uncertain as to which of the persons in the motor vehicle at the time of the accident was the driver,—

35 it shall be the duty of the Hospital Board having the control of that hospital and of the Medical Superintendent of that hospital to ensure that as soon as practicable after that person has been received in the hospital a specimen of his venous blood is taken in accordance with normal medical procedures;
40 whether or not that person has consented thereto and whether or not he is capable of giving his consent:

"Provided that the provisions of this subsection shall not apply unless and until that person has been examined by a registered medical practitioner and that medical practitioner

is satisfied that the taking of such a specimen of blood would not be prejudicial to the proper care or treatment of that person.

“(3) A specimen of blood may be taken under subsection (2) of this section by any registered medical practitioner or by any nurse or other person employed by the Hospital Board and authorised in the normal course of his duties to take blood.

“(4) Any specimen of blood taken under the provisions of subsection (2) of this section shall, after setting aside any portion thereof required for research purposes pursuant to subsection (8) of this section, forthwith be divided into 2 parts, or if it is insufficient to be divided into 2 parts a further specimen of blood may forthwith be taken under the said subsection (2), and each part or specimen shall be placed in separate containers, which shall be sealed. Where any specimen of blood is divided into 2 parts as aforesaid, each such part shall be deemed to be a specimen of blood for the purposes of this Act.

“(5) Where a constable or traffic officer has good cause to suspect that any person from whom a specimen of blood was taken under subsection (2) of this section has committed any of the offences specified in subsection (1) of section 58A of this Act, being an offence arising out of the driving of the motor vehicle involved in the accident, he may request the Medical Superintendent, or a person nominated for the purpose by the Medical Superintendent, of the hospital at which the specimen of blood was taken to deliver to him the separate containers containing the specimens of blood, and the Medical Superintendent, or person so nominated, shall deliver those containers to the person making the request.

“(6) The provisions of subsections (3) to (15) of section 58B of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every specimen of blood taken pursuant to subsection (2) of this section, as if—

“(a) That specimen had been taken pursuant to the said section 58B; and

“(b) The references to a registered medical practitioner in subsections (4), (5), and (13) of the said section 58B were references to the person by whom the specimen of blood was taken pursuant to subsection (2) of this section; and

“(c) The reference in subsection (11) of the said section 58b to a specimen of blood provided by the defendant under that section were a reference to a specimen of blood taken from the defendant pursuant to subsection (2) of this section.

“(7) Every person commits an offence who, being a person from whom a specimen of blood is required to be taken pursuant to subsection (2) of this section, refuses or fails to permit such a specimen to be taken. The provisions of subsections (2) and (3) of section 58c of this Act shall apply with respect to every offence against this subsection as if it were an offence against subsection (1) of the said section 58c, and the provisions of subsection (3) of that subsection shall apply as if the defendant had been required by a constable or traffic officer to permit a specimen of blood to be taken.

“(8) Any person specified in subsection (3) of this section may take for research purposes, whether in the hospital by which he is employed or otherwise, a specimen of blood from any person from whom a specimen of blood may be taken pursuant to subsection (2) of this section.

“(9) Notwithstanding anything in any other Act or in any rule of law, no proceeding, civil or criminal, shall be taken against the Hospital Board or against any person in respect of the taking of a specimen of blood pursuant to this section, or in respect of the delivery of any specimen of blood to a constable or traffic officer pursuant to this section, on the ground that any person whose consent to the taking of the specimen of blood would have been otherwise required by law if this section had not been enacted has not so consented:

“(10) Provided that nothing in this subsection shall apply with respect to any proceeding on the ground of any negligent act or omission in the taking of any such specimen.

“(11) In this section the expressions ‘hospital’ and ‘Hospital Board’ have the same meanings as in section 2 of the Hospitals Act 1957.”

5. Penalty for refusing to allow specimen of blood to be taken—Section 30 of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970) is hereby amended by inserting in subsection (3), after paragraph (e), the following paragraph:

“(ea) Subsection (7) of section 58b (which relates to the refusal of a person in hospital to allow a specimen of blood to be taken); or”.

6. **Defensive driving course**—Section 68 of the principal Act is hereby amended by adding to subsection (1) the words “or a defensive driving course of instruction conducted by an instructor approved for the purpose by the Secretary”.

7. **Regulations as to seat belts**—Section 77 of the principal Act is hereby amended by adding to subsection (1) (as amended by section 17 of the Transport Amendment Act 1968) the following paragraph: 5

(y) Requiring motorcars and such other classes of motor vehicles as are specified in the regulations to be fitted with seat belts of a type approved by the Secretary by notice in the *Gazette*; requiring that in the case of vehicles first registered on or after the 1st day of July 1972 the seat belts shall be three-point lap and diagonal belts or harnesses of a type so approved; authorising the Secretary to approve the fitting of different types of seat belts for particular vehicles or classes of vehicles where it is not practicable to fit three-point lap and diagonal belts or harnesses; requiring persons 15 years of age or over occupying a seat for which a seat belt is provided to wear the seat belt while the motor vehicle is moving forward; and authorising the Secretary to exempt specified persons or classes of persons and specified vehicles or classes of vehicles from the requirements of the regulations.” 10 15 20 25

8. **Payment of motor spirits duty into National Roads Fund**—(1) Section 187 of the principal Act (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) is hereby amended by omitting from subsection (2) the words “as to 17.1 cents thereof to the credit of the National Roads Fund, and as to 1 cent thereof to the credit of the Consolidated Revenue Account”, and substituting the words “to the credit of the National Roads Fund”. 30 35

(2) The principal Act is hereby further amended—

(a) By omitting from subsection (5) of section 188 (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) the words “and out of the Consolidated Revenue Account to the extent specified in subsection (6) of this section”; 40

- 5 (b) By omitting from subsection (6) of section 188 (as so substituted) the words "or the Consolidated Revenue Account, as the case may be, to the extent specified in column 3 or, as the case may be, column 4 of that table":
- (c) By omitting from subsection (6) of section 188 (as so substituted) column 3 and column 4 of the table set out in that subsection.

10 **9. Payment of mileage tax into National Roads Fund**—Section 190 of the principal Act (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) is hereby amended by omitting from subsection (7) all words after the words "shall be credited", and substituting the words "to the National Roads Fund".

15 **10. Refund of motor spirits duty**—Section 188 of the principal Act (as so substituted) is hereby further amended by omitting from the table set out in subsection (6) the last 3 items in that table, and substituting the following words:

"Used otherwise than as fuel in motor vehicle | 18.1"