



REPUBLIC OF NAURU

# MOTOR TRAFFIC (AMENDMENT) BILL 2020

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No. of 2020

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A Bill for an Act to amend the *Motor Traffic Act 2014*.

Certified: [ ]

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Motor Traffic (Amendment) Act 2020*.

**2 Commencement**

This Act commences on certification of the Speaker.

**3 Amendment of the Motor Traffic Act 2014**

The *Motor Traffic Act 2014* is amended by the provisions of this Act.

**4 Amendment of Section 69**

Section 69(2) is deleted and substituted as follows:

(2) A person who is found driving or in charge of a motor vehicle while:

- (a) the proportion of alcohol in his or her breath exceeds the prescribed limit;
- (b) the percentage of alcohol in his or her blood exceeds the prescribed limit; or
- (c) under the influence of intoxicating liquor and in the assessment of a police officer fails an impairment test,

commits an offence under subsection (1) for driving or being in charge of a motor vehicle while under the influence of intoxicating liquor and upon conviction is liable to a penalty under section 79.

**5 Insert new Section 70A**

**70A Power to administer impairment test**

(1) A police officer may require a person who is found driving or in charge of a motor vehicle to undergo an impairment test, if the police officer has reasonable cause to believe that such person is under the influence of intoxicating liquor.

(2) An impairment test includes:

- (a) a walk and turn assessment;
- (b) an eye assessment;

- (c) a pupillary assessment;
  - (d) a balance assessment;
  - (e) a finger to nose assessment; and
  - (f) a one leg stand assessment.
- (3) A police officer may require a person specified under subsection (1) to:
- (a) remain in the place where he or she was stopped, for a period of time that is reasonable in the circumstances, to undergo an impairment test; or
  - (b) accompany the police officer to another place for an impairment test.
- (4) The police officer who conducts the test:
- (a) shall record the test he or she required the person to take and his or her finding of such test in writing; and
  - (b) may take a video recording of the test being conducted using a mobile phone or other digital device.
- (5) The tests recorded under subsection (4) is admissible as evidence in any proceedings in court by the police officer conducting the test or the police officer who takes the video or who recorded the test being conducted.
- (6) A person who, when required by a police officer to undergo an impairment test, fails or refuses to do so, commits an offence and upon conviction, is liable to a fine not exceeding \$1,000 or a term of imprisonment not exceeding 6 months or to both.
- (7) A person, who fails or refuses to undergo an impairment test under this section, may be arrested without a warrant by a police officer.

## **6 Amendment of Section 71**

Section 71(1)(b) is deleted and substituted as follows:

- ‘(b) who has undergone a preliminary breath test under Section 70, by which, it has been ascertained that it is likely that the percentage of alcohol in such person’s blood or proportion of alcohol in the person’s breath exceeds the prescribed limit.’

**7 Amendment of Section 72**

Section 72 is amended by:

(a) deleting and substituting subsection (5) as follows:

(5) Where a person is required to undergo a preliminary breath test under Section 70 or Section 71 and is receiving medical treatment, he or she:

(a) may not be required to submit to the breath test where the medical practitioners are of the opinion that it will be prejudicial to the health of such person; and

(b) shall provide a sample of blood for testing the proportion of alcohol in his or her blood, which the medical practitioners shall obtain with or without the consent of such person.

(b) inserting new subsection (6) as follows:

(6) A person who fails to submit to a breathalyser test or fails to furnish sufficient sample of breath into the device or instrument for the breath test for the reading of alcohol content under subsection (1), commits an offence and upon conviction is liable to:

(a) mandatory suspension of his or her driver's licence for 3 months;

(b) a maximum fine of \$1000;

(c) imprisonment for 6 months; or

(d) a combination of (a), (b) or (c) or all.

**8 Insert new Section 72A**

**72A Right to elect blood test**

(1) A person may elect to have a blood test where the result of his or her breath test exceeds the prescribed limit.

(2) Where a person elects to have a blood test under subsection (1), the result of such blood test shall take precedence over the result of a breath test.

(3) No person shall elect to undergo a blood test under subsection (1) more than two hours after the breathalyser test was initially administered.

**9                   Amendment of Section 74**

Section 74 is deleted and substituted as follows:

**74                   Certificate of breath analysis**

- (1) The police officer who conducts the breath test of a person by means of a breath-analysing device or instrument shall, as soon as practicable, sign and deliver to the person whose breath has been analysed a certificate contained in the Second Schedule to this Act stating:
  - (a) the percentage of alcohol indicated by the analysis to be present in such person's blood; or
  - (b) the proportion of alcohol in the person's breath; and
  - (c) the date and time at which the analysis was made.
- (2) A certificate given in subsection (1) shall be prima facie evidence of any proceedings referred to in Section 75.
- (3) Where an accused person requires the police officer who signed the certificate to be called as a witness, he or she shall give prosecution a notice in writing 10 days before the trial or hearing of the proceedings where such evidence is being sought to be relied upon by the prosecution including in Section 75(2).
- (4) A certificate signed by the Commissioner of Police that a police officer is authorised by the Commissioner of Police to operate the breath-analysing device or instrument shall be admissible in any proceedings as evidence of the authority of that person.

**10                  Amendment of Section 75**

Section 75 is deleted and substituted as follows:

**75                   Evidence of intoxication**

- (1) Where under this Act or any other written law a person is charged with an offence, the question as to whether such person was under the influence of intoxicating liquor may be established by:
  - (a) an impairment test;
  - (b) the result of the test of proportion of alcohol in the breath of any person;

- (c) the result of the test of the percentage of alcohol in the blood of any person; or
  - (d) a combination of (a), (b) and (c).
- (2) The results of the tests referred to under subsection (1) are admissible evidence for the purposes of the following offences:
- (a) dangerous driving under Section 67;
  - (b) dangerous driving occasioning death under Section 67A;
  - (c) dangerous driving occasioning grievous bodily harm under Section 67B;
  - (d) driving or in charge of vehicle while under the influence of intoxicating liquor under Section 69; and
  - (e) negligently causing serious harm under Section 73 of the *Crimes Act 2016*.

## **11 Amendment of Section 79**

Section 79(1) is deleted and substituted as follows:

- (1) Any person who is convicted of an offence under Section 69(2) is liable to:
- (a) for a first offence:
    - (i) mandatory suspension of his or her driver's licence for six months; and
    - (ii) a maximum fine of \$1,000,00; or
    - (iii) imprisonment for six months;
  - (b) for a second offence:
    - (i) mandatory suspension of his or her driver's licence for twelve months; or
    - (ii) a maximum fine of \$3,000.00; or
    - (iii) imprisonment for twelve months;
  - (c) for a third offence:

- (i) mandatory suspension of his or her driver's licence for five years; and
- (ii) a maximum fine of \$10,000.00; or
- (iii) imprisonment for three years.

**12 Amendment of Section 81**

Section 81 is deleted and substituted as follows:

**81 Prescribed limits of alcohol**

For the purposes of this Act, the '*prescribed limits*' means:

- (a) in the case of breath, the proportion of alcohol in the person's breath exceeds 0.0525 grams of alcohol per 210 litres of breath; and
- (b) in the case of blood, the proportion of alcohol in the person's blood exceeds 50 milligrams of alcohol per 100 millilitres of blood.

**13 Amendment of Section 132**

Section 132(2) is amended by:

- (a) deleting the full stop and inserting a semicolon and the word 'and' immediately after the word 'regulations' in paragraph (m); and
- (b) inserting a new paragraph (n) as follows:
  - (n) prescribe or amend any forms contained in the Schedules of the Act to be used for the purposes of the Act.