

REPUBLIC OF NAURU
MOTOR TRAFFIC (AMENDMENT) BILL 2020

EXPLANATORY MEMORANDUM

The *Motor Traffic (Amendment) Bill 2020* is a Bill for the *Motor Traffic (Amendment) Act 2020*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Motor Traffic (Amendment) Act 2020*.

Clause 2 sets out when the Bill's provisions will commence which is upon certification by the Speaker.

Clause 3 is the enabling provision for the amendment of the *Motor Traffic Act 2014*.

Clause 4 amends Section 69(2) of the Act by clarifying that it is an offence to drive a motor vehicle whilst under the influence of alcohol. This clause provides for the offence of driving or being in charge of a motor vehicle whilst under the influence of alcohol. The offence is committed by the person:

- (a) exceeding the alcohol limit in breath;
- (b) exceeding the alcohol limit in the blood;
- (c) failing the impairment test which is also called the sobriety test.

Clause 5 inserts a new Clause 70A. This new Clause allows police officers to administer an impairment test where a police officer has reasonable cause to believe that a person is driving or in charge of motor vehicle while under the influence of alcohol. This test will include a walk and turn assessment; an eye assessment, pupillary assessment, balance assessment, a finger to nose assessment and a one leg assessment.

The assessments provided under subclause (2) shall be conducted as prescribed. The persons so tested are to remain in a place where he or she was stopped or may accompany the police officer to another place to do the test. The results of the test conducted shall be recorded by the police officer in the prescribed form or certificate which shall be signed and provided to the person who was tested. Such form or certificate is sufficient evidence in any proceedings under this Act unless the accused requires such police officer to be called as a witness. The impairment tests are in addition to any other tests.

Where a person fails or refuses when required by a police officer to undergo an impairment test, such person commits an offence and is liable upon conviction to a fine not exceeding

\$1,000 or a term of imprisonment not exceeding 6 months or to both. This penalty is equivalent to the first offence for drink driving.

A police officer may arrest a person without a warrant should such person fail or refuse to undergo an impairment test under this clause.

Clause 6 amends Section 71(1)(b). This amendment provides that where it is likely that the percentage of alcohol in the person's blood or the proportion of alcohol in the person's breath exceeds the prescribed limit during a preliminary breath test, a police officer may require such person to furnish a sample of his or her breath.

Clause 7 amends Section 72. Subsection (5) is substituted to clarify that when a person is receiving medical treatment, he or she may not be required to submit to a breath test if in the opinion of the doctors, it would be prejudicial to such person's health. A blood sample for testing the proportion of alcohol in his or her blood must be obtained with or without consent. The purpose for this is to allow for a person who is too drunk to give an informed consent.

A new subclause (6) is inserted This is the offence provision in that should a person fail to exhale into a device or instrument through the attached tube continuously to the reasonable satisfaction of the person operating the device or instrument, such person commits an offence. A person may also not provide sufficient portion or amount of breath for the instrument to test. Penalty: mandatory suspension of driver's licence for three months; maximum fine of \$1,000; or imprisonment for six months or combination of the penalties provided or all such penalties.

Clause 8 inserts a new Section 72A. Subclause (1) allows a person to elect to have a blood test if his or her breath test exceeds the prescribed limit. Subclause (2) provides that the blood test carried out under subclause (1) is conclusive test of alcohol present in the blood. Subclause (3) provides that a person shall not elect to have a blood test under subclause (1) where more than 2 hours has passed since the breathlyser test was initially carried out.

Clause 9 deletes and substitutes clause 74. This provision requires the issuance of a certificate by the police officer who conducted the breath test. The substituted clause is to clarify the test and the processes that are needed to be undertaken. It also adds the proportion of alcohol in the person's breath in addition to the blood test. This is also to provide a methodological process of certification of results as it would be used in court for evidence. The Commissioner of Police is required to authorise police officers to operate a breath-analysing device or instrument. The Commissioner must issue a certificate which is conclusive evidence of such authority.

Clause 10 deletes and substitutes Section 75 which relates to evidence of intoxication. This clause allows the results of the tests to be used as evidence. The results of the impairment tests, breath or blood tests are admissible against an accused person who is charged with the following offences:

- dangerous driving;
- dangerous driving occasioning death;
- dangerous driving occasioning grievous bodily harm;
- driving or in charge of vehicle while under the influence of intoxicating liquor; and
- negligently causing harm under the *Crimes Act 2016*.

Clause 11 deletes and substitutes Section 79(1). The offence of drink driving is serious and a major cause of motor vehicle accidents. With the breathalyser testing machines, it is possible to ascertain the prescribed limits of the offences with certainty. The penalties for drink driving are increased to reflect the deterrence of the commission of the offences. The requirement of impounding the vehicle is removed as the other family members should not be deprived of the use of the vehicle. In lieu, the custodial sentence has been increased to ensure that the offender suffers the consequences for his or her act of drink driving and not the family.

Clause 12 deletes and substitutes Section 81 which relate to the prescribed limits of alcohol. Subclause (a) prescribes the limit for breath test; and subclause (b) prescribes the limit for blood test.

This amendment defines the alcohol limit in the breath or blood of a person who is found to be driving or in charge of a motor vehicle while under the influence of intoxicating liquor.

The limits are:

- (a) in the case of breath – 0.0525 grams of alcohol per 210 litres of breath; and
- (b) in the case of blood - 50 milligrams of alcohol per 100 millilitres of blood.

Clause 13 amends Section 132 which provides for the making of regulations. Forms are a procedural requirement which does not affect any substantive matters requiring legislative amendment. Forms are required to be made or for those existing in the Schedule need to be changed, can be expeditiously included or amended by the Cabinet.