



Land Transport (Road Safety Enforcement) Amendment Act 2001

Public Act 2001 No 104
Date of assent 19 December 2001
Commencement see section 2

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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 is called “the principal Act”.

Part 1

Preliminary provisions

2 Commencement

- (1) Sections 4(1), (2), and (4), 5 to 10, and 14(1), (3), (4), and (5) come into force on 29 December 2001.
- (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:
- (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:
- (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:
- (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.

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:

“**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**.
- (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”.
- (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

- (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”.

6 New section 70A inserted

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

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

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

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)”.

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

- “(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 (being an offence committed on or after the commencement of this section), 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.
- “(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, called into question, or put in issue in any proceedings in respect of an offence involving excess breath alcohol recorded by the device.
- “(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—
- “(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.
- “(5) After consultation with the Minister and the Minister of Justice, the Minister of Police must, by notice in the *Gazette*, specify for each kind of evidential breath-testing device the matters that are required to be stated in a certificate of compliance.
- “(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:

- “(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 date on which that period began or begins:
- “(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 compliance to specify the 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.”

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”:
 - (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

- (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,—
 - “(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
 - “(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.”

- (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—
- “(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

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

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

- (1) Despite sections 77(1)(q) and 199(1)(d) of the Transport Act 1962, the power conferred by 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 the relevant maximum fine specified in section 167(1)(h).
- (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:

“(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.”

(2) The Transport Act 1962 is consequentially amended—

- (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—

- (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.”

(4) Clause 8 of the Transport (Breath Tests) Notice (No 2) 1989 (SR 1989/389) is consequentially revoked.

(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—

- 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.”

- (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.

15 Savings relating to certificates of accuracy

- (1) This section applies to an alleged offence if—
- (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
 - (c) the proceedings for the offence are heard by a court on or after the commencement of this section.
- (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).

16 Saving and transitional provision relating to certificates of compliance

- (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.
- (2) Despite section 2(1), persons may be appointed, 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.
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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
10 December 2001	Reported from Transport and Industrial Relations Committee (Bill 173–2)
13 December 2001	Second reading
18 December 2001	Committee of the whole House, third reading
19 December 2001	Royal assent

This Act is administered in the Ministry of Transport.
