

Transport Amendment Act 2007



ANALYSIS

- | | |
|--|---|
| 1. Short title and commencement | 28C. Who must give blood specimen |
| 2. Interpretation | 28D. How blood specimen is to be taken |
| 3. Causing bodily injury or death through reckless or dangerous driving or driving while under the influence of drink or drugs | 28E. Protection for patients |
| 4. Causing bodily injury or death through careless use of motor vehicle | 28F. Evidence |
| 5. Reckless or dangerous driving | 29. Power of Arrest |
| 6. Driving under the influence of drink or drugs | 7. Disqualification of drivers licence and partial disqualification |
| 28. Driving while under the influence of drink and/or drugs, etc | 8. Speed |
| 28A. Driving with excessive breath-alcohol or blood-alcohol concentration | 9. Minor Offences |
| 28B. Who must undergo breathalyser test | 10. Calibration of approved devices |
| | 11. Rear vision mirrors |
| | 12. Safety Helmets |
| | 13. Prohibition on motor vehicles, motorcycles or bicycles travelling abreast |
| | 14. Repeal of Section 62 |
| | 15. Repeal of the Transport Amendment Act 1989 Schedules |

2007, No. 32

An Act to amend the Transport Act 1966

(12th November 2007)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short title and commencement- (1) This Act may be cited as the Transport Amendment Act 2007, and shall be read together with and deemed part of the

Transport Act 1966 (the "principal Act").

(2) Except as provided in subsection (3) of this section, this Act shall come into force in Rarotonga on the date appointed by the Queen's Representative, by Order in Executive Council.

(3) Section 12 of this Act shall come into force 4 months after the date appointed by the Queen's Representative, by Order in Executive Council as provided in subsection (2) of this section.

(4) This Act shall come into force in the other islands of the Cook Islands on the dates appointed by the Queen's Representative, by Order in Executive Council.

2. Interpretation - Section 2 of the principal Act is hereby amended by inserting in the appropriate alphabetical sequence the following interpretations -

"Accompany", in relation to the accompanying of a constable to a place, includes remaining with a constable at a place whether or not a journey is involved;

"Approved analyst" means -

- (a) a person who is designated in writing by the Commissioner as the analyst in charge of an approved laboratory; or
- (b) a person who works in an approved laboratory and who is authorized in writing, by the analyst in charge of that laboratory, to act as an approved analyst, either generally or in a particular case;

"Approved device" means a breathalyser test device or a speed measuring device approved by the Commissioner by Notice in the Gazette;

"Approved laboratory" means the Rarotonga Hospital laboratory or any other facility notified by the Commissioner by Notice in the Gazette for the purposes of analysing blood specimens taken for the purposes of this Act;

"Blood specimen" means a specimen of venous blood taken by a medical officer in accordance with prescribed medical procedures;

"Blood test" means the taking of a blood specimen for laboratory analysis;

"Breathalyser test" means a test carried out for the purposes of measuring the alcohol content level in a person's breath, by means of an approved device;

"Commissioner" means the Commissioner of Police;

"Drink" means alcoholic drink;

"Drug" includes any substance, not including alcohol, that affects control of the human body whether taken for medicinal, curative, recreational or ceremonial purposes;

"Hospital" means a facility which provides medical and or surgical treatment for in-patients or outpatients and includes medical centres;

"Medical officer" means –

- (a) a registered medical practitioner; or
- (b) a person acting in a hospital or doctor's surgery and who, in the normal course of the person's duties, takes blood specimens; or
- (c) a nurse; or
- (d) a medical laboratory technician;

"Motor vehicle" shall include a motorcycle, motorised quad-bike or trike;

"Prescribed limit" means -

- (a) 400 micrograms of alcohol in per litre of breath as measured by an approved device; or
- (b) 80 milligrams of alcohol per 100 millilitres of blood as measured by an approved analyst;

"Prosecutor" means the person who is for the time being in charge of the file or files relating to a criminal proceeding; and includes –

- (a) any other employee of the person or agency by whom the prosecutor is employed who has responsibilities for any matter directly connected with the proceedings; or
- (b) any counsel representing the person who laid the information in the proceedings;

"Registered medical practitioner" means a person registered as a medical practitioner under section 9 of the Medical and Dental Practitioners Act 1976."

3. Causing bodily injury or death through reckless or dangerous driving or driving while under the influence of drink or drugs – Section 25 of the principal Act is amended by deleting "five years or to a fine not exceeding five hundred pounds" and substituting "10 years or to a fine not exceeding \$10,000."

4. Causing bodily injury or death through careless use of motor vehicle – Section 26 of the principal Act is amended by deleting "three months or to a fine not exceeding one hundred pounds" and substituting "5 years or to a fine not exceeding \$5,000."

5. Reckless or dangerous driving – Section 27 of the principal Act is amended by deleting "three months or to a fine not exceeding one hundred pounds" and substituting "12 months or to a fine not exceeding \$1,000."

6. Driving under the influence of drink or drugs - Sections 28 and 29 of the principal Act are deleted and the following sections substituted –

"28. Driving while under the influence of drink and/or drugs, etc - (1) A person who is under the influence of a drink or a drug or both and -

- (a) drives or attempts to drive a motor vehicle on a road; or
- (b) is in charge of a motor vehicle which is on a road,

commits an offence.

(2) A person that contravenes a provision of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both, and the Court shall, in addition to any other penalty, order him or her to be disqualified with or without condition from holding or obtaining a driver's licence for a minimum period of 12 months.

(3) In addition to the penalties specified in subsection (2) the Court may also upon conviction impose the sentence of community work.

(4) It is a defence for a person charged with an offence under subsection (1)(b) if the person proves that, at the time he or she is alleged to have committed the offence, the circumstances were such that there was no likelihood of the person driving the vehicle while he or she was under the influence of a drink, or a drug, or both.

28A. Driving with excessive breath-alcohol or blood-alcohol concentration - (1) A person who -

- (a) drives or attempts to drive a motor vehicle on a road; or
- (b) is in charge of a motor vehicle on a road,

and has the proportion of alcohol in his or her breath or blood exceeding the prescribed limit commits an offence.

(2) A person that contravenes a provision of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both, and the Court shall, in addition to any other penalty, order him or her to be disqualified with or without condition from holding or obtaining a driver's licence for a minimum period of 12 months.

(3) In addition to the penalties specified in subsection (2) the Court may also upon conviction impose the sentence of community work.

(4) It is a defence for a person charged with an offence under subsection (1)(b) if the person proves that, at the time the person is alleged to have committed the offence, the circumstances were such that there was no likelihood of him or her driving the vehicle while the proportion of alcohol in his or her breath or blood exceeded the prescribed limit.

28B. Who must undergo breathalyser test - (1) Where a constable has reasonable cause to suspect that a person -

- (a) is driving or attempting to drive or is in charge of a motor vehicle on a road; or
- (b) has recently been driving or attempting to drive or has been in charge of a motor vehicle on a road; or
- (c) was the driver or person in charge of a motor vehicle which was involved in a motor vehicle crash,

the constable may, subject to section 28F, require that person to provide without delay a specimen of breath for a breathalyser test.

(2) A person who undergoes a breathalyser test shall remain at the place where the person underwent the test until after the result of the test is ascertained.

(3) The breathalyser test referred to in subsection (2) shall be conducted on the spot where such person is apprehended or at the nearest police station.

(4) A person who -
(a) refuses to undergo a breathalyser test; or
(b) refuses to remain at the place pursuant to subsection (2),
commits an offence.

(5) A person that contravenes a provision of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both, and the Court shall, in addition to any other penalty, order him or her to be disqualified with or without condition from holding or obtaining a driver's licence for a minimum period of 12 months

(6) In addition to the penalties specified in subsection (5) the Court may also upon conviction impose the sentence of community work

28C. Who must give blood specimen - (1) A person shall permit a medical officer to take a blood specimen from the person when required to do so by a constable if -

- (a) the person fails or refuses to undergo without delay a breathalyser test after having been required to do so by a constable under section 28B; or
- (b) the person has undergone a breathalyser test under section 28B and -
 - (i) it appears to the officer that the level of alcohol in the persons breath exceeds the prescribed limit by 150 micrograms of alcohol per litre of breath; and
 - (ii) within 10 minutes of being advised by the constable of the result of the test, the person advises the constable that the person wishes to undergo a blood test; or
- (c) a breathalyser testing device is not readily available to the apprehending constable or at the nearest Police Station; or
- (d) the person was arrested without a warrant and the constable has good cause to suspect that the person has committed an offence under any of sections 28 or 28A; or
- (e) the person is under examination, care, or treatment in a hospital.

- (2) Every person who -
- (a) fails or refuses to accompany a constable to a hospital, police station or other place in order to permit a blood specimen to be taken when required to do so under this section; or
 - (b) having accompanied a constable to the hospital, police station or other place in order to permit a blood specimen to

be taken under this section, fails or refuses to remain at that place until requested by a medical officer to permit a blood specimen to be taken under this section;

- (c) fails or refuses to permit a medical officer to take a blood specimen under this section,

commits an offence.

(3) A person that contravenes a provision of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both, and the Court shall, in addition to any other penalty, order him or her to be disqualified with or without condition from holding or obtaining a driver's licence for a minimum period of 12 months.

(4) In addition to the penalties specified in subsection (3) the Court may also upon conviction impose the sentence of community work.

(5) It is a defence to proceedings for an offence under this section if the court is satisfied, on the evidence of a registered medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.

28D. How Blood specimen is to be taken - (1) When a medical officer is required to take blood specimen from a person, the medical officer shall inform the person before taking the blood specimen.

(2) When a blood specimen is taken from a person, the medical officer shall cause the specimen to be divided into 2 parts and -

- (a) each part must be placed in a separate bottle and the bottle must then be sealed; and
 (b) each part is a blood specimen for the purposes of this Act.

(3) One or more preservative substances and anti-coagulant substances may be added to a blood specimen by placing them in the bottle, whether before or after the specimen is taken and placed in the bottle.

(4) If the specimen originally taken is insufficient to be divided into 2 parts, the medical practitioner who is in immediate charge of the person may take or cause to be taken a further blood specimen which shall be treated as a part of the original blood specimen taken from the person.

28E. Protection for patients - (1) Where a person is in a hospital for the purposes of examination, care or treatment, a breathalyser test may be administered or blood specimen taken under any provision of this Act only if the registered medical practitioner -

- (a) has examined the person and is satisfied that the administering of the breathalyser test or the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and
 (b) informs the person that the breathalyser test is being administered under this section for evidential purposes; or
 (c) informs the person (or a next-of-kin, where reasonably available, if the person is unconscious) that the blood specimen is being or was taken under this section for evidential purposes.

(2) If a blood specimen is taken under this section from a person who is unconscious, the medical officer who took the specimen shall notify the person (or a next-of-kin, where reasonably available, if the person is still unconscious) in writing as soon as practicable that the specimen was taken under this section for evidential purposes.

(3) No civil or criminal proceedings may be taken against any authority, hospital or health service, or any other person in respect of the taking of a blood specimen under this section, or in respect of the sending of a blood specimen to an approved analyst, on the ground of lack of consent of a person whose consent to the taking of the blood specimen would have been otherwise required by law if this section had not been enacted.

(4) Nothing in subsection (3) applies to any proceeding on the ground of any negligent act or omission in the taking of a blood specimen.

(5) Where a registered medical practitioner has refused, for the reason set out in subsection (1)(a), to permit the taking of a specimen of breath or to take or permit the taking of a blood from a patient, he or she shall provide a report to the Commissioner outlining the reasons for the refusal.

(6) Nothing in this section applies where the person is in a hospital solely for the purpose of providing a breathalyser test or blood specimen.

28F. Evidence - (1) The following provisions apply with respect to proceedings for an offence under section 28 or 28A.

(2) Evidence of the proportion of alcohol or any drug in a specimen of breath or blood provided by the defendant shall, in all cases, be taken into account and it shall be conclusively presumed that the proportion of alcohol or drugs in the defendant's breath or blood at the time of the alleged offence was not less than in the specimen taken from the defendant.

(3) It shall be conclusively presumed that the result of the analysis of the breath or blood specimen taken from the defendant is correct, unless the contrary is proven.

(4) Evidence of the proportion of alcohol or a drug in the person's breath or blood may, subject to subsections (6) and (7), be adduced by the following means -

- (a) a notice produced by the approved device by which the proportion of alcohol in the person's breath was measured and a certificate signed by a constable that the notice relates to a specimen of breath provided by the accused at the date and time shown in the notice, together with a calibration certificate; or
- (b) oral evidence from the operator of the approved device by which the proportion of alcohol in that person's breath was measured as to the breath alcohol concentration reading given by the device, together with a calibration certificate;
- (c) a certificate signed by an approved analyst as to the proportion of alcohol or any drug found in a specimen of blood provided by the defendant and as identified in the certificate.

(5) A document purporting to be such a notice or such a certificate, or both referred to in subsection (4)(a) of this section, is admissible in evidence by the prosecutor for the purposes of this section only if –

- (a) a copy of it has either, been handed to the defendant when the document was produced, or
- (b) has been served on him or her not later than 14 days before the hearing; and
- (c) any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing.

(6) A copy of the document as defined in subsection (4)(a) or subsection (4)(c) of this section is deemed to have been served on the defendant if it has been handed to him or her, or sent by recorded delivery service to him or her at his or her last known residential address.

29. Power of arrest - (1) A constable may arrest a person without warrant if the constable has reasonable cause to suspect that that person has committed an offence under the following sections –

- (a) section 28(1)(a);
- (b) section 28(1)(b);
- (c) section 28A(a);
- (d) section 28A(b);
- (e) section 28B(4);
- (g) section 28C(3);

(2) Notwithstanding sub section (1), a constable cannot arrest a person when that person is at a hospital or doctor's surgery as a patient unless that person leaves the grounds of that property.

(3) In effecting an arrest under this section a constable may enter (if necessary by force) any place or vehicle where that person is or where the constable, with reasonable cause, suspects that person to be."

7. Disqualification of drivers licence and partial disqualification – Section 31 of the principal Act is amended by deleting "29," from subsection (2).

8. Speed – (1) Sections 56 (1), (2) and (3) of the principal Act are deleted and the following substituted –

"56. Speed – (1) No person shall on any road drive any type of motor vehicle, motor cycle, motorised quad-bike or trike at a speed exceeding 50 kilometres per hour in zones not designated as reduced speed zones and exceeding 30 kilometres in reduced speed zones."

(2) Section 56 (4) of the principal Act is re-numbered to Section 56 (2).

9. Minor Offences – The Fourth Schedule referred to in Section 55B of the principal Act (as amended by the Transport Amendment Act 1995) is amended by deleting–

(a) "Section 56 Exceeding speed limit \$40",
and the following substituted under their respective headings –

The Cook Islands Legislation Supplement 2007

"Section	Offence	Fine payable
56	Exceeding speed limit by up to 10 km	\$100
	Exceeding speed limit between 11 km to 20 km	\$150
	Exceeding speed limit between 21 km to 30 km	\$200
	Exceeding speed limit over 31 km	\$250"

- (b) "Section 57" and substituting "Section 58";
(c) the "\$40" fines for the offences under sections 32, 57, 61, 62, 64 and substituting the fine of "\$100" for those sections.

10. Calibration of approved devices - Section 56A of the principal Act is deleted and the following substituted -

"56A. Calibration of approved devices - (1) An approved device must be supported by a calibration certificate given under this section by a person authorised for the purpose by the Commissioner.

(2) A calibration certificate issued under subsection (1) is deemed 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 or called into question.

(3) An approved device shall be calibrated every 12 months."

11. Rear-vision Mirrors - Section 75 of the principal Act is deleted and the following substituted -

"75. Rear-vision Mirrors - No person shall drive a motor vehicle, motor cycle, motorised quad-bike or trike on any road unless it is fitted with a mirror so as to reflect to the driver a view of the road to the rear sufficient for safe driving requirements.

12. Safety Helmets - Section 86A of the principal Act is deleted and the following substituted -

"86A. Safety Helmets - (1) No person shall drive or ride on a motor cycle, motorised quad-bike or trike or bicycle on any road without wearing an approved safety helmet appropriate to that vehicle or bicycle which must bear a sticker inside it stating which standard it complies with.

(2) For the purposes of sub section (1) an approved safety helmet shall be one of the class, type or make that meets the safety standards for safety helmets as detailed in the Schedule to this Act.

(3) Every person who contravenes sub-sections (1) and (2) commits an offence and is liable to a fine not exceeding \$100.

(4) All safety helmets imported or sold in Cook Islands for road use are required to comply with one or more approved international safety standards for

safety helmets and must bear the standards marks as detailed in the Schedule to this Act.

(5) Every person who contravenes sub-section (4) commits an offence and is liable to a fine not exceeding \$1000."

(6) Every person who contravenes sub-sections (1) and (2) is deemed to have committed a Minor Offence under, and be subject to, the Transport Amendment Act 1995.

13. Prohibition on motor vehicles, motorcycles or bicycles travelling abreast - The principal Act is amended by inserting after section 86A, the following -

"86B. Prohibition on motor vehicles, motorcycles or bicycles travelling abreast -

(1) Except for the purposes of overtaking, no person operating a motor vehicle, motorcycle, motorised quad-bike or trike or bicycle on a public road shall travel abreast another motor vehicle, motorcycle, motorised quad-bike or trike or bicycle for any purpose.

(2) Subsection (1) shall not apply to a police escort."

14. Repeal of Section 62 - Section 62 of the principal Act is hereby repealed.

15. Repeal of the Transport Amendment Act 1989- The Transport Amendment Act 1989 is hereby repealed.

This Act is administered by the Ministry of Police

SCHEDULE

Section 86A Approved safety helmets (not bicycles)

All safety helmets for users of motorbikes or trikes used or sold in Cook Islands for road use are required to comply with one or more approved international standards. These are:

- UN/ECE Regulation No. 22: Protective helmets and their visors for drivers and passengers of motor cycles and mopeds (Europe)
- Australian Standard AS 1698: Protective helmets for vehicle users
- New Zealand Standard NZ 5430: Protective helmets for vehicle users
- Snell Memorial Foundation: Helmet Standard for use in motorcycling
- Federal Motor Vehicle Safety Standard No. 218: Motor-cycle helmets*
- British Standard BS 6658: Specification for protective helmets for vehicle users (for type A helmets only)
- Japan Industrial Standard T8133.

* Due to the lack of a formal certification system for the US FMVSS 218 standard, this standard only applies to motorcycle helmets that have been manufactured and purchased in the USA.

Standards marks

Any helmet complying with one of the above standards will be labelled with a standards mark, such as one of the following:



Australian Standard

AS 1698



UN/ECE 22 (example only)



NZS 5430

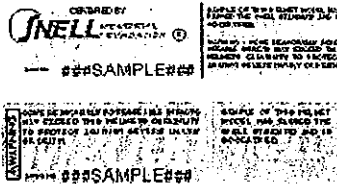


BS 6658



JIS T8133

Snell Standards



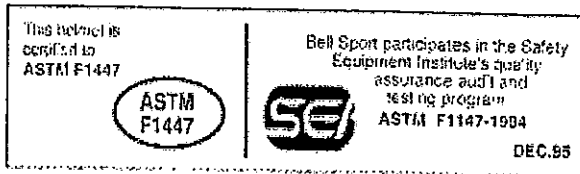
Helmets complying with FMVSS 218 will be marked with the letters 'DOT'.

Section 12

Approved safety helmets (bicycles)

All safety helmets for users of bicycles used or sold in Cook Islands for road use are required to comply with one or more approved international standards and bear an approved standards stickers.

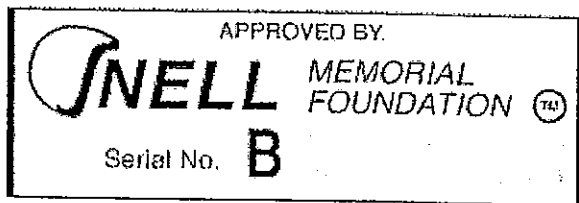
The approved standards stickers are:



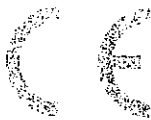
Complies with standard ASTM F1447-1994



Complies with standards AS/NZS 2063:1996, NZS 5439 or AS 2063.2



Complies with standard Snell B90 or B95



Complies with European standard EN 1078.

The US Consumer Product Safety Commission's bicycle helmet safety standard is also approved.