



ANALYSIS

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An Act to amend the Transport Act 1966 to—

- (a) to lower the prescribed blood and breath alcohol limits; and
- (b) prohibit the use of mobile phones and similar electronic devices while driving, subject to exceptions; and
- (c) prohibit the use of headphones and similar devices while driving, subject to exceptions; and
- (d) make changes to the requirements about the supply of safety helmets including increasing the fine for breach of the provisions; and
- (e) make it compulsory for the drivers of motor cycles and power cycles and persons in control of electric bikes, on the road, to wear, and ensure any passenger wears, an approved safety helmet.

(25 March 2020)

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Transport Amendment Act 2020.
- 2 Commencement**
This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.
- 3 Application**
 - (1) The provisions of this Act apply as set out in this section.

- (2) The following provisions apply to all of the Cook Islands on and after commencement:
 - (a) sections 1 to 8;
 - (b) section 9 to the extent it repeals section 86A(6) and (7);
 - (c) section 10 to the extent it inserts items relating to *new sections 30A and 30B* into the Fourth Schedule.
- (3) The rest of section 9 and section 10 to the extent it inserts an item relating to *new section 86A* into the Fourth Schedule apply—
 - (a) to Rarotonga on and after the date that is 3 months after commencement; and
 - (b) to islands other than Rarotonga on and after the date appointed by the Queen's Representative by Order in Executive Council made on the advice of each Island Government of the island where it will apply.

4 Principal Act amended

This Act amends the Transport Act 1966 (the **principal Act**).

5 Section 2 amended

- (1) The definition of **bicycle** in section 2 is amended by inserting, after “includes”, the words “an electric bike and”.
- (2) Section 2 is amended by repealing the definition of **prescribed limit** and substituting the following definition:

“**prescribed limit** means—

 - “(a) 250 micrograms of alcohol per litre of breath as measured by an approved device; or
 - “(b) 50 milligrams of alcohol per 100 millilitres of blood as measured by an approved analyst”.
- (3) Section 2 is amended by inserting, in its appropriate alphabetical order, the following definition:

“**electric bike** means a pedal bicycle that has 1 or more electric propulsion motors attached to it”.

6 Section 28C amended

Section 28C(1)(b) is amended by repealing subparagraph (i) and substituting the following subparagraph:

- “(i) it appears to the officer that the level of alcohol in the person's breath exceeds the prescribed limit; and”.

7 New sections 30A and 30B inserted

The following sections are inserted after section 30:

“30A Ban on using mobile phones and similar electronic devices while driving

- “(1) A person must not, while driving a vehicle, use a mobile phone or similar electronic device (for example, a tablet or smart watch)—
 - “(a) to make, receive, or end a phone call; or
 - “(b) to create, send, or read a text; or
 - “(c) to create, send, or read an email; or
 - “(d) to create, send, or view a video message; or

- “(e) to communicate in a way similar to those described in any of paragraphs (b) to (d); or
- “(f) in a way other than described in any of paragraphs (a) to (e).
- “(2) The ban on using a phone or device applies—
 - “(a) whether or not the phone or device requires the driver to hold or manipulate it while it is used; and
 - “(b) subject to the exceptions in subsections (3) and (4).
- “(3) Despite subsection (1), a person may, while driving a vehicle, use a phone or device in the following ways:
 - “(a) to make a 999 call if it is unsafe or impracticable to stop and park the vehicle to make the call;
 - “(b) in any of the ways described in subsection (1) if the vehicle has stopped for a reason other than the normal starting and stopping of vehicles in a flow of traffic;
 - “(c) as described in subsection (1)(f) if that use does not require the driver to hold or manipulate the phone or device.
- “(4) Despite subsection (1), a constable, or an ambulance or a fire-brigade driver, may, while driving a vehicle, use a phone or device to make, receive, or end a phone call if the constable or driver is making, receiving, or ending the call in the execution of their duty.
- “(5) A person who contravenes subsection (1) commits a minor offence under Part VA (Minor Offences) and is liable to a fine not exceeding \$100.
- “**30B Ban on wearing headphones and similar devices while driving**
- “(1) A person must not, while driving a vehicle, wear headphones, earphones earbuds, or a headset covering, or inserted into, the ears.
- “(2) The ban on wearing headphones, earphones, earbuds, and headsets is subject to the exceptions in subsections (3) and (4).
- “(3) Despite subsection (1), a person may, while driving a vehicle, wear headphones, earphones, earbuds, or a headset—
 - “(a) if the vehicle has stopped for a reason other than the normal starting and stopping of vehicles in a flow of traffic; or
 - “(b) for safety related to driving the vehicle, for example, when operating noisy machinery; or
 - “(c) to correct subnormal hearing.
- “(4) Despite subsection (1), a constable, or an ambulance or a fire-brigade driver may, while driving a vehicle, wear headphones, earphones, earbuds, or a headset if the constable or driver is required to do so in the execution of their duty.
- “(5) A person who contravenes subsection (1) commits a minor offence under Part VA (Minor Offences) and is liable to a fine not exceeding \$100.

8 New heading and section 85A inserted

The following heading and section are inserted after section 85:

Importation, sale, and supply of safety helmets for road use

“85A Importing, selling, or supplying safety helmets for road use

- “(1) No safety helmet may be imported or sold, or supplied by a person renting out a motorcycle, power cycle, or bicycle to another person, in the Cook Islands for road use unless—

- “(a) it complies with 1 or more approved international safety standards set out in the Schedule to the Transport Amendment Act 2007, as appropriate for that type of helmet; and
 - “(b) bears the standard mark as specified in the Schedule, as appropriate to the type of helmet.
- “(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding \$10,000.”

9 Section 86A repealed and new section substituted

Section 86A is repealed and the following section substituted:

“86A Approved safety helmets must be worn

- “(1) A person must not drive a motorcycle or power cycle or be in control of an electric bike, on a road, unless that person and any passenger on the vehicle is wearing an approved safety helmet that is—
- “(a) free from damage, wear, tear, or modifications that may adversely affect the safety it provides; and
 - “(b) securely fastened.
- “(2) A person must not drive a motorised quad-bike or trike on a road at a speed of more than 40 kilometres an hour unless that person and any passenger is wearing an approved safety helmet that complies with the requirements in subsection (1)(a) and (b).
- “(3) A person driving or riding on a motorcycle, power cycle, motorised quad-bike, trike, or electric bike (including a passenger) who is wearing a helmet must immediately produce the helmet for inspection on the demand of a constable, and must, if so required, hand it to the constable for that purpose.
- “(4) For the purposes of subsections (1) and (2), an approved safety helmet must—
- “(a) be of a class, type, or make that meets the relevant safety standards for approved safety helmets set out in the Schedule of the Transport Amendment Act 2007; and
 - “(b) bear a sticker inside it stating the standard with which it complies.
- “(5) A person who contravenes any of subsections (1) to (3) commits a minor offence under Part VA (Minor Offences) and is liable to a fine not exceeding \$250.”

10 Fourth Schedule amended

The item relating to section 86A in the Fourth Schedule is deleted and the following items are inserted in their appropriate numerical order:

Section	Offence	Fine payable
30A(1)	Using mobile phone or similar electronic device while driving	\$100
30B(1)	Wearing headphones or similar device while driving	\$100
86A(1) to (3)	Failing to comply with safety helmet requirements.	\$250

This Act is administered by the Ministry of Police.
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