

## **New drink driving limits – FPP and medical certification implications**

In the last edition of *The Legal Lounge™*, I discussed some recent developments and potential law changes that might affect the current FPP test.

With Christmas approaching, and new drink driving laws about to take effect shortly, I thought it timely to also remind readers about the potential implications of drink driving offences on your fit and proper person, and possibly medical certification, status for civil aviation purposes.

### **New drink driving limits – 1 December 2014**

From 1 December 2014, the current excess breath and blood alcohol limits for driving will reduce from:

- 400 micrograms (mcg) of alcohol per litre of breath, down to 250mcg; and/or
- 80 milligrams (mg) of alcohol per 100ml of blood, down to 50mg.

This brings the limits in line with those in many Australian states. Under the new laws, drivers who commit an offence between 251 – 400mcg of breath, or between 50 – 80mg per 100ml of blood, will be issued with an infringement offence notice and fined \$200 and receive 50 demerit points. Drivers who accumulate 100 or more demerit points for driving offences within 2 years are automatically suspended from driving for three months, and these demerit points will be included in that tally.

### **Fit and proper person implications**

Although a breach of the new limit below 400mc of breath or 50mg of blood is to be treated as an infringement offence, and thus does not attract a conviction or automatic loss of licence, it is still relevant to the civil aviation fit and proper person (FPP) test.

It is an ongoing obligation for all aviation industry participants to continue to meet the fit and proper person test to exercise any privileges in the civil aviation system. In determining a person's fitness, the Director must consider not only traffic offences, but a person's "*compliance history with transport safety regulatory requirements*" and "*any evidence that [a] person has committed a transport safety offence*". A history of transport safety breaches, including for road traffic infringement offences, could contribute to an adverse finding that a person is not fit and proper to continue to hold an aviation document or to continue to be approved as a senior person in an aviation organisation.

Drug and alcohol related offending, and drink driving offending in particular, are likely to be of particular interest and significance to this assessment, particularly for pilots and air traffic controllers, and those in senior person positions with flight safety related responsibilities. If a participant has accumulated demerit points and the addition of an infringement for breaching the new alcohol limits leads to loss of licence, this would be of increased significance. Participants who are subject to a review of their FPP status or who are applying for a new aviation document or privilege, should therefore be aware of the potential for not only convictions, but infringement offences under the new limits, to become relevant to their FPP status in the civil aviation system.

## **Medical certification implications**

Drug and alcohol related offending can at times be a result of an underlying dependency or addiction issue. For this reason, the CAA consider that such offending may signify a change or potential change in a medical certificate holder's medical status, and potentially interfere with the safe exercise of the privileges of a pilot or air traffic controller's licence. The CAA position is that this triggers a positive legal obligation on medical certificate holders to disclose any such offending under s27C of the Civil Aviation Act 1990.

While this legal interpretation could be debatable, I have always advised participants to err on the side of caution and disclose any new convictions for drug or alcohol related offences while a medical certificate remains current, without delay. The CAA require in any event any such history of offending to be disclosed when applying for or renewing a medical certificate, as part of the application process, so it is unlikely to remain a secret for long.

More often than not, in my experience, participants who have disclosed a recent breach or pending prosecution have been permitted to continue to exercise the privileges of their licence and, as long as they have subsequently passed a medical assessment, the matter has gone no further. In some cases, the CAA medical unit may suspend a medical certificate pending the outcome of medical testing, but this usually only applies where there is a recent history of such offending or the alcohol reading was particularly high.

## **Whether an infringement offence for drink driving should be disclosed to CAA**

In my view, not every infringement offence committed gives rise to an automatic duty to disclose such offending to the CAA for the purposes of assessing a person's ongoing FPP status. However, if issue of an infringement notice for drink driving leads to a participant breaching the demerit points limit and thus losing their licence, I would suggest that a positive duty may arise, particularly if the other infringement offences contributing to the loss of licence have not previously been disclosed to the CAA.

Whether a positive obligation to disclose an infringement offence for drink driving for medical certification purposes arises under s27C is also more debatable. A breach of the lower limit but not the existing limit may signify no more than that a person was genuinely unaware that they had consumed more than permitted under the new limit, particularly as road users adjust to the new limits over time. Once again, if issue of an infringement notice leads to loss of licence due to demerit points, or there is a history of similar offending, I would suggest that disclosure would be advisable. If in doubt, seek legal advice, or err on the side of disclosure.

For those exercising commercial privileges in the system, the best advice I can give for the festive season, is to drive sober or take a taxi. Take care until next year.

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