

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) AMENDMENT BILL (No. 2) 2002

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Operations (Road Use Management) Amendment Bill (No.2) 2002 is to introduce provisions relating to the taking of blood from drivers who are, or appear to be, unconscious or unable to communicate when they attend hospital as a result of a road crash, for the purposes of blood alcohol content testing.

REASONS FOR THE BILL

Despite continuing road safety improvements, vehicle crashes involving alcohol represent a major social, economic and health issue. Alcohol use is considered to contribute to a substantial proportion of the more severe crashes, especially those involving a fatality.

A number of potentially culpable drivers are escaping penalty for drink driving when they attend hospital following a road crash. The introduction of legislation that allows the police to request the taking of a blood sample from a driver who is, or appears to be, unconscious or unable to communicate will resolve the inequity that exists between these drivers who currently cannot be tested, and conscious drivers who can.

Amendment to the *Transport Operations (Road Use Management) Act 1995* is necessary to ensure culpable drink drivers are detected and prosecuted, in order to improve the safety of Queensland road users.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

No significant costs are associated with the implementation of this legislation. There will be an incremental cost associated with the small

increase in tests, however it is proposed to access funding for this road safety program through speed camera revenue.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The amendment proposed to s.80 of the Act, which inserts a new subsection (10) is a fundamental legislative principle concern in relation to whether the legislation has sufficient regard to the rights and liberties of individuals.

The amendment provides the ability to blood test drivers who attend hospital for treatment, and who are, or appear to be, unconscious or unable to communicate. These persons cannot refuse to give a sample. However, the ability to test unconscious drivers will address the current iniquitous situation where unconscious or unable to communicate suspected drink drivers are escaping serious driving convictions, and a greater number are avoiding attention (and the related possibility of rehabilitation) for drink driving.

It will be lawful to take a specimen of blood from these persons without consent, the results of which may be used as evidence against them, possibly contravening their civil rights and liberties. However, the Parliamentary Travelsafe Committee has reported that the general public believe that legislation aimed at protecting the public from the drinking driver more than counterbalances any loss of individual freedom. In order to protect the driving public from drink drivers, it is believed that the benefits for the community far outweigh the costs to individual rights, a view supported by the Parliamentary Travelsafe Committee.

The amendment proposed to s.80 of the Act, which inserts a new subsection (30) is a fundamental legislative principle concern in relation to whether the legislation provides for the reversal of the onus of proof in criminal proceedings without adequate justification.

The amendment provides that a qualified assistant who takes a specimen of blood from a person for a laboratory test, is to be taken to have been directed by a doctor or nurse to take the specimen. The amendment also provides that any equipment used in a laboratory test of a specimen of

blood is to be taken to have given accurate results. While this effectively reverses the onus of proof in relation to the authority of a qualified assistant to take a blood specimen, as well as in relation to the accuracy of the equipment, this new provision will join other provisions of s.80 directed at facilitating the operation of the section, such as providing for the conclusiveness of particular certificates in the absence of proof to the contrary. This amendment will add to the comprehensiveness of these evidentiary provisions which have been found to be necessary for the effective operation of the section. Without providing for a reversal of the onus in these circumstances, the scheme would be particularly difficult to administer.

NOTES ON CLAUSES

Clause 1 states the short title of the Act.

Clause 2 states the Act to be amended.

Clause 3 amends section 80 of the Act.

Subclause (1) amends s.80(1) by inserting a definition for the terms “health care professional”, “nurse” and “qualified assistant”.

“Health care professional” is defined to mean a doctor, nurse or a qualified assistant.

“Nurse” is defined to mean a person registered under the *Nursing Act 1992* as a registered nurse.

“Qualified assistant” is defined to mean a person whose duties include the taking of blood. This would include persons such as phlebotomists and enrolled nurses trained in taking blood.

Subclause (2) omits s.80(8K). This provision is redundant as it is now replaced by the amended s.80(9B) – see subclauses (4) and (5).

Subclause (3) amends s.80(8L)(a) to correct a formatting inaccuracy.

Subclause (4) amends s.80(9B). This provision has been expanded to apply to any person who is required to provide a specimen of blood under s.80, to allow a doctor or nurse, or a qualified assistant directed by a doctor

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or nurse to take the specimen whether or not the person consents to the taking.

This authorisation to take a blood sample, with or without consent, provides protection for health care professionals against the operation of s.246(1) of the *Criminal Code* (Assaults Unlawful).

Subclause (5) amends s.80(9B) to replace references to ‘doctor’ with the new term ‘health care professional’. This amendment will allow appropriately trained persons, other than doctors, to take specimens of blood.

Subclause (6) amends s.80(9C) by omitting the word ‘doctor’ and inserting ‘doctor or nurse’.

Subclause (7) amends s.80 by inserting a new ss.80(10), (10A), (10B), (10C), (10D), (10E), (10F) and (10G).

Inserts a new s.80(10). This amendment will provide police officers with the power to require a doctor or nurse who is attending a person who is at a hospital for treatment, to obtain a specimen of the person’s blood for a laboratory test. This will only apply if the person is a person whom the police officer may require to provide a specimen of breath for a breath test under subsection (2) or (2A), and the person is, or appears to be, unable to consent to the taking of the specimen of blood because the person is, or appears to be, unconscious or otherwise unable to communicate.

Inserts a new s.80(10A) to require that the doctor or nurse, after being given a requirement by a police officer under subsection (10), must take a specimen of the person’s blood that will enable the laboratory test to be carried out, or ensure that a qualified assistant takes the specimen of blood.

Inserts a new s.80(10B) to clarify that a qualified assistant may take a specimen of blood, if directed to do so by the doctor or nurse who was given a requirement by a police officer under subsection (10).

Inserts a new s.80(10C) to require that a health care professional who takes the specimen of blood under subsection (10A)(a) or (10B) must, immediately after taking such specimen, take another specimen of blood to be given to the person as soon as practicable.

Inserts a new s.80(10D) to provide circumstances where a doctor or nurse need not comply with subsection (10A). These include where the doctor or nurse reasonably believes that taking the specimen would be prejudicial to the person’s treatment, or the doctor or nurse has another reasonable excuse.

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Under s.80(10D)(a), a doctor or nurse may reasonably believe that taking a specimen would be prejudicial to a person's treatment if the person sustained serious injuries and required emergency surgery as a result.

Inserts a new s.80(10E). This provision precludes a police officer from making a requirement under subsection (10) if the person has already provided a specimen of breath for analysis by a breath analysing instrument for the same occurrence or event which occurred prior to the person being at a hospital for treatment, and the specimen has been analysed by a breath analysing instrument, and there is a certificate under subsection (15) for the analysis.

Inserts a new s.80(10F) to clarify that subsections (10A) and (10C) do not create offences.

Inserts a new s.80(10G) to clarify that it is lawful for a health care professional acting under subsection (10A)(a), (10B) or (10C) to take a specimen of a person's blood, even though the person has not consented to the taking.

This amendment also provides protection for health care professionals against the operation of s.246(1) of the *Criminal Code* (Assaults Unlawful).

Subclause (8) amends s.80(16) to clarify that this subsection applies to any specimen of blood or urine which has been obtained under section 80.

Subclause (9) amends ss.80(16C), (18), (18A), and (26)(c) by replacing 'doctor' with the new term 'health care professional'. This amendment will allow appropriately trained persons, other than doctors, to take specimens of blood as a result of a police requirement. This amendment will not require persons other than doctors to be 'called out' to a police station, vehicle, vessel or other place for the purpose of taking a blood specimen.

Subclause (10) amends s.80(20) to reflect the new term of 'health care professional', and to clarify that a person who has provided a specimen of blood for laboratory test and who wants a specimen of their blood for their own purposes, must make such request to the health care professional.

Subclause (11) amends s.80(20A) to reflect the new term of 'health care professional', and to clarify that upon a request under subsection 80(20), a health care professional who took a specimen of blood must give the person a specimen of the person's blood.

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Subclause (12) amends s.80(22)(ba)(iii)(B). The purpose of this amendment is to ensure that this subsection reflects new terminology. This subsection will apply where, because of the remoteness of the area, a doctor or nurse is not available to take a specimen of blood from a person for a laboratory test or to direct a qualified assistant to take the specimen.

Subclause (13) amends s.80(22)(e) to clarify that a doctor or nurse may make a certification in writing under this subsection.

Subclause (14) amends s.80(22)(e) by inserting the words ‘or taking’ after the word ‘provision’. This amendment clarifies that this subsection applies where a person has been required by a police officer to provide a specimen of blood, as well as where a specimen of blood has been taken from a person as the result of a requirement by a police officer to a doctor or nurse under subsection (10).

Subclause (15) amends s.80(23) to clarify that a police officer may take a person to a place where the officer knows or has a reasonable belief that a doctor is available for the taking of a specimen, if, for the taking of a specimen of blood at a hospital, the officer believes that a nurse is also not available. This is in addition to the existing grounds of the officer believing that a doctor is not available at the hospital or to go to the police station to take the specimen.

Subclause (16) amends s.80(27) by inserting a new s.80(27)(d). This amendment requires that a defendant who is giving a notice under s.80(26)(b), states the grounds on which the defendant intends to rely to prove that the result of the laboratory test was not a correct result.

The purpose of this amendment is to limit the occurrences when analysts, health care professionals and others involved in the blood testing process may be called to appear in court to give evidence regarding the taking or analysis of a blood sample. These provisions should deter non-legitimate claims as the defendant will be required to substantiate their application, before the court will grant leave to require a person involved in the blood taking, receipt, storage or testing to attend a hearing and give such evidence.

Subclause (17) amends s.80(28) by relocating the defined term ‘suspend’ to s.80(1). For consistency, all defined terms for the purposes of s.80 will be contained in s.80(1).

Subclause (18) amends s.80 by inserting a new ss.80(28), (29) and (30).

Inserts a new s.80(28). This amendment requires a person who gives a notice under s.80(26)(b) to be granted with the leave of the court to require

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persons to attend and give evidence at a hearing. This applies to persons involved in the taking, receipt, storage or testing of a specimen of blood.

The purpose of this amendment is to limit the occurrences when analysts, health care professionals and others involved in the blood testing process may be required to appear in court to give evidence regarding the taking or analysis of a blood sample. These provisions should deter non-legitimate claims as the defendant will be required to substantiate their application, before the court will grant leave to require a person involved in the blood taking, receipt, storage or testing to attend a hearing and give such evidence.

Inserts a new s.80(29) to provide the grounds in which a court must be satisfied before granting leave under s.80(28), for a defendant to require a person involved with the specimen to attend a hearing and give evidence.

The purpose of this amendment is to limit the occurrences when analysts, health care professionals and others involved in the blood testing process may be required to appear in court to give evidence regarding the taking or analysis of a blood sample. These provisions should deter non-legitimate claims as the defendant will be required to substantiate their application, before the court will grant leave to call a person involved in the blood taking, receipt, storage or testing to attend a hearing and give such evidence

Inserts a new s.80(30). This amendment provides evidentiary support for the operation of section 80. In circumstances where a qualified assistant takes a specimen of blood from a person for a laboratory test, the qualified assistant is taken to have been directed by a doctor or nurse to take the specimen. The amendment also provides that any equipment used in a laboratory test of a specimen of blood is to be taken to have given accurate results. These provisions will apply in a proceeding for an offence against s.79, unless the contrary is proved.

Clause 4 inserts new sections 80A and 80B.

Inserts a new s.80A to create an offence where persons obstruct a health care professional when taking a specimen of blood from someone else, without reasonable excuse. For consistency, this offence will apply to all relevant subsections of s.80 where a specimen of blood is required to be taken from a person. The maximum penalty for this offence is 40 penalty units. Within s.80A(2) the term 'health care professional' is defined to have the same meaning as in s.80, and the term 'obstruct' is defined to include hinder, resist and attempt to obstruct.

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Inserts a new s.80B to provide for the interstate exchange of information under section 80 or a corresponding law.

Section 80B(1) provides for the commissioner to enter into an arrangement with an interstate commissioner. This arrangement will be for the reciprocal exchange of information under s.80 or a corresponding law, between Queensland and another State. This provision will allow for greater coordination and cooperation between Queensland police and transport authorities and their counterparts in other Australian jurisdictions regarding the exchange of information on drink driving. An arrangement under this provision will allow for the exchange of blood and/or breath test results data, to improve the level of information available about drink driving in Australia.

Section 80B(2) defines the term “interstate commissioner” to mean the commissioner of the police service (however described) of another State.

Clause 5 amends s.167 of the Act.

Subclause (1) renumbers subsection 167(1)(h) as 167(1)(i).

Subclause (2) inserts a new subsection 167(1)(h) to include a health care professional under section 80 acting under that section, as an official under this section. This will provide health care professionals with indemnity from civil liability for an act done, or omission made, honestly and without negligence under a transport Act.

Subclause (3) corrects a reference within subsection 167(3)(a) as a result of the above amendments.

Subclause (4) corrects a reference within subsection 167(3)(b) as a result of the renumbering in subclause (1).