

# **POLICE SERVICE ADMINISTRATION (ALCOHOL AND DRUG TESTING) AMENDMENT BILL 2003**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The objective of the legislation is to provide for random alcohol breath testing and targeted urine drug testing for police officers and staff members working in critical areas to—

- (a) ensure appropriate steps are taken in the interests of the health and welfare of officers, and staff members in critical areas; and
- (b) enhance the public's confidence in the Service and the integrity of the Service.

#### **Means of Achieving Policy Objectives**

The Bill achieves its objectives by amending the *Police Service Administration Act 1990* to allow for a scheme of drug and alcohol testing of police officers and staff members working in critical policing areas.

#### **Alternative Means of Achieving Policy Objectives**

There are no alternative means of achieving the policy objectives other than by providing a legislative basis for conducting the blood and alcohol testing.

#### **Estimated Cost for Government Implementation**

The costs involved in implementing this legislation will be associated with conducting random breath testing on police officers and staff members and drug testing where a reasonable suspicion is formed that an officer or member may be in breach of this legislation.

The cost of implementing the scheme will be met from the existing Police Service budget.

### **Consistency with Fundamental Legislative Principles**

The legislation relates primarily to health and welfare issues and where appropriate, disciplinary proceedings under *the Police Service Administration Act 1990*. With one exception, it does not involve criminal sanctions. The Bill does not breach Fundamental Legislative Principles.

### **Consultation conducted in Development of the Bill**

With respect to the contents of the Bill, the following departments were consulted with extensively—

- Department of Premier and Cabinet;
- Queensland Treasury; and
- Department of Industrial Relations.

Prior to the development of the Bill, a Drug and Alcohol Working Party was established by the Police Service to examine all issues associated with the random and targeted testing of police staff. This working party involved—

- Crime and Misconduct Commission;
- Queensland State Public Sector Union;
- Queensland Police Union of Employees; and
- Queensland Police Commissioned Officers Union.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short title**

*Clause 1* provides the short title of the Bill.

#### **Commencement**

*Clause 2* provides that the Act is to commence on proclamation.

### **PART 2—AMENDMENT OF POLICE SERVICE ADMINISTRATION ACT 1990**

#### **Act amended**

*Clause 3* provides that the part amends the *Police Service Administration Act 1990*.

#### **Amendment of s 1.4 (Definitions)**

*Clause 4* amends section 1.4 of the *Police Service Administration Act 1990* by inserting cross references to new definitions relevant to this Bill into the Dictionary of that Act.

#### **Insertion of new pt 5A**

*Clause 5* provides for the insertion of a new “Part 5A – Alcohol and Drug Tests” into the *Police Service Administration Act 1990*. Part 5A contains the following provisions –

## **PART 5A—ALCOHOL AND DRUG TESTS**

### *Division 1—General*

#### **5A.1 Object of pt 5A**

The objects of the part are—

- to ensure appropriate steps are taken in the interests of the health and welfare of relevant members of the Queensland Police Service; and
- to enhance the public's confidence in the Queensland Police Service and the integrity of the Service.

#### **5A.2 Definitions for pt 5A**

##### *“alcohol test”*

For the purposes of the Bill an alcohol test means a test used to determine whether a relevant member is over the limit applying to that member.

##### *“authorised person”*

An authorised person is to be a commissioned officer of police above the rank of the person to be tested in the case of random alcohol tests, periodic testing of covert operatives, and targeted alcohol and drug testing. In all cases the Commissioner and Deputy Commissioner are to be authorised persons.

##### *“covert operative”*

For the purposes of continuous testing of covert operatives, i.e., police officers performing an “undercover” role, the definition of a covert operative in the Dictionary to the *Police Powers and Responsibilities Act 2000* is to be adopted.

##### *“critical area”*

*Clause 5A.5* defines a critical area. Staff members working in critical areas, i.e., in a direct support role for operational police officers or in an area whose functions involve a measure of risk, are to be subject to similar testing as police officers. This definition identifies those areas which are critical to this support role as—

*Police Service Administration (Alcohol and Drug  
Testing) Amendment Bill 2003*

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- a communications centre;
- a driver training facility, but only with respect to staff members or recruits who are instructors, drivers or mechanics;
- a facility used for storing dangerous drugs under the *Police Powers and Responsibilities Act 2000* (use of dangerous drugs for training);
- a magazine used for storing explosives;
- a police armoury or weapons collection facility, i.e., an issuing, storing, repair or retrieval point for firearms;
- a property point within the meaning of the *Police Powers and Responsibilities Act 2000*;
- a watch-house;
- a weapons training facility, e.g., a range on which firearms are discharged as part of police training;
- the police Airwing. Although Airwing pilots are subject to Commonwealth legislation governing alcohol and drug consumption prior to piloting an aircraft, this Bill will also apply to employees who are responsible for weighing loads for police aircraft and for any other task which is relevant to the safety of an aircraft;
- a place prescribed by regulation as a critical area.

***“critical incident”***

For the purposes of the legislation a critical incident is defined as—

- an incident in which it was necessary for an officer on duty to discharge a firearm in circumstances that caused or could have caused injury to a person. Should the officer not be on duty, the legislation in this instance will not apply as the officer will be subject to the same laws as other members of the public as contained in the *Weapons Act 1990*;
- a death of a person in custody;
- a vehicle pursuit or a workplace incident at a police station or police establishment in which a person dies or is admitted to hospital for treatment of injuries; or

*Police Service Administration (Alcohol and Drug  
Testing) Amendment Bill 2003*

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***“dangerous drug”***

Reference to a dangerous drug in this legislation will have the same meaning given to the term in the *Drugs Misuse Act 1986*.

***“evidence”***

The term evidence is defined with respect to its meaning for the purposes of a dangerous drug or a targeted substance in a person’s urine.

***“general alcohol limit”, “low alcohol limit” ,“no alcohol limit” and  
“relevant member”***

The definitions are provided for the purposes of interpretation of the Bill.

***“over the limit”***

The term is defined to describe a person who is over the general alcohol limit, the low alcohol limit or the no alcohol limit.

***“random alcohol test”***

The terms refers to an alcohol test conducted under section 5A.9.

***“relevant member”***

The term provides a cross reference to section 5A.2

***“targeted substance”***

The term means—

- a dangerous drug within the meaning of the *Drugs Misuse Act 1986*;
- a controlled drug, restricted drug or a poison under the *Health Act 1937* that may impair a person’s physical or mental capacity to perform their duties without causing risk to themselves or others; or
- any other substance that may impair a person’s physical or mental capacity to perform their duties without causing risk to themselves or others.

***“targeted substance test”***

The terms refers to a test conducted for a targeted substance.

### **5A.3 Persons to whom pt 5A applies**

The part will apply only to a “relevant member” of the Queensland Police Service and not to all Service staff. A relevant member is a—

- a police officer;
- a staff member performing functions in a critical area (see definition of critical area);
- a person who is employed as an assistant watch-house officer;
- a police radio and electronics technician; or
- a police recruit.

### **5A.4 Substances to which pt 5A applies**

The part will apply only in relation to substances mentioned in this section. They are—

- alcohol;
- a dangerous drug within the meaning of the *Drugs Misuse Act 1986*;
- a substance that is a controlled drug, a restricted drug or a poison under the *Health Act 1937* that may impair a person’s physical or mental capacity;
- another substance that may impair a person’s physical or mental capacity.

### **5A.5 Part does not affect other powers**

The part is not to affect the commissioner’s powers with respect to section 8.3 of the *Police Service Administration Act 1990* (unfitness on medical grounds). Therefore, where necessary, the commissioner may use the provisions of section 8.3 although action may also have been taken under this part.

## ***Division 2—Provisions about alcohol testing***

### ***5A.6 When is a person over the limit***

For the purposes of the *Police Service Administration Act 1990* only, limits apply to relevant members as mentioned in section 5A.2. This obviously does not mean that an employee not mentioned in section 5A.2 is entitled to be under the influence of alcohol or a drug while performing duty and not be subject to disciplinary measures that may be taken under the *Police Service Administration Act 1990* or the *Public Service Act 1996*. It simply means that the employee cannot be tested under this part.

For the purposes of alcohol testing, limits that have been set are determined by breath analysis rather than blood analysis. When expressed as a percentage the “no alcohol limit” represents 0.00%; the “low alcohol limit” equals or exceeds 0.02%; and the “general alcohol limit” equals or exceeds 0.05%.

### ***5A.7 Alcohol limits***

The application of alcohol limits is divided into 3 areas. With the exception of Special Emergency Response Team members, all relevant members must be under the low alcohol limit—

- when reporting for duty for a rostered shift; or
- while on duty for a rostered shift; or
- while on call on a rotational basis.

Clearly, a member may, in exceptional circumstances, be recalled to duty when not rostered for duty or on call. In these cases the low alcohol limit and thus, the Part, cannot to apply to these members as they would not be aware of the impending recall. Although a member who is intoxicated would not be recalled to duty, it is possible that a member who has an alcohol reading of 0.03% could be in exceptional circumstances. Therefore, reference is made to ‘rostered duty’ in the section.

However, a member who is on call on a ‘rotational basis’ must be under the low alcohol limit during the period he or she is on call. For example, a member working in a radio and electronics area may be paid an ‘on call’ allowance and is aware that he or she might be recalled to duty after normal hours for one week in each month when he or she is on call.



On call on a 'rotational basis' differs from the case of police officers at 1 or 2 officer stations who, other than when on recreation leave, remain on call during the entire time the officers work at that station. Thus the officers may be recalled to duty 24 hours a day, 7 days a week. It is not practicable in these circumstances to expect the officers to be under the low alcohol limit at all times. Although the officers will have to be under the low alcohol limit when reporting for rostered duty or on rostered duty, they will only need to be under the general alcohol level at other times.

The no alcohol limit will apply in the case of Special Emergency Response Team members who are reporting for duty, while on duty, or while on call on a rotational basis. Due to the critical and dangerous nature of work undertaken by these officers, often entailing high levels of risk to life, it is imperative that the officers are subject to a no alcohol limit in the circumstances outlined.

#### ***5A.8 Circumstances for alcohol testing***

The section provides that an authorised person may require a relevant member to submit to an alcohol test if—

- the person has been involved in a critical incident;
- the test is authorised under section 5A.8 (random alcohol testing);
- an authorised person reasonable suspects the person is contravening or has contravened section 5A.6 (alcohol limits); or
- for an officer who is an applicant to become a covert operative, the person is required to undergo a medical examination for deciding the person's suitability to be a covert operative.

#### ***5A.9 Random alcohol testing***

Subsection (1) provides the lawful basis for an authorised person to require a relevant member to submit to a random alcohol test.

Subsection (2) qualifies subsection (1) by providing that an authorised person may conduct the test only with the approval of the commissioner or deputy commissioner unless it is done in accordance with a regulation as referred to in subsection (2)(b). Subsection (5) also provides that the authority to give the approval mentioned in subsection (2)(a) cannot be delegated to any other person.

Subsection (3) allows for a regulation to be created that may prescribe the criteria for deciding when and where a random test is to be conducted. By way of example, the regulation may prescribe that a computer program may randomly extract names, sections or locations of relevant persons to be tested and print out a list of those names, sections or locations. Should the commissioner or deputy commissioner give an approval that tests are to be carried out in accordance with the random computer generated list, then no further approval will need to be given to an authorised person.

***5A.10 Providing specimen of breath for alcohol test or random alcohol test***

The section provides the power for an authorised person to require a relevant member to provide a specimen of breath for a breath test under section 5A.7 or section 5A.8. However, the test must be performed using an instrument approved by the commissioner and in accordance with the manufacturer's instructions for use of the instrument. To ensure that the sample is provided properly, an authorised person may require a relevant member to provide the specimen to the authorised person's satisfaction.

***5A.11 Failure to provide specimen of breath***

A relevant member who fails to provide a specimen of breath as required is taken to have returned a test result over the alcohol limit for that person.

***Division 3—Provisions about drug testing***

***5A.12 Targeted substance levels***

The section provides that a relevant member must not have evidence of a dangerous drug in the person's urine. There is no leeway in terms of any level permitted to be present in the person's urine.

Subsection (2) recognises that a relevant member may at times need to take a targeted substance in accordance with a prescription issued by a doctor or a targeted substance available over the counter at a chemist. For example, a member may be prescribed anti-depressant medication that may impair the person's physical or mental capacity to perform duties. The subsection is qualified by providing that impairment relates to diminishment of a person's capacity to perform duties without danger to the person or others. This subsection is included as a health and safety

issue that is not related to any disciplinary proceedings which can be taken for a positive targeted substance result. However, should a relevant member be taking a substance prescribed to that person in excess of the amount prescribed by a doctor or recommended by a manufacturer, action may be taken for this breach.

Subsection (3) of the section 5A.11 provides that a relevant member must not have present in the person's urine evidence of a targeted substance that the person may not lawfully take. The subsection also captures the situation where although a substance has lawfully been prescribed or supplied to the member it is taken contrary to the directions of a doctor or the manufacturer of the substance.

### ***5A.13 Circumstances for targeted substance testing***

The section provides the lawful basis for an authorised person to require a relevant member to submit to a targeted substance test if—

- the relevant member—
  - has been involved in a critical incident;
  - is a covert operative;
  - is an officer who is an applicant to become a covert operative and is required to undergo a medical examination or test related to that officer's suitability to perform those duties; or
  - an authorised person reasonably suspects the relevant member is contravening or has contravened section 5A.12.

### ***5A.14 Providing specimen for targeted substance test***

The section provides the power for an authorised person to require a relevant member to provide a specimen of urine for analysis. The requirement may be given orally either in person or by use of a telephone, or may be given in writing or by any form of electronic communication.

Should the specimen be required as a result of a critical incident, the requirement should be made as soon as reasonable practicable after the incident happened. It may not be possible to make a requirement immediately after a critical incident as the relevant member may be injured or in shock.

*Police Service Administration (Alcohol and Drug  
Testing) Amendment Bill 2003*

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Subsection (3) provides that it is lawful for a doctor or registered nurse to give reasonable directions about how the specimen is to be provided and the need to provide a sufficient specimen for testing. The directions must not be inconsistent with any requirements prescribed under a regulation for this section.

Subsection (5) requires the relevant member to provide the specimen in accordance with the directions given by a doctor or registered nurse. A registered nurse is defined as meaning a registered nurse under the *Nursing Act 1992*.

Subsection (6) recognises that a person may not be able to supply a specimen of urine when required due to a medical condition that may prevent the member from providing a specimen or a suitable specimen. In this case the member will not contravene the part nor will a positive test result be recorded. However, what is a reasonable excuse in terms of a medical condition will be subject to the determination of a doctor.

A specimen taken under this section is required by virtue of subsection (7) to be dealt with in a way prescribed by regulation.

#### ***5A.15 Effect of failure to provide specimen of urine***

Failure to provide a specimen of urine will be taken to have been a positive result unless the person has a reasonable excuse under section 5A.14(6).

### ***Division 4—What happens if test result is positive***

#### ***5A.16 If alcohol or targeted substance test positive***

The section applies where a person equals or exceeds the alcohol limit or has a targeted substance in the person's urine.

A list of actions that the commissioner may take is provided in subsection (2). The options are—

- (a) suspend the relevant member from duty until he or she is no longer over the alcohol limit or no longer has a targeted substance in his or her urine;
- (b) correct the relevant member by way of guidance. This is not a disciplinary sanction;

*Police Service Administration (Alcohol and Drug  
Testing) Amendment Bill 2003*

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- (c) require the relevant member to undergo counselling or rehabilitation approved by the commissioner. This option is designed as a welfare measure;
- (d) require the relevant member to attend a government medical officer for an examination of the member's fitness to continue to perform the member's current duties;
- (e) after considering a report of a government medical officer about an examination, move the relevant member to other duties for the time the commissioner considers necessary. This option allows the commissioner to have the member work in an area where a risk to member's safety or to another person's safety is reduced;
- (f) take disciplinary or other action against the relevant member under either the *Police Service Administration Act 1990* or the *Public Service Act 1996*, whichever is relevant to the member. Other action may include standing down or suspending a police officer under section 6.1 of the *Police Service Administration Act 1990*;
- (g) require the relevant member to submit to further testing from time to time until the commissioner is satisfied the reason for making the requirement no longer exists, i.e., until the member is alcohol or substance free.

Subsection (3) provides that only options (a), (b), (c) and (f) of subsection (2) apply where to a member lawfully taking a targeted substance.

Where a relevant member is moved to other duties under subsection (2)(e), the member is to be paid salary and allowances at the rate the member would have been paid if not moved. This provision ensures that a member is not financially penalised by a move made in the interests of welfare and safety. Should the member be moved because of having unlawfully taken targeted substances, the member is still liable to disciplinary action.

Subsection (5) provides a legislative basis for a government medical officer to provide a report of an examination to the commissioner.

#### ***5A.17 Effect of failure to comply***

The section provides that the commissioner may take disciplinary action against a relevant member who fails to attend or complete counselling or

rehabilitation or who fails to attend a government medical officer for an examination.

### ***Division 5—General***

#### ***5A.18 Giving requirements***

The section allows for requirements to be given in a form other than orally in person.

#### ***5A.19 Interfering with specimens***

The section provides that a penalty of 100 penalty units may be imposed on a person found guilty of unlawfully interfering with a specimen of breath or urine provided under the part.

#### ***5A.20 Test result evidence generally inadmissible***

The purpose of this part is welfare and public confidence. Therefore, any tests and results of those tests need to remain confidential. Accordingly, the section provides that anything done under this part or any test result is inadmissible in a civil or criminal proceedings. Additionally, the commissioner and anyone else involved in anything done under the part cannot be compelled to produce to a court any document kept or to disclose to a court any information obtained by virtue of this part.

However, these restrictions on the production of material and the giving of evidence do not apply to—

- a proceeding for a charge of an offence against a relevant member in which the result of a test conducted under this part may be admissible as evidence of the offence charged;
- an inquest in a Coroners Court into the death of a person in a critical incident; or
- a proceeding on an application under the *Industrial Relations Act 1999*, section 74 for reinstatement because of unfair dismissal.

Additionally, the section does not prevent the Commissioner giving a witness anonymity certificate under the *Evidence Act 1977* with respect to disciplinary action which may be resulted from a breach of this Bill.

### ***5A.21 Evidentiary provision***

The section deals with evidentiary provisions for disciplinary, administrative or welfare action relating to certificates produced as a result of the part.

### ***5A.22 Application of Freedom of Information Act 1992***

The *Freedom of Information Act 1992* does not apply to any document created under this part. The exemption is necessary on the basis that media outlets should not be entitled to medical records or other documents relating to the welfare of a member, or to which member was tested under this part.

### ***5A.23 Limitation on disciplinary proceedings***

If 2 or more contraventions of this part by the same member arise from the same facts and circumstances, it is intended that the relevant member be proceeded against for only 1 disciplinary offence.

## **PART 3—AMENDMENT OF JUDICIAL REVIEW ACT 1991**

Schedule 1 (Operation of other laws) of the *Judicial Review Act 1991* is amended to insert *Police Service Administration Act 1990*, part 5A.