

Queensland



TRANSPORT (COMPULSORY BAC TESTING) AMENDMENT BILL 2002



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2002

A BILL

FOR

**An Act to amend the *Transport Operations (Road Use Management)*
*Act 1995***

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Bill 2002*

The Parliament of Queensland enacts—

1

Clause 1 Short title

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This Act may be cited as the *Transport (Compulsory BAC Testing) Amendment Act 2002*.

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Clause 2 Commencement

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This Act commences on a day to be fixed by proclamation.

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Clause 3 Act amended

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This Act amends the *Transport Operations (Road Use Management) Act 1995*.

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Clause 4 Amendment of s 80 (Provisions with respect to breath tests and laboratory tests)

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Section 80(2A)—

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insert—

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‘(d) was otherwise involved in the incident, whether as a passenger or a pedestrian, and is at least 15 years;’.

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Clause 5 Insertion of new ss 80A–80J

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After section 80—

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insert—

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‘80A Taking blood samples in hospitals from accident patient

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‘(1) This section applies if—

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(a) a doctor at a hospital attends an accident patient; or

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(b) there is no doctor at a hospital and a registered nurse accredited by the hospital as competent to perform sampling procedures attends an accident patient at the hospital.

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- ‘(2) The doctor or nurse must take a specimen of the patient’s blood
(“**blood sample**”) for analysis. 1 2
- Maximum penalty—20 penalty units. 3
- ‘(3) The doctor or nurse must take the blood sample as soon as 4
practicable and whether or not the accident patient consents to the taking of 5
the sample. 6
- Maximum penalty—20 penalty units. 7
- ‘(4) This section does not require a doctor or nurse to take a blood 8
sample from an accident patient— 9
- (a) unless when the incident concerned happened, the accident 10
patient was— 11
- (i) driving a motor vehicle involved in the incident; or 12
- (ii) occupying the driving seat of a motor vehicle involved in 13
the incident and attempting to put the motor vehicle in 14
motion; or 15
- (iii) a pedestrian involved in the incident; or 16
- (iv) driving a vehicle, other than a motor vehicle, involved in the 17
incident; or 18
- (v) driving or riding a horse involved in the incident; or 19
- (vi) the holder of a driver licence and occupying the seat in the 20
motor vehicle next to a holder of a learner licence who was 21
driving a motor vehicle involved in the incident; or 22
- (b) if— 23
- (i) a doctor or nurse has already taken a sample of the accident 24
patient’s blood; or 25
- (ii) the doctor or nurse has been informed by a police officer, or 26
reasonably believes, the sample is required for the purposes 27
of section 80; or 28
- (iii) more than 12 hours had passed since the accident concerned 29
happened; or 30
- (iv) the doctor or nurse reasonably believes more than 12 hours 31
had passed since the accident concerned happened. 32

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- ‘(5) In a proceeding against a doctor or nurse for a charge of an offence against subsection (1) or (3), it is a defence for the doctor or nurse to satisfy the court—
- (a) the doctor or nurse reasonably believed taking blood from the person as required by subsection (1) would be prejudicial to the proper care and treatment of the person; or
 - (b) the doctor or nurse did not believe the person was at least 15 years and the belief was reasonable; or
 - (c) the doctor or nurse did not believe the person had attended at or been admitted into the hospital because of an accident on a road involving a motor vehicle or other vehicle or horse; or
 - (d) without limiting paragraph (c), the doctor or nurse did not believe the person was a person from whom the doctor or nurse was required by subsection (2) to take a blood sample and the belief was reasonable; or
 - (e) when the requirement to take a blood sample from the person arose—
 - (i) more than 12 hours had passed since the accident concerned happened; or
 - (ii) the doctor or nurse reasonably believed more than 12 hours had passed since the accident concerned happened; or
 - (f) the doctor or nurse did not know, and could not with reasonable diligence have found out, which of 2 or more persons involved in an accident on a road involving a motor vehicle or other vehicle or horse was a person from whom the doctor or nurse was required by subsection (2) to take a blood sample; or
 - (g) because of the behaviour of the person concerned, the doctor or nurse could not take a sample of blood from the person—
 - (i) when the person attended or was admitted to the hospital; or
 - (ii) a reasonable time after the person attended or was admitted to the hospital; or
 - (h) there was reasonable cause for the doctor or nurse not to take a blood sample from the person as required by subsection (2).
- ‘(6) In this section—

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“accident patient” means a person at least 15 years who attends at or is admitted to a hospital for examination or treatment because of an incident on a road, in Queensland or elsewhere, involving a motor vehicle or other vehicle or a horse.	1 2 3 4
“hospital” includes a place declared under a regulation to be a hospital.	5
‘80B Offence to obstruct health professional taking blood sample	6
‘(1) A person must not obstruct a doctor or nurse in the performance of a duty under section 80A.	7 8
Maximum penalty—20 penalty units.	9
‘(2) A person must not—	10
(a) wilfully behave in a way that prevents a doctor or nurse from taking a sample of the person’s blood as required by section 80A; or	11 12 13
(b) after the accident concerned happened and before the taking of a sample of the person’s blood as required by section 80A, wilfully do anything to change the concentration of alcohol in the person’s blood.	14 15 16 17
Maximum penalty—	18
(a) for a secondary participant—30 penalty units; or	19
(b) otherwise—50 penalty units or 2 years imprisonment.	20
‘(3) It is a defence to a charge of an offence against subsection (2)(b) for the person to satisfy the court that the person did the thing—	21 22
(a) more than 2 hours after the accident concerned happened; or	23
(b) at the direction or under the supervision of an appropriate health professional.	24 25
‘(4) In this section—	26
“appropriate health professional” means a doctor or nurse, or another person prescribed by regulation for the proper care and treatment of the person.	27 28 29
“obstruct” includes hinder, resist and attempt to obstruct.	30
“secondary participant” , in an accident, means a person involved in the accident who was—	31 32

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(a) a pedestrian; or	1
(b) driving or riding a vehicle, other than a motor vehicle or a horse.	2
‘80C Dealing with blood samples taken under s 80A	3
‘(1) A doctor or nurse who takes a blood sample from a person under section 80A must—	4 5
(a) divide the sample into 2 nearly equal parts; and	6
(b) place each part into a container; and	7
(c) fasten and seal each container; and	8
(d) mark or label each container for future identification.	9
Maximum penalty—20 penalty units.	10
‘(2) Of the 2 parts of the blood sample—	11
(a) 1 may be used for analysis under section 80F; and	12
(b) the other must be made available to or for the use and benefit of the person from whom the sample was taken.	13 14
‘(3) As soon as reasonably practicable after taking the blood sample, the doctor or nurse who took it must arrange for the part of the sample to be used for analysis to be delivered to the laboratory of an analyst for analysis to determine the concentration of alcohol in the blood.	15 16 17 18
Maximum penalty—20 penalty units.	19
‘(4) A doctor in another State who, under a law of that State substantially corresponding to the provisions of section 80A, takes a blood sample from a person attended by the doctor because of an accident that happened in Queensland may arrange for a part of the sample to be delivered to the laboratory of an analyst for analysis to determine the concentration of alcohol in the blood.	20 21 22 23 24 25
‘(5) A police officer may arrange for a part of a blood sample taken from a person under section 80A to be delivered to the laboratory of an analyst for analysis to determine the concentration of alcohol indicated as being present in the person’s blood, or the presence of a drug or the metabolite of a drug, in the blood.	26 27 28 29 30

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- ‘(6) However, a police officer may not make arrangements under subsection (5) for the analysis of a blood sample to determine the presence in the blood of a drug other than alcohol unless—
- (a) the police officer reasonably believes that when the accident concerned happened the person from whom the sample was taken was under the influence of a drug other than alcohol; and
 - (b) a police officer did not attend the scene of the accident that led to the taking of the sample.
- ‘(7) A sample delivered to the laboratory of an analyst under this section must be delivered in the way prescribed under a regulation.

‘80D Functions performed under supervision

- ‘A function a doctor may perform under section 80A—
- (a) may be performed by another person under a doctor’s supervision; and
 - (b) if performed under a doctor’s supervision, is taken to have been performed by a doctor.

‘80E Blood alcohol content to be determined by laboratory test

- ‘(1) The concentration of alcohol in a person’s blood (“BAC”) taken from the person under section 80A must be determined by a laboratory test of the blood sample.
- ‘(2) The BAC may be expressed as—
- (a) a stated number of milligrams of alcohol per 100 mL of blood; or
 - (b) a percentage that expresses the number of milligrams of alcohol in 100 mL of blood.

Example—

The concentration of alcohol in a person’s blood may be expressed as 63 mg of alcohol for each 100 mL of blood or as 0.063%.

- ‘(3) An analyst who is given a part of a sample of blood for analysis under section 80C may perform an analysis of the part to determine the concentration of alcohol in the blood.

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- ‘(4) The analysis of the blood sample, and anything else necessary to be done for performing the analysis, including receiving the part of the sample of blood to be analysed and breaking any seal securing the sample—
- (a) may be performed by a person under the supervision of an analyst; and
 - (b) if performed under an analyst’s supervision, is taken to have been performed by an analyst.
- ‘80F Evidence of accreditation**
- ‘A certificate signed or apparently signed by the chief executive officer of a hospital stating a stated nurse is accredited by the hospital as competent to perform sampling procedures for taking a specimen of blood from an accident patient under section 80A is evidence of what it states.
- ‘80G Evidentiary provision for test result**
- ‘A certificate signed or apparently signed by an analyst and stating the following about a blood sample taken from a person under section 80A is evidence of what it states—
- (a) a sample of the blood of a stated person provided by that person on a stated date and at a stated time and place was received from a stated person at the laboratory of the analyst on a stated day and at a stated time; and
 - (b) that the analyst made a laboratory test of the sample on a stated date and at a stated place; and
 - (c) that—
 - (i) the concentration of alcohol in the person’s blood indicated by the laboratory test was a stated number of milligrams of alcohol in the blood per 100 mL of blood; or
 - (ii) a stated drug or metabolite of a stated drug was indicated by the laboratory test to be present in the person’s blood.

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‘80H Evidence by analyst

‘(1) In a proceeding for an offence against section 79(1), an analyst can not be required to give evidence before a court unless the court requires the person to give evidence in the proceeding.

‘(2) The defendant must give the prosecution at least 14 days notice of intention to apply for leave to require the analyst to give evidence.

‘(3) The court may require an analyst to give evidence only if the court is satisfied—

(a) there is a reasonable possibility the specimen of blood analysed—

(i) was not the defendant’s blood; or

(ii) gave a higher BAC than it otherwise would have given because it was contaminated; or

(iii) was taken in a way that did not comply with a code of practice for taking specimens of blood; or

(b) requiring the analyst to give evidence would materially help the court find out relevant facts.

‘80I Exchange of information

‘(1) The Minister may enter into an arrangement with the corresponding Minister of another State for the exchange, between Queensland and the other State, of stated information under this Act or the corresponding law.

‘(2) In particular, the arrangement may provide for the Minister to give to the corresponding Minister certificates of a kind mentioned in section 80G relating to a person apparently injured in an incident involving a motor vehicle that apparently happened in the other State, for which the injured person sought treatment in Queensland.

‘80J Effect of interstate certificates

‘(1) This section applies if, under an arrangement under section 80J, a corresponding Minister gives the Minister a certificate under a corresponding law stating information included in a certificate issued for section 80G of this Act.

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‘(2) The corresponding certificate is taken to be a certificate under section 80G. 1
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‘(3) Also, the corresponding certificate may be received in evidence in a proceeding started against a person for a charge of an offence against this Act of which the certificate may be evidence as if the certificate had been issued under this Act.’. 3
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Clause 6 Amendment of s 167 (Protection from liability) 7

(1) Section 167(1), definition “official”— 8

insert— 9

‘(i) a doctor or nurse when taking a blood sample.’. 10

(2) Section 167(3)(a), after ‘(g)’— 11

insert— 12

‘or (i)’. 13

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