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Transport Operations (Road Use Management) Amendment Bill (No 2) 2002: Extending Police Powers to Order Blood Alcohol Tests

The Transport Operations (Road Use Management) Amendment Bill (No 2) 2002 (Qld) provides for the taking of blood specimens from unconscious drivers who are receiving treatment in hospital after being involved in road accidents. These specimens may lawfully be taken with or without the person's consent.

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1 INTRODUCTION

The Transport Operations (Road Use Management) Amendment Bill (No 2) 2002 was introduced into the Queensland Legislative Assembly on 18 June 2002 by the Hon Stephen Bredhauer MP, Minister for Transport and Minister for Main Roads.

The Transport (Compulsory BAC Testing) Amendment Bill 2002 dealing with the same subject matter was introduced into the Legislative Assembly on 18 April 2002 as a Private Member's Bill.¹ This Bill was covered in *Research Brief* No 2002/15.

2 PROVISIONS OF THE TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) AMENDMENT BILL (NO 2) 2002 (QLD)

The Transport Operations (Road Use Management) Amendment Bill (No 2) 2002 amends the *Transport Operations (Road Use Management) Act 1995 (Qld)* to provide for the taking of blood from drivers who are, or appear to be, unconscious or unable to communicate when they attend hospital after a road crash, for the purpose of blood alcohol content testing.²

Clause 3(4) provides for a widening of persons who will be authorised to take a blood specimen for a laboratory test when a police officer has required that the blood specimen be taken. The widening of **s 80(9B)** by this clause means that, in addition to a doctor (as is currently the case), a nurse or a qualified assistant who is under the direction of a doctor or a nurse will be authorised to take such specimens. Qualified assistants are those persons whose duties include the taking of blood.³

In line with the increased authority for nurses to take specimens under **s 80(9B)**, **clause 3(6)** authorises nurses (when required by police) under **s 80(9C)** to direct a person who has been arrested or detained by police for motor vehicle offences to direct that person to supply a specimen of urine for a laboratory test.

Clause 3(7) inserts **proposed new s 80(10) to (10G)**. **Proposed new s 80(10)** authorises police to require a doctor or nurse attending an unconscious person who is at a hospital for treatment, to obtain a specimen of that person's blood for analysis if that person would have been required to give a specimen of breath for analysis if not for his or her condition.

¹ The Private Member's Bill was introduced by Mr Vaughan Johnson MP, Shadow Minister for Transport and Main Roads.

² Transport Operations (Road Use Management) Amendment Bill (No 2) 2002 (Qld), *Explanatory Notes*, p 1.

³ See the definitions inserted in s 80, as amended by **Clause 3(1)**.

Proposed new s 80(10A) places a requirement on a doctor or nurse who has been required by police to take the blood specimen to do so or, alternatively, to ensure that a qualified assistant takes the specimen.

Proposed new s 80(10C) inserts a procedural requirement that, immediately after the first specimen has been taken, a second specimen of blood must be taken which must be given to the person from whom it was taken.

With respect to the taking of a blood specimen, **proposed new s 80(10D)** inserts the proviso that a doctor or nurse who has been required by police to take a blood specimen will not have to comply with the police direction if there is a reasonable belief that to do so would be prejudicial to the treatment of the person concerned.

Proposed new s 80(10E) prohibits police from directing that a blood specimen be taken from a person when that person has already provided a specimen of breath which has been analysed and for which a certificate of analysis has been issued.

Proposed new s 80(10F) provides that any doctor or nurse who does not comply with a police requirement to take a blood specimen, or who does not take a second specimen that is to be given to the person concerned, will not be committing an offence against the Act.

Under **proposed new s 80(10G)**, health care professionals are authorised to take blood specimens when required by police even if the person concerned has not consented to the blood being taken.

Clause 3(11) amends **s 80(20A)**, ensuring that the second blood sample taken is given to the person from whom it was taken or another person on behalf of the person from whom it was taken. As a result of the amendment, sub-section **20A** will oblige the health care professional who takes the blood specimen to give the second specimen to the appropriate person in accordance with the sub-section. It is a power that will be required to be exercised.⁴

The amendment to **s 80(27)** provided for in **clause 3(16)** will ensure that a defendant who has been charged with driving under the influence of alcohol or a drug and who intends to lead evidence to show that the laboratory test returned an incorrect result will also be required to give a notice to the prosecuting authority, within 14 days of the return date of the summons or the appointed hearing date of the charge, of that intention. Currently, **s 80(27)** only contains a notice requirement in relation to breath tests, not blood tests.

In line with the requirement to notify an intention to lead evidence showing faulty testing, **clause 3(18)** amends **s 80** by inserting **proposed new sub-sections 28, 29 and 30**, requiring the leave of the court for a defendant to call as a witness any person involved in the taking, receipt, storage or testing of the blood specimen. **Proposed new sub-section 29** provides that such leave may only be granted after the complainant has been given an opportunity to make a submission to the court about granting the leave and the court is satisfied that there is a reasonable possibility that an irregularity or defect occurred in the

⁴ Section 32CA(2) *Acts Interpretation Act 1954*.

testing process about which the witness may be able to advise the court or it is otherwise in the interests of justice that the witness be required to attend.

Proposed new sub-section 30 provides for two assumptions. Firstly, any qualified assistant who takes a specimen of blood is presumed to have been directed by a doctor or nurse to take that specimen unless otherwise proven to the satisfaction of the court. Secondly, this assumption also applies to the accuracy of any equipment that was used in the laboratory testing of a blood specimen.

Clause 4 inserts **proposed new sections 80A and 80B**, providing respectively for the offence of obstructing a health care professional in the taking of a blood specimen and the exchange of information between States.

The wilful obstruction of a health care professional in taking a blood specimen will render the guilty party liable to a maximum fine of \$3,000.

The provision for the exchange of information between Queensland and other States contained in **proposed new s 80B** is in line with New South Wales legislation.⁵ The Queensland Commissioner of Police may enter into an arrangement with the Commissioner of Police of another State for the purpose of exchanging information as to the results of laboratory tests of blood specimens taken from a person treated in a hospital in that jurisdiction but who had actually been involved in a road accident in Queensland.

Clause 5(2) extends the protection from liability now available to doctors to nurses and qualified assistants performing their duties in taking blood specimens in accordance with police directives under **s 80** of the Act. This is achieved by amending **s 167(1)**.

3 COMPARISON WITH THE TRANSPORT (COMPULSORY BAC TESTING) AMENDMENT BILL 2002

- The Government Bill provides for the taking of blood from drivers who are unconscious or unable to communicate when they attend hospital as a result of a road crash. The Private Member's Bill provides for the taking of breath samples from passengers and pedestrians involved in accidents and who are at least 15 years of age.
- The Government Bill provides for blood specimens to be taken at a hospital by a doctor or nurse, or a qualified assistant when under the direction of a doctor or a nurse. The Private Member's Bill makes provision for a doctor to take a blood specimen or, where a doctor is not available, a registered nurse who is accredited whilst another person may take such a specimen under the supervision of a doctor.
- The Government Bill provides for a police direction to medical staff for the taking of a blood specimen whereas the Private Member's Bill generally obliges a doctor or nurse

⁵ See Queensland. Legislative Assembly, Parliamentary Travelsafe Committee, *Compulsory BAC Testing*, Report No 22, December 1997, p 61, paras 218-219.

to take a blood specimen from accident patients within a 12 hours period from the time of the accident.

- Under the Private Member's Bill, a failure to take a blood specimen would make the relevant doctor or nurse liable for a maximum fine of \$1,500. However, if the doctor or nurse concerned can show that one of the lawful defences allowed for in the Bill applied (these defences are listed in clause 5(5) of that Bill), then no offence would have occurred. The Government Bill does not provide for an offence on the part of any health care professional where a specimen is not taken when police have given such a direction.
- Both the Government and the Private Member's Bill provide that when a blood specimen is taken from an accident patient, this can be lawfully done with or without the consent of the patient.
- Under the Private Member's Bill, a person who obstructs a doctor or nurse in performing his or her duty of taking a blood specimen would be liable for a maximum penalty of a \$1,500. The Government Bill provides for a maximum penalty of a \$3,000 fine for any person who obstructs a health care professional from taking a blood specimen from someone else.
- Under the Private Member's Bill, a secondary participant involved in an accident who prevents a blood specimen from being taken from his or her person, or who does anything to change the concentration of alcohol in his or her blood, would be liable to a maximum penalty of \$2,250. For persons other than secondary participants to accidents, the maximum penalty for these two offences is \$3,750 or a maximum of 2 years imprisonment.
- The Private Member's Bill provides for a maximum penalty of \$1,500 for a doctor or nurse who fails to deal with a blood specimen in the prescribed way with respect to storage and labelling. Failure to ensure that the blood specimen is delivered to a laboratory for testing carries a similar maximum penalty.

4 CONCLUSION

The Government Bill, and the Private Member's Bill introduced earlier, both provide for the lawful taking of blood specimens from road accident patients being treated in hospital. Both Bills provide that such specimens may be lawfully taken without the consent of the patient, irrespective of whether the consent is deliberately withheld or because the patient is unconscious and/or cannot communicate.

A distinction can be drawn between the approach of the Government Bill and the Private Member's Bill. The provisions of the Private Member's Bill are secondary to the existing provisions under the *Transport Operations (Road Use Management) Act 1995* that allow police to require the taking of blood specimens. In doing so, an onus is placed upon relevant medical staff to take such a specimen even though police have not required that it be done or have been unable to require it.

The Government Bill provides for the taking of specimens from road accident patients as an integral part of the existing legislation as there is no onus upon medical staff to take such a specimen when police have not given such a direction.

APPENDIX – MINISTERIAL MEDIA STATEMENT

Hon Peter Beattie MP, Premier and Minister for Trade

27 May 2002

Blood tests to snare drink drivers

Police investigating road accidents will have the power to request blood tests on unconscious drivers, in a further step to combat drink driving, Premier Peter Beattie said today.

Mr Beattie said new laws, ready for introduction to Parliament, would broaden the attack on Queensland's road toll.

"These laws will empower police to ask that blood samples be taken from unconscious drivers admitted to hospital after an accident," Mr Beattie said.

"The Government will fix the current anomaly, where drunken drivers who become unconscious may be escaping conviction for drink driving, because police cannot ask for a blood sample.

"Currently, police can only request blood samples from drivers who are conscious and able to communicate.

"We need to go harder in our attack on drink driving, which costs the community about \$120 million each year.

"Despite concerted education campaigns and the threat of breath-testing, irresponsible fools continue to drink and drive.

"The number of casualties due to drink driving is on the rise. In 2001, 79 more people were hospitalised than in 2000, because of a road accident involving alcohol.

"From 1997 to 2001, Queensland recorded an annual average of 72 fatalities and 468 hospitalisations from crashes where the driver had a blood alcohol content.

"Statistics like this tell us to toughen up the fight against drink driving," Mr Beattie said.

Transport and Main Roads Minister Steve Bredhauer, said: "Our laws will involve blood tests on drivers, motorbike riders and cyclists aged 15 years and over who are admitted to a hospital after a road crash.

"Initiatives such as testing the blood of drivers involved in a crash will help close the gap on people who continue to put lives at risk on our roads."

Mr Bredhauer rejected an Opposition Bill which would allow blood testing of unconscious road crash victims, while overlooking crucial issues such as security of blood samples, health care professional liability and implementation costs.

"These are important issues and they need to be thoroughly addressed in any proposal to introduce blood testing of unconscious accident victims," Mr Bredhauer said.

“The Government has been working on this proposal since 2001, and the medical profession, Department of Justice and Attorney-General, Queensland Police Service and other community and industry groups have been consulted.

“Medical and health professionals would take blood samples on request from police.

“They would be able to refuse a request if they believed taking a blood sample could compromise the patient’s health in a medical emergency.” Mr Bredhauer said.

The Queensland Government proposal involves two stages:

1. Introduction of blood testing of unconscious drivers on request of a police officer; and
2. An immediate investigation into the introduction of compulsory blood testing of all unconscious drivers involved in a road crash.

Mr Bredhauer said: “This two-phased approach will allow the Government to comprehensively address all issues involved in implementing compulsory blood testing after further consultation with police, medical and legal professionals.”

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