

Queensland



**TRANSPORT OPERATIONS
(ROAD USE MANAGEMENT)
AMENDMENT ACT (NO. 2)
2002**

Act No. 48 of 2002

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TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) AMENDMENT ACT (NO. 2) 2002

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**Transport Operations (Road Use
Management) Amendment Act (No. 2) 2002**

Act No. 48 of 2002

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

[Assented to 24 September 2002]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Transport Operations (Road Use Management) Amendment Act (No. 2) 2002*.

2 Act amended

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

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

(1) Section 80(1)—

insert—

‘**“health care professional”** means—

- (a) a doctor; or
- (b) a nurse; or
- (c) a qualified assistant.

“nurse” means a person registered under the *Nursing Act 1992* as a registered nurse.

“qualified assistant” means a person whose duties include the taking of blood.’.

(2) Section 80(8K)—

omit.

(3) Section 80(8L)(a), ‘laboratory test and—’—

omit, insert—

‘laboratory test; and’.

(4) Section 80(9B), from ‘pursuant to subsection (9)’ to ‘requisition’—

omit, insert—

‘by a police officer, under this section, to provide a specimen of the person’s blood for a laboratory test must allow a doctor or nurse, or a qualified assistant directed by a doctor or nurse to take the specimen, to take the specimen’.

(5) Section 80(9B), ‘the doctor, the doctor being’—

omit, insert—

‘the health care professional, the health care professional being’.

(6) Section 80(9C), ‘doctor’—

omit, insert—

‘doctor or nurse’.

(7) Section 80—

insert—

(10) A police officer may 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, if the person—

- (a) is a person whom a police officer may require under subsection (2) or (2A) to provide a specimen of breath for a breath test; and
- (b) 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.

(10A) The doctor or nurse must—

- (a) take a specimen of the person’s blood that will enable the laboratory test to be carried out; or
- (b) ensure that a qualified assistant takes a specimen of the person’s blood that will enable the laboratory test to be carried out.

(10B) A qualified assistant may take the specimen of the person’s blood if directed to do so by the doctor or nurse.

(10C) The health care professional who takes the specimen of the person’s blood under subsection (10A)(a) or (10B) must, immediately after taking the specimen, take another specimen of the person’s blood and give it to the person as soon as practicable.

(10D) The doctor or nurse need not comply with subsection (10A) if the doctor or nurse—

- (a) reasonably believes that taking the specimen would be prejudicial to the person’s treatment; or
- (b) has another reasonable excuse.

Example—

A doctor or nurse would have a reasonable excuse if he or she was required to attend to a patient suffering a heart attack and was unable to take the specimen of blood when required.

(10E) A police officer must not make a requirement under subsection (10) relating to a person if—

- (a) under this section, the person has provided a specimen of breath (the **“analysis specimen”**) for analysis by a breath analysing instrument in relation to the occurrence or event in relation to which the police officer may require a specimen of breath for a breath test as mentioned in subsection (10)(a); and
- (b) the analysis specimen has been analysed by a breath analysing instrument; and
- (c) there is a certificate under subsection (15) for the analysis.

(10F) Subsections (10A) and (10C) do not create offences.

(10G) It is lawful for a health care professional to take a specimen of a person’s blood under subsection (10A)(a), (10B) or (10C) even though the person has not consented to the taking.’.

(8) Section 80(16), from ‘blood has been’ to ‘(9C)’—

omit, insert—

‘blood or urine has been obtained under this section’.

(9) Section 80(16C), (18), (18A) and (26)(c), ‘doctor’—

omit, insert—

‘health care professional’.

(10) Section 80(20), from ‘police officer’ to ‘specimen of’—

omit, insert—

‘health care professional who took the specimen to give to the person a specimen of the person’s’.

(11) Section 80(20A), ‘police officer or doctor in question shall’—

omit, insert—

‘health care professional must’.

(12) Section 80(22)(ba)(iii)(B)—

omit, insert—

‘(B) a doctor or nurse is not available to take a specimen of blood from the person for a laboratory test or to direct a qualified assistant to take the specimen; or’.

(13) Section 80(22)(e), from ‘the doctor’ to ‘to this section certifies’—

omit, insert—

‘a specimen of a person’s blood is taken under this section for a laboratory test and a doctor or nurse certifies’.

(14) Section 80(22)(e), after ‘provision’—

insert—

‘or taking’.

(15) Section 80(23), after ‘to the police station,’—

insert—

‘or that, for the taking of a specimen of blood at the hospital, a nurse also is not available,’.

(16) Section 80(27), after example of paragraph (c)—

insert—

‘(d) for a notice under subsection (26)(b)—state the grounds on which the defendant intends to rely to prove that the result of the laboratory test was not a correct result.’.

(17) Section 80(28), definition “**suspend**”—

relocate to section 80(1).

(18) Section 80(28), as amended—

omit, insert—

‘(28) A defendant who gives a notice under subsection (26)(b) may, only with the court’s leave, require a person who was involved in the taking,

receipt, storage or testing of the specimen of blood to attend the hearing to give evidence.

‘(29) The court may grant the leave only if satisfied—

- (a) that the complainant has been given an opportunity to make a submission to the court about granting the leave; and
- (b) that—
 - (i) there is a reasonable possibility that an irregularity or defect exists in relation to the taking, receipt, storage or testing of the specimen of blood about which the person required to attend the hearing is able to give evidence; or
 - (ii) it is otherwise in the interests of justice that the person be required to attend the hearing to give evidence relevant to the proceeding.

‘(30) In a proceeding for an offence against section 79, unless the contrary is proved—

- (a) 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; and
- (b) any equipment used in a laboratory test of a specimen of blood is to be taken to have given accurate results.’

4 Insertion of new ss 80A and 80B

After section 80—

insert—

‘80A Obstructing the taking of a blood specimen

‘(1) A person must not obstruct a health care professional taking a specimen of blood from someone else under section 80, without a reasonable excuse.

Maximum penalty—40 penalty units.

‘(2) In this section—

“**health care professional**” has the same meaning it has in section 80.

“**obstruct**” includes hinder, resist and attempt to obstruct.

‘80B Interstate exchange of information

‘(1) The commissioner may enter into an arrangement with an interstate commissioner for the exchange, between Queensland and the other State, of information obtained under section 80 or a corresponding law to section 80.

‘(2) In this section—

“**interstate commissioner**” means the commissioner of the police service (however described) of another State.’.

5 Amendment of s 167 (Protection from liability)

(1) Section 167(1)(h)—

renumber as section 167(1)(i).

(2) Section 167(1)—

insert—

‘(h) a health care professional under section 80 acting under that section; and’.

(3) Section 167(3)(a), ‘(g)’—

omit, insert—

‘(h)’.

(4) Section 167(3)(b), ‘(1)(h)’—

omit, insert—

‘(1)(i)’.