

Queensland



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

Act No. 67 of 2003

Queensland



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

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Queensland



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

Act No. 67 of 2003

**An Act to amend the *Police Service Administration Act 1990*, and for
other purposes**

[Assented to 22 October 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003*.

2 Commencement

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

PART 2—AMENDMENT OF POLICE SERVICE ADMINISTRATION ACT 1990

3 Act amended in pt 2

This part amends the *Police Service Administration Act 1990*.

4 Amendment of s 1.4 (Definitions)

Section 1.4—

insert—

‘**“alcohol test”**, for part 5A, see section 5A.2.¹

“authorised person”, for part 5A, see section 5A.2.

“covert operative” see the *Police Powers and Responsibilities Act 2000*, schedule 4.²

1 Section 5A.2 (Definitions for pt 5A)

2 *Police Powers and Responsibilities Act 2000*, schedule 4 (Dictionary)

“critical area”, for part 5A, see section 5A.2.

“critical incident”, for part 5A, see section 5A.2.

“dangerous drug”, for part 5A, see section 5A.2.

“deputy commissioner”, for part 5A, see section 5A.2.

“evidence”, for part 5A, see section 5A.2.

“general alcohol limit”, for part 5A, see section 5A.2.

“low alcohol limit”, for part 5A, see section 5A.2.

“medical examination”, for part 5A, see section 5A.2.

“no alcohol limit”, for part 5A, see section 5A.2.

“over the limit”, for part 5A, see section 5A.2.

“random alcohol test”, for part 5A, see section 5A.2.

“relevant member”, for part 5A, see section 5A.2.

“targeted substance”, for part 5A, see section 5A.2.

“targeted substance test”, for part 5A, see section 5A.2.’.

5 Insertion of new pt 5A

After section 5.16—

insert—

‘PART 5A—ALCOHOL AND DRUG TESTS

‘Division 1—General

‘5A.1 Object of pt 5A

‘The objects of this part are—

- (a) to ensure appropriate steps are taken in the interests of the health and welfare of relevant members of the service; and
- (b) to enhance the public’s confidence in the service and the integrity of the service.

‘5A.2 Definitions for pt 5A

‘In this part—

“alcohol test” means a test for deciding whether a relevant member is over the limit applying to the member when the test is conducted.

“authorised person” means—

- (a) in all cases—the commissioner or deputy commissioner; or
- (b) for an alcohol test or a random alcohol test—a commissioned officer who holds rank above the rank of the person to be tested; or
- (c) for periodic testing of a covert operative—a commissioned officer who—
 - (i) is responsible for supervising covert operatives; and
 - (ii) is above the rank of the covert operative to be tested; or
- (d) for a test to be conducted because of section 5A.8(c)³—a commissioned officer who holds rank above the rank of the person to be tested; or
- (e) for section 5A.10 or 5A.14⁴—a commissioned officer who holds rank above the rank of the person to be tested.

“covert operative” see the *Police Powers and Responsibilities Act 2000*, schedule 4.⁵

“critical area” means any of the following in which a staff member or recruit performs functions for the police service—

- (a) a communications centre;
- (b) a driver training facility;
- (c) a facility used for storing dangerous drugs under the *Police Powers and Responsibilities Act 2000*, chapter 11, part 4;⁶
- (d) a magazine used for storing explosives;

3 Section 5A.8 (Circumstances for alcohol testing)

4 Section 5A.14 (Providing specimen for targeted substance test)

5 *Police Powers and Responsibilities Act 2000*, schedule 4 (Dictionary)

6 *Police Powers and Responsibilities Act 2000*, chapter 11 (Administration), part 4 (Use of dangerous drugs for training)

- (e) a police armoury or weapons collection facility;
- (f) a property point as defined under the *Police Powers and Responsibilities Act 2000*;
- (g) a watch-house;
- (h) a weapons training facility;
- (i) the unit known as the police air wing;
- (j) a place prescribed under a regulation as a critical area.

“critical incident” means—

- (a) 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; or
- (b) a death of a person in custody; or
- (c) either of the following in which a person dies or because of which a person is admitted to hospital for treatment of injuries—
 - (i) a vehicle pursuit;
 - (ii) a workplace incident at a police station or police establishment.

“dangerous drug” means a dangerous drug under the *Drugs Misuse Act 1986*.

“deputy commissioner” means the executive officer holding rank as deputy commissioner.

“evidence”, of a targeted substance in a person’s urine, includes evidence of the presence of the following in the person’s urine—

- (a) a targeted substance;
- (b) a substance that is used in a targeted substance;
- (c) a metabolite of a targeted substance.

“general alcohol limit” means the general alcohol limit under section 5A.6(1)(c).⁷

“low alcohol limit” means the low alcohol limit under section 5A.6(1)(b).

⁷ Section 5A.6 (When is a person over the limit)

“medical examination” includes medical assessment and test, whether physical or mental.

“no alcohol limit” means the no alcohol limit under section 5A.6(1)(a).

“over the limit”, in relation to a relevant member, means the member is over the general alcohol limit, the low alcohol limit or the no alcohol limit applying to the member.

“random alcohol test” means an alcohol test conducted under section 5A.9.⁸

“relevant member” see section 5A.3.⁹

“targeted substance” means—

- (a) a dangerous drug; or
- (b) another substance mentioned in section 5A.4 (c) or (d).¹⁰

“targeted substance test” means a test for deciding whether a relevant member has evidence of a targeted substance in the member’s urine.

‘5A.3 Persons to whom pt 5A applies

‘(1) This part applies only to a member of the service (**“relevant member”**) who is—

- (a) an officer; or
- (b) a staff member whose duties include performing functions in a critical area; or
- (c) an assistant watch-house officer or a person whose duties include duties as an assistant watch-house manager; or
- (d) a police radio and electronics technician; or
- (e) a recruit.

‘(2) However, if the critical area mentioned in subsection (1) is a driver training facility, this part applies only to a staff member who is a driver, instructor or mechanic at the facility.

8 Section 5A.9 (Random alcohol testing)

9 Section 5A.3 (Persons to whom part 5A applies)

10 Section 5A.4 (Substances to which pt 5A applies)

‘5A.4 Substances to which pt 5A applies

‘This part applies only in relation to the following substances—

- (a) alcohol;
- (b) a dangerous drug;
- (c) 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;
- (d) another substance that may impair a person’s physical or mental capacity.

‘5A.5 Part does not affect other powers

‘This part does not affect the commissioner’s powers under section 8.3.¹¹

‘Division 2—Provisions about alcohol testing

‘5A.6 When is a person over the limit

‘(1) For this part—

- (a) a person is over the **“no alcohol limit”** if the concentration of alcohol in the person’s breath is more than 0 g of alcohol in 210 L of breath;
- (b) a person is over the **“low alcohol limit”** if the concentration of alcohol in the person’s breath is, or is more than, 0.02 g of alcohol in 210 L of breath;
- (c) a person is over the **“general alcohol limit”** if the concentration of alcohol in the person’s breath is, or is more than, 0.05 g of alcohol in 210 L of breath.

‘(2) For this Act, the concentration of alcohol in a person’s breath may be expressed as—

- (a) a specified number of grams of alcohol in 210 L of breath; or
- (b) a specified number of grams in 210 L.

¹¹ Section 8.3 (Unfitness for duty on medical grounds)

Example for subsection (2)—

The concentration of alcohol in a person's breath may be expressed as 0.063 g of alcohol in 210 L of breath or as 0.063g/210L.

‘5A.7 Alcohol limits

‘(1) A relevant member must be under the low alcohol limit—

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

‘(2) Also, a relevant member must be under the general alcohol limit when not rostered for duty but permanently on call for duty in a place where there is a police station at which no more than 1 or 2 officers are permanently stationed.

‘(3) However, if the person is a member of the special emergency response team, the person must not be over the no alcohol limit when reporting for duty, while on duty, or while on call on a rotational basis.

‘(4) This section does not apply to a relevant member who is a police officer to the extent it prevents the member consuming alcohol while performing duties under an exemption under section 5A.9(4).

‘5A.8 Circumstances for alcohol testing

‘An authorised person may require a relevant member to submit to an alcohol test if—

- (a) the person has been involved in a critical incident; or
- (b) the test is authorised under section 5A.9; or
- (c) an authorised person reasonably suspects the person is contravening or has contravened section 5A.7; or
- (d) 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

‘(1) An authorised person may require a relevant member to submit to a random alcohol test.

‘(2) However, an authorised person other than the commissioner or deputy commissioner may require the person to submit to the test—

- (a) only with the written approval of the commissioner or deputy commissioner; or
- (b) only if the test is conducted in accordance with criteria prescribed under a regulation for conducting random alcohol tests without the approval of the commissioner or deputy commissioner.

‘(3) For subsection (2)(b), a regulation may prescribe the criteria for deciding—

- (a) when and where a random alcohol test may be conducted; and
- (b) when a random alcohol test may be conducted without the approval of the commissioner or deputy commissioner.

‘(4) Also, the commissioner or deputy commissioner may, in writing, exempt a relevant member or class of relevant member from random alcohol testing, either generally or in particular circumstances.

Examples—

1. The relevant member may be a covert operative.
2. The relevant member may be required to consume alcohol at a hotel when keeping a person suspected of engaging in criminal activities under surveillance.

‘(5) The power to approve random alcohol testing under this section can not be delegated.

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

‘(1) If a relevant member is required to submit to an alcohol test or a random alcohol test under this part, an authorised person may require the relevant member to provide a specimen of breath for the test.

‘(2) The authorised person may require the relevant member to provide the specimen to the authorised person’s satisfaction.

‘(3) The relevant member must comply with a requirement under subsection (2).

‘(4) The authorised person must perform the test—

- (a) using an instrument approved by the commissioner for the purpose; and
- (b) in accordance with the manufacturer’s instructions for use of the instrument.

‘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 been tested for alcohol and to have been over the limit for alcohol applying to the member when the failure happened.

‘Division 3—Provisions about drug testing

‘5A.12 Targeted substance levels

‘(1) A relevant member must not have evidence of a dangerous drug present in the person’s urine at any time.

‘(2) A relevant member, who is lawfully taking a targeted substance mentioned in section 5A.4(c) or (d),¹² must not perform duties in or involving an operational capacity or critical area if the substance impairs the member’s capacity to perform the duties without danger to the member or someone else.

‘(3) A relevant member must not have present in the person’s urine—

- (a) evidence of a targeted substance mentioned in section 5A.4(c) that the person may not lawfully take; or
- (b) evidence of having taken a targeted substance mentioned in section 5A.4(c) or (d) in a way contrary to a direction of a doctor or a recommendation of the manufacturer of the substance.

12 Section 5A.4 (Substances to which pt 5A applies)

‘5A.13 Circumstances for targeted substance testing

‘(1) An authorised person may require a relevant member to submit to a targeted substance test if—

- (a) the relevant member—
 - (i) has been involved in a critical incident; or
 - (ii) is a covert operative; or
 - (iii) is an officer who is an applicant to become a covert operative and is required to undergo a medical examination or test for deciding the person’s suitability to be a covert operative; or
- (b) an authorised person reasonably suspects the relevant member is contravening or has contravened section 5A.12.¹³

‘(2) Also, an authorised person may require a person who has been notified of the person’s appointment as a recruit to submit to a targeted substance test before the person starts the training necessary to become an officer.

‘5A.14 Providing specimen for targeted substance test

‘(1) An authorised person may require a relevant member to provide a specimen of urine to a doctor or registered nurse for a targeted substance test at a place and time specified by the authorised person.

‘(2) If the specimen is required because of section 5A.13(a)(i), the requirement must be made, and the specimen provided, as soon as reasonably practicable after the critical incident happened.

‘(3) A doctor or registered nurse may give reasonably necessary directions to the relevant member about how the specimen is to be provided and providing a sufficient specimen for testing.

‘(4) However, a direction given under subsection (3) must not be inconsistent with any requirements about the collection of urine specimens prescribed under a regulation for this section.

13 Section 5A.12 (Targeted substance levels)

‘(5) Subject to subsection (4), the relevant member must provide the specimen in accordance with the directions of a doctor or a registered nurse.

‘(6) If the relevant member acts in accordance with the directions of the doctor or registered nurse but has a reasonable excuse, because of a medical condition, for being unable to provide a specimen of urine—

- (a) the person does not contravene subsection (5); and
- (b) the failure to provide the specimen is not to be taken as a positive test for this part.

‘(7) As soon as practicable after a specimen of urine has been obtained under this section, the specimen must be dealt with in the way prescribed under a regulation for this section.

‘(8) In this section—

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

‘5A.15 Effect of failure to provide specimen of urine

‘A relevant member who fails to provide a specimen of urine is taken, unless section 5A.14(6) applies to the member, to have been tested for a targeted substance and to have been found to have had evidence of a targeted substance in the person’s urine.

‘Division 4—What happens if a test result is positive

‘5A.16 If alcohol or targeted substance test positive

‘(1) This section applies if a test conducted under this part shows a relevant member, when tested—

- (a) was over the limit applying to the member when the test was conducted; or
- (b) had evidence of a targeted substance in the person’s urine.

‘(2) The commissioner may do any 1 or more of the following—

- (a) suspend the relevant member from duty until the member is no longer over the relevant alcohol limit or no longer has evidence of a targeted substance in the person’s urine;

- (b) correct the relevant member by way of guidance;
- (c) require the relevant member to undergo counselling or rehabilitation approved by the commissioner;
- (d) require the relevant member to attend a government medical officer for a medical 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 a medical examination under paragraph (d), direct the relevant member to perform other duties for the time the commissioner considers necessary;
- (f) take disciplinary or other action against the relevant member under whichever of the following is relevant—
 - (i) this Act;
 - (ii) the *Public Service Act 1996*;
- (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.

Example of other action for paragraph (f)—

Action that may be taken under section 6.1.

‘(3) Subsection (2)(a), (b), (c) and (f) do not apply to a targeted substance mentioned in section 5A.12(2).¹⁴

‘(4) A relevant member directed to perform other duties under subsection (2)(e) is entitled to be paid salary and allowances at the rate at which the member would have been paid had the member not been directed to perform the other duties.

‘(5) A government medical officer who prepares a report about a medical examination of a relevant member may give the report to the commissioner.

‘5A.17 Effect of failure to comply

‘(1) This section applies if a relevant member—

- (a) fails to attend or complete counselling or rehabilitation under a requirement under section 5A.16(2)(c); or

14 Section 5A.12 (Targeted substance levels)

(b) fails to attend a government medical officer for medical examination under a requirement under section 5A.16(2)(d).

‘(2) The commissioner may take disciplinary action against the member under whichever of the following is relevant—

- (a) this Act;
- (b) the *Public Service Act 1996*.

‘Division 5—General

‘5A.18 Giving requirements

‘A requirement under this part may be given orally or in writing or by any form of electronic communication.

‘5A.19 Interfering with specimens

‘A person must not unlawfully interfere with a specimen of breath or urine provided under this part.

Maximum penalty—100 penalty units.

‘5A.20 Test result evidence generally inadmissible

‘(1) Evidence of—

- (a) anything done under this part; and
- (b) the result of any test conducted under this part;

is inadmissible in a civil or criminal proceeding before a court.

‘(2) Without limiting subsection (1), evidence of any of the following is inadmissible in a civil or criminal proceeding before a court—

- (a) an approval given to conduct a random alcohol test;
- (b) a requirement made under division 2, 3 or 4;
- (c) a direction given by a person under division 3.

‘(3) Also, the commissioner and anyone else involved in any way in anything done under this part can not be compelled to produce to a court

any document kept or to disclose to a court any information obtained because of the doing of the thing.

‘(4) This section does not apply to—

- (a) a proceeding for a charge of an offence arising from a critical incident; or
- (b) an inquest in a Coroners Court into the death of a person in a critical incident; or
- (c) a proceeding on an application under the *Industrial Relations Act 1999*, section 74 for reinstatement because of unfair dismissal.¹⁵

‘(5) Also, this section does not prevent the commissioner giving a witness anonymity certificate under the *Evidence Act 1977*, section 21D that includes matter mentioned in section 21E(1)(d) of that Act¹⁶ in relation to a person who has been found guilty of misconduct or a breach of discipline because of the testing of the person under this part.

‘5A.21 Evidentiary provision

‘(1) A certificate apparently signed by an analyst and stating the following is evidence of what it states—

- (a) a specimen of urine provided by a stated person on a stated day and at a stated place was received from a stated authorised person at the analyst’s laboratory on a stated day and time;
- (b) the analyst made a laboratory test of the specimen on a stated day and at the stated place;
- (c) a stated targeted substance or a metabolite of a stated targeted substance was indicated by the laboratory test to be present in the person’s urine.

‘(2) A certificate apparently signed by a government medical officer and stating that the presence of a stated targeted substance in a person impairs or may impair the person’s capacity to perform the person’s duties without danger to the person or others is evidence of what it states.

15 *Industrial relations Act 1999*, section 74 (Application for reinstatement)

16 *Evidence Act 1977*, section 21D (Witness anonymity certificate) and 21E (What witness anonymity certificate must state)

‘(3) A certificate apparently signed by the commissioner and stating either of the following is evidence of what it states—

- (a) at a stated time a stated officer performed duties in an operational capacity in a critical area;
- (b) at a stated time a stated staff member performed duties involving a critical area.

‘5A.22 Application of Freedom of Information Act 1992

‘The *Freedom of Information Act 1992* does not apply to a document created under this part.

‘5A.23 Limitation on disciplinary proceedings

‘If 2 or more contraventions of this part by a particular relevant member arise out of the same facts or circumstances, a disciplinary proceeding against the relevant member may be started for 1 disciplinary offence only.’.

PART 3—AMENDMENT OF JUDICIAL REVIEW ACT 1991

6 Act amended in pt 3

This part amends the *Judicial Review Act 1991*.

7 Amendment of sch 1 (Operation of other laws)

Schedule 1, part 2—

insert—

‘7. *Police Service Administration Act 1990*, part 5A’.



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