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## **Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld)**

*The Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld) provides for the mandatory taking of blood samples by medical practitioners or accredited nursing personnel for the purpose of drug analysis from persons involved in traffic accidents.*

*The provisions of the Bill broadly put into effect recommendations of the 1997 report of the Queensland Parliamentary Travelsafe Committee on compulsory blood alcohol testing.*

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## **1 INTRODUCTION**

The Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld) was introduced into the Legislative Assembly on 18 April 2002. The Bill is a Private Member's Bill, introduced by Mr Vaughan Johnson MP, the Shadow Minister for Transport and Main Roads.<sup>1</sup> The proposed amendments will authorise the taking of blood samples by medical practitioners and/or accredited nursing personnel from persons involved in traffic accidents for the purpose of drug analysis.

At a national level, a reduction in alcohol related accidents is still viewed as an essential and ongoing endeavour. Queensland is represented by the Minister for Transport on the Australian Transport Council. The Council has produced the National Road Safety Action Plan 2001 and 2002 which contains improved road user behaviour as its first strategic objective. Under this strategic objective, a reduction in the incidence of drink driving has been targeted as an action area.<sup>2</sup>

By the mid 1980s, fatal road accidents had risen to become the most frequent cause of death among Australian males aged 1 to 44 years. It has been recognised that, in part, this level of mortality for this age group has come as a result of increased mobility afforded by passenger motor vehicles and changes in social behavioural patterns.<sup>3</sup>

## **2 ROAD ACCIDENTS AND ALCOHOL**

Alcohol is a social drug along with tobacco and caffeine.<sup>4</sup> Over time, improved testing technology has widened the scope for the detection of alcohol use in drivers. The widespread social use of alcohol highlighted it as the first drug to be a contributor to road accidents. The relationship between alcohol consumption and increased traffic accident

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<sup>1</sup> Mr VG Johnson MP, Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 April 2002, pp 1178-79.

<sup>2</sup> Australian Transport Council, *National Road Safety Action Plan 2001 and 2002*, <http://www.dotrs.gov.au/atc/ACTIONPLAN.PDF> Downloaded 26 April 2002.

<sup>3</sup> Jane Hendtlass, *Drug Involvement in Fatal Crashes in Melbourne*, Commonwealth Department of Transport. Federal Office of Road Safety, Consultant's Report No 41 (CR 41), December 1985, p 1.

<sup>4</sup> Hendtlass, p 3.

risks is now well established; in fact, the very first call for the mandatory testing of drivers involved in accidents was in 1914 in Germany.<sup>5</sup>

Research designed to measure the effects of alcohol consumption on driving behaviour have been conducted in controlled environments such as the use of driver simulators or closed driving circuits. Various research studies over time into the effects of alcohol consumption on drivers have provided the following results:

- Drivers affected by alcohol engage in a speed-accuracy trade-off which is thought to be related to risk-taking behaviour as alcohol involvement in road crashes not only involves effects on skills performance but also on mood and motivational changes.<sup>6</sup>
- Performance deficits and mood changes produced by the consumption of alcohol are of a significant magnitude.<sup>7</sup>
- With increased alcohol consumption, there is an increase in the pulse rate indicating heightened physiological response.<sup>8</sup>
- Alcohol consumption has a negative effect on both simple and complex reaction times.<sup>9</sup>
- Physiological states such as fatigue, personality, emotional state and mental illness can affect the response to the consumption of drugs such as alcohol.<sup>10</sup>
- The effect of the consumption of alcohol with over-the-counter or prescription drugs is complicated but is thought to be 'additive'.<sup>11</sup>
- The result is that the risk of accidents from alcohol consumption is quite high at levels well below that needed for intoxication.<sup>12</sup>

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<sup>5</sup> GA Starmer and DJ Mascord, *Drugs and Traffic Safety*, Australia. Federal Office of Road Safety, Consultants' Report 140 (CR 140), August 1994, p 2.

<sup>6</sup> Gregory Chesher, Helen Dauncey, John Crawford and Kim Horn, *The Interaction Between Alcohol and Marijuana: A Dose Dependent Study of the Effects on Human Moods and Performance Skills*, Commonwealth Department of Transport. Federal Office of Road Safety, Consultants' Report No 40 (CR 40), January 1986, p (ii) and (iv).

<sup>7</sup> Chesher, Dauncey, Crawford and Horn, p (iii).

<sup>8</sup> Chesher, Dauncey, Crawford and Horn, p 59.

<sup>9</sup> Chesher, Dauncey, Crawford and Horn, p 61.

<sup>10</sup> Hendtlass, p 20.

<sup>11</sup> Hendtlass, p 22.

In Queensland between 1970-1971 and 1996-1997 there were 574,339 road accidents which resulted in 13,767 people being killed and 273,813 suffering injury.<sup>13</sup>

Studies have identified the most common occurrences directly related to alcohol consumption that occur prior to accidents:

- (a) Falling asleep;
- (b) Speeding and/or overcompensation, and
- (c) Internal distraction.

These causes manifested themselves in single vehicle accidents and accidents where another parked car was struck, and account for approximately two-thirds of all alcohol related accidents.

Alcohol is a factor that is over-represented in rear-end accidents and single vehicle accidents. This data has been used to conclude that alcohol adversely effects information acquisition and processing as well as sensory responsiveness and motor ability.<sup>14</sup>

### **3 COMPREHENSIVE ROAD SAFETY STRATEGY**

In road safety literature, two general models have been identified as containing countermeasures for road accidents. Firstly, there is a model that views accidents as being the result of personal attributes of individual drivers. Consequently, the countermeasures that are invoked are designed to improve individual driver performance. This is done in such ways as licensing standards, education and training and legislation, enforcement and punishment.

In the second model, the attributes of the driver are viewed as only an element within a wider interacting system. Here the driver is seen as performing tasks according to the demands imposed by road conditions, traffic and other environmental conditions which act upon individual abilities and limitations. This model has resulted in countermeasures

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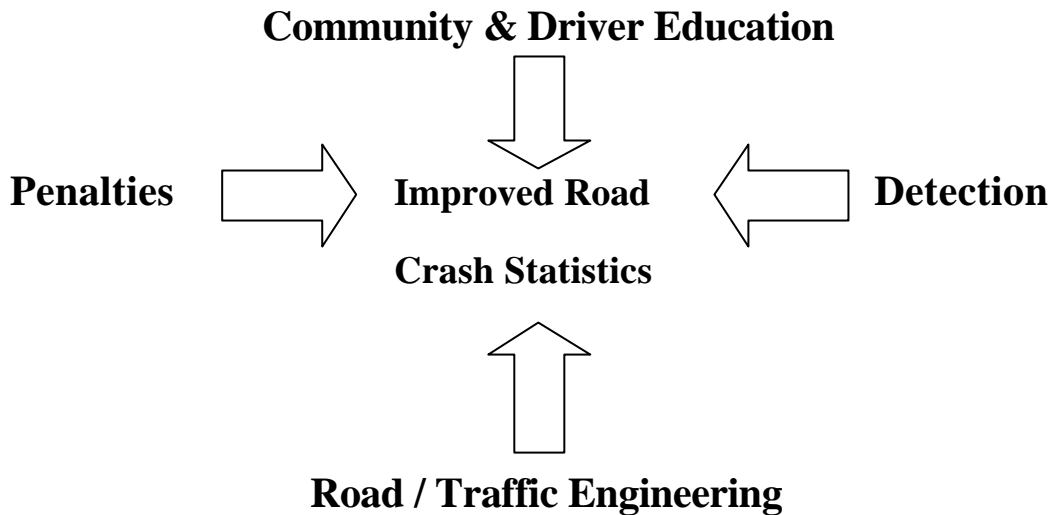
<sup>12</sup> Sally Leivesley, *Road Safety Enforcement: A Literature Review*, Commonwealth Department of Transport and Communications. Federal Office of Road Safety, Consultant's Report No 67 (CR 67), August 1987, p 21.

<sup>13</sup> Australian Bureau of Statistics, *Queensland Year Book 1998*, p 327; *Queensland Year Book 1999*, p 285.

<sup>14</sup> Wendy MacDonald, *Human Factors and Road Crashes: A Review of their Relationship*, Department of Transport. Federal Office of Road Safety, Consultant's Report No 39 (CR 39), October 1985, p 76.

such as improved motor vehicle safety standards and improved road conditions which facilitate improved performance of the driving task.<sup>15</sup>

The second general model is more comprehensive as it brings into play interrelated elements:



Just as random breath testing has contributed toward a decrease in the number of drivers being detected and charged with drink driving, mandatory blood samples taken from persons involved in road accidents may contribute to a further decline.

#### **4 CURRENT BAC PROVISIONS IN QUEENSLAND**

There is currently no mandatory requirement for medical staff to take a blood sample from road accident victims. Under s 80(8K) of the *Transport Operations (Road Use Management) Act 1995* a blood sample may be lawfully taken by medical personnel in a hospital once the accident victim has been requested to provide a sample. This authority exists even if the person does not consent to giving the sample of blood. However, the Deputy Director of Adult Emergency at the Mater Public Hospital in Brisbane echoes the thoughts of some medical practitioners:

*(Firstly), if I don't have the time to take the sample because I'm treating the patient, then it is definitely not a priority. But if you're going to take a sample, they need to be aware that you're taking it and what you're taking it for. If a patient refuses consent, that's it, I call it quits. I don't force the issue because if I did, it would be assault. ...*

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<sup>15</sup> MacDonald, p 3.



*The medicos are stuck in the middle of the duties of police to maintain the law and the civil rights of the person to be aware of what is happening to them.*<sup>16</sup>

A practising lawyer commented on the existing provisions in Queensland in the following way:

*While with a conscious person the doctor is authorised to take the specimen, whether or not the person consents to the taking. However, it's not clear that with an unconscious person the same provisions apply, because the police officer is not in a position to require the person to provide the specimen...*

*Where the person is unconscious, the doctor has no clear legal protection.*<sup>17</sup>

## **5 THE UNPROCLAIMED 1974 QUEENSLAND AMENDMENTS AND THE 1997 REPORT OF THE PARLIAMENTARY COMMITTEE**

Clause 9 of the *Traffic Act Amendment Act 1974* amended s 16A of the *Traffic Act 1949-1971* by inserting sub-clause 10(a) which provided for the taking of blood samples from persons of at least 14 years of age who had attended or been admitted to a hospital as a result of being injured in a traffic accident. The provision obligated a medical practitioner attending the person to take a blood sample for analysis unless to do so would have been injurious to the medical condition of the person.

If the person refused to allow a specimen of blood to be taken after having been informed that his/her refusal was an offence against the Act, the medical practitioner had thereby discharged his/her obligation under the Act.

The time period within which the sample could lawfully be taken under the section was to have been 8 hours from the time of the accident for a person who survived and 8 hours from the time of death for a person who did not survive.

At the time of the passing of the amendments, the Queensland branch of the Australian Medical Association objected to never having been consulted:

*Tomorrow we'll be making a very thorough examination of how this happened without our knowledge. ...*

*It seems we could be committing an assault by examining a patient without his permission for this purpose. There appears to be no protection.*<sup>18</sup>

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<sup>16</sup> quoted in Stephanie Luxmoore, 'Drunk, Drugged and Unconscious: Should We Test?', *Drugs in Society*, March 2002, pp 2-3, p 2.

<sup>17</sup> quoted in Stephanie Luxmoore, p 2.

The provisions of the 1974 Amendment Act relating to the taking of blood samples from road accident victims at a hospital were never proclaimed into force. The issue was not raised again in any concerted way until the 1997 report of the Queensland Parliamentary Travelsafe Committee.

The Parliamentary Travelsafe Committee recommended that blood samples be taken from drivers, motor cycle riders and pedestrians 15 years of age and over who are involved in road accidents and either attend or are admitted to hospital as a result of sustaining injuries. The Committee also recommended that any person who fails to allow a blood sample to be taken be deemed guilty of an offence.<sup>19</sup>

A further recommendation of the Committee was that medical staff taking blood samples be indemnified from civil and criminal liability which was a concern for the Queensland Branch of the Australian Medical Association in relation to the un-proclaimed 1974 amendments.

The full recommendations of the Parliamentary Committee are included in **Appendix A** to this Research Brief.

## **6 PROVISIONS OF THE TRANSPORT (COMPULSORY BAC TESTING) AMENDMENT BILL 2002**

**Clause 5** of the Bill, by inserting **proposed new s 80A(1)(a)** into the *Transport Operations (Road Use Management) Act 1995*, provides that medical practitioners at hospitals will be authorised to take blood samples for analysis from drivers and pedestrians 15 years of age and over who attended for treatment as a result of being involved in a traffic accident. Registered nurses will be similarly authorised to take blood samples but they will have to be accredited by the hospital to be competent to do so.

**Proposed new section 80A(3)** provides that the sample must be taken as soon as practicable and whether the patient consents to the taking or not. However, this provision does not require a doctor or nurse to take a blood sample from an accident patient if more than 12 hours have passed since the accident or the medical personnel

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<sup>18</sup> 'Demand by Doctors - Don't make us police pimps in breath tests', *Courier Mail*, 2 September 1974, p 1.

<sup>19</sup> Queensland. Legislative Assembly, Parliamentary Travelsafe Committee, *Compulsory BAC Testing: Inquiry into Whether Blood Alcohol Content (BAC) Testing of People who Attend a Hospital for Examination or Treatment as a Result of a Motor Vehicle Accident Should be Compulsory*, Committee Report No 22, December 1997.

concerned reasonably believes more than 12 hours have elapsed (**proposed new s 80A(4)(b)(iii)&(iv)**).

**Proposed new s 80A(5)** provides defences that medical staff will be able to raise to a charge of failing to take a blood sample:

- To do so would have been prejudicial to the proper care and treatment of the person concerned; or
- There was a reasonable belief that the person concerned had not reached the age of fifteen; or
- A belief that the person was not a road accident victim; or
- That the accident had occurred more than 12 hours previously or there was a reasonable belief that this was so; or
- That the medical personnel could not ascertain which person of a number of persons involved in a road accident was the driver/rider or pedestrian; or
- That the person concerned was behaving in a manner that would not allow a sample of blood to be taken.

Under **proposed new s 80B(2)(a)**, any person who can lawfully be expected to allow a sample of his or her blood to be taken for analysis, and who wilfully prevents a doctor or accredited nurse from doing so, will be guilty of an offence carrying a maximum fine of \$3,750 or 2 years imprisonment.

**Proposed new s 80C, ss (1)&(2)** provide for the procedures that must be followed with respect to the handling of blood samples that have been taken from accident victims. Basically the requirements are:

- The sample is to be divided into two equal parts and placed in sealed containers that are clearly labelled for identification.
- The content of one of the containers is then to be analysed for alcohol content whilst the other is to be made available to the person from whom the sample was taken.

Compliance with handling requirements will be essential for the results of analyses to be admitted as evidence in court proceedings.

Under **proposed new s 80C(6)**, blood samples that are taken are only to be tested for the presence of alcohol and no other drug, unless police have reasonable grounds to suspect that the owner of the blood sample was under the influence of a drug other than alcohol at the time of the accident.

**Proposed new s 80G** also provides for procedural matters that must be adhered to for the test results to be admitted as evidence (ie a signed certificate containing the name of the person from whom the blood was taken and the date, time and place that this occurred; the day, time and place that the sample was received for analysis and from whom; the date and place the sample was tested, and the result of the test).

Under **proposed new s 80H**, analysts issuing certificates will not be required to attend court unless the court so orders. If the defendant wishes to have the analyst attend the court to give evidence, he or she will be required to give the prosecution a minimum 14 days notice that an application will be made to the court for leave to call the analyst concerned.

Under **proposed new s 80H**, the court may require the analyst to give evidence only if the court is satisfied:

- there is a reasonable possibility that:
  - the specimen of blood that was tested was not in fact the defendant's blood; or
  - the sample was contaminated, resulting in a greater BAC reading than would have otherwise been obtained; or
  - the sample was not taken in accordance with the code of practice for the taking of such specimens; or
- evidence on oath from the analyst would be materially helpful to the court.

The Travelsafe Committee in its 1997 report recommended that a process be established that would allow the exchange of blood and/or breath analysis information between Queensland and other States. **Proposed new ss 80I and 80J** provide for the implementation of this recommendation. The effect is that drivers, riders and pedestrians who are in fact guilty of a drink driving offence will not escape detection for that offence by seeking medical treatment in a Queensland hospital out of the State in which the accident occurred. This would also apply in situations where an accident occurs in Queensland but the driver/rider or pedestrian seeks medical attention in the hospital of another State or Territory.

Certificates of analysis that are received from other jurisdictions relating to accidents that occurred in Queensland are to be made admissible in Queensland court proceedings under **proposed new s 80J**.

**Clause 6** amends existing **s 167** of the *Transport Operations (Road Use Management) Act 1995* by providing that a doctor or nurse taking a blood sample under the Act is an official who will not be civilly liable for an honest act done or omission made that was not in fact negligently done.

## 7 BAC AS A DETECTION MEASURE

It has been argued that an increase in the severity of punishment by itself will not have a positive effect on drink driving behaviour and that an increased risk of apprehension is also important or even essential.<sup>20</sup> The introduction of mandatory blood testing is viewed by many as a detection weapon that can be used to add to the deterrence level already provided by RBT.

Random breath testing of drivers was introduced into Victoria in 1978 and adopted by the other States and the Territories after that time. It has been adopted as an enforcement measure to such a degree by police in Australia that it now exceeds the efforts of any other Western nation.<sup>21</sup>

The main value of RBT is through deterrence because it raises the perceived risk of apprehension and subsequent punishment. In fact, low detention rates may indicate effective deterrence.<sup>22</sup> Its acceptance as a road safety initiative and not as a revenue raising device makes it an even more powerful weapon against drink driving. There is no doubt that RBT is the central weapon in the social control of drink driving in Queensland and this could be extended to mandatory blood testing.

The percentage of drivers and motor cycle riders who were involved in road accidents in Queensland and elsewhere and who were tested for their blood alcohol level in 1997 is listed in Table 1.

**Table 1**

**Percentage of drivers and motor cycle riders involved in fatal road accidents who were tested for alcohol consumption, 1997<sup>23</sup>**

**Fatally injured drivers and motorcycle riders**

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
<b>Tested</b>	92%	94%	86%	95%	100%	63%	59%	42%	90%
<b>Untested</b>	8%	6%	14%	5%	0%	37%	41%	58%	10%

<sup>20</sup> Mary Sheehan, *Alcohol Controls and Drink Driving: The Social Context*, Australia. Federal Office of Road Safety, Consultant's Report No 142 (CR 142), November 1994, p 59.

<sup>21</sup> Sheehan, p 87.

<sup>22</sup> Sheehan, p 86.

<sup>23</sup> Australia. Federal Office of Road Safety, 'Alcohol and Road Fatalities in Australia 1997', *Monograph 29*, 1999. Table 5.

**All involved drivers and motorcycle riders**

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
<b>Tested</b>	87%	53%	75%	93%	98%	74%	49%	40%	75%
<b>Untested</b>	13%	47%	25%	7%	2%	26%	51%	60%	25%

These statistics indicate that, even under existing legislation in Queensland, there is still a high proportion of drivers involved in accidents who are being tested for blood alcohol concentration, although the level at which this is being done is lower than in New South Wales, Western Australia and South Australia.

The percentage of fatally injured drivers and motor cycle riders who were found to have a blood alcohol concentration equal to the .05% limit or above is listed in Table 2.

**Table 2**

**Percentage of Fatally Injured Drivers and Motor Cycle Riders found to have a Blood Alcohol Concentration equal to or above .05% from 1990 to 1997<sup>24</sup>**

Year	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
<b>1990</b>	35	30	31	43	33	24	69	n/a	34
<b>1991</b>	33	29	31	35	34	21	65	n/a	32
<b>1992</b>	26	21	33	36	42	21	61	36	29
<b>1993</b>	28	28	28	51	36	32	77	67	32
<b>1994</b>	23	26	31	31	33	38	50	29	28
<b>1995</b>	29	22	33	27	35	44	56	50	29
<b>1996</b>	24	24	36	31	34	28	78	33	29
<b>1997</b>	27	23	27	32	31	25	84	20	28

The Queensland Travelsafe Committee received evidence submitted by Queensland Transport which suggested that 9% of all road accidents and 30% of all accidents that resulted in fatalities were directly related to alcohol consumption. The Committee received figures from Queensland Transport stating that during the period 1986 to 1995,

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<sup>24</sup> Australia. Federal Office of Road Safety, 'Alcohol and Road Fatalities in Australia 1997', *Monograph 29*, 1999. Table 1.

14,506 people were injured in alcohol related accidents in Queensland. Of these 14,506, there were 1,451 who were killed. Hospitalisation was required for 6,433 of the 14,506 whilst 4,871 required medical treatment.<sup>25</sup>

With respect to the results of BAC tests that are conducted under the existing legislation, the Committee reported that, in 1995, approximately 40% of drivers and riders fatally injured in traffic accidents had a BAC three times the legal limit whilst a further 20% recorded a level five times that of the legal limit.<sup>26</sup>

The Committee went on to state that a conservative estimate of the economic cost of road accidents caused by alcohol consumption in Queensland in 1995 was \$122 million.<sup>27</sup> This figure does not of course include the social cost to families when a family member loses his or her life on the roads.

## **7.1 ARGUMENTS AGAINST MANDATORY BLOOD TESTING**

Civil liberty issues were initially raised with respect to the compulsory wearing of seat belts in the early 1970s and the introduction of RBT in the 1980s. They are also used as opposing arguments for mandatory blood testing of persons treated at hospitals for injuries sustained in road accidents:

- Taking of mandatory blood samples is an invasion of the personal civil liberty of an individual's right to refuse to allow such a procedure as it is not for the benefit of the person's health.
- It is an invasive procedure to the person and, as such, may carry a risk to the health of the person concerned.
- It is a procedure that causes inconvenience to the person concerned.
- The abuse of individual rights is not warranted because such tests are only being used to try to prove a person's guilt.
- A refusal to supply a specimen of blood should not be an offence as this highlights the loss of individual freedom.
- The responsibility of a doctor is to save lives and minimise suffering and any duty to enforce the law is secondary.

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<sup>25</sup> Queensland. Legislative Assembly, Parliamentary Travelsafe Committee, *Compulsory BAC Testing: Inquiry into Whether Blood Alcohol Content (BAC) Testing of People who Attend a Hospital for Examination or Treatment as a Result of a Motor Vehicle Accident Should be Compulsory*, Committee Report No 22, December 1997, paragraphs 19 & 20, p 6.

<sup>26</sup> Queensland, Legislative Assembly, Parliamentary Travelsafe Committee, paragraph 21, p 7.

<sup>27</sup> Queensland, Legislative Assembly, Parliamentary Travelsafe Committee, paragraph 22, p 7.

- Doctors should not be placed in a position where there is a conflict of interest between the duty of a doctor to his/her patient and evidence gathering for the Crown.
- Greater deterrence for drink driving over existing random breath testing measures is unlikely because BAC testing is contingent upon involvement in an accident. Deterrence is contingent upon being detected, not by crash involvement per se.
- BAC non-consensual testing violates the basic common law principle that a person should not be compelled to give evidence that would be to their own detriment.

## **7.2 ARGUMENTS IN FAVOUR OF MANDATORY BLOOD TESTING**

- Legislation that is in the public interest warrants the loss of an individual's right to object.
- Doctors have a social obligation that transcends their duty to the individual patient.
- When legislation provides that a doctor's obligation ceases with the making of a request and informing the patient that it is an offence to refuse, there is no conflict of interest on the part of the doctor.
- As with other anti-social behaviour, the law can be a powerful weapon in enforcing road safety where other measures may not be successful.<sup>28</sup>
- The use of blood tests for persons involved in road accidents who are admitted to hospital will help detect drink drivers in country areas who would not otherwise be detected because of the lower presence of RBT.
- The rights of road users not to be placed at risk from other drivers affected by alcohol takes precedence over the civil liberties or rights of drivers not to have a sample of blood taken.
- Compulsory testing at hospitals will identify drivers/riders/pedestrians who have a concentration of alcohol in their blood and who would not otherwise have been identified.
- Hospitals should not provide a 'safe haven' from detection for drink drivers.
- The deterrent effect of existing legislation will be greatly enhanced with more drivers being tested.
- Greater deterrence of drink driving will ultimately play a role in increased road safety for all road users.

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<sup>28</sup> Leivesley, p 25.



## **8 THE POSITION IN OTHER AUSTRALIAN STATES**

### **8.1 NEW SOUTH WALES**

**Sections 19-24** of the *Road Transport (Safety and Traffic Management) Act 1999* deal with issues concerning the mandatory taking of blood samples from road trauma victims whether they are drivers/riders or pedestrians. The taking of these samples does not require hospital medical staff to seek the authority of police. However, the mandatory provision that a blood sample is to be taken can be waived by medical staff if, in their opinion, it would be prejudicial to the medical condition of the person concerned. Pedestrians involved in road accidents are also covered by the mandatory blood sample provisions. The consent of the person concerned is not required. There is a 12 hour limit from the time the accident occurred within which the blood sample is to be taken by the hospital staff.

Whilst the legislation places a duty upon doctors working at hospitals to take the blood samples from accident victims as soon as practicable, there is also the overriding provision that blood samples are only to be taken from accident victims who are at least 15 years of age.

These provisions also apply to persons who are treated at or admitted into a hospital in New South Wales but who may have been involved in a road accident that occurred outside New South Wales.

#### **8.1.1 Assessing the New South Wales Legislation**

There were a number of changes made to the traffic legislation in 1982 in an effort to reduce the incidence of drink driving. The changes that were made were the introduction of a three-tier system of penalties to be applied to the offence of driving whilst under the influence of a drug. The changes also involved the introduction of compulsory blood testing of all drivers, motor cyclists and pedestrians over the age of 15 years admitted to hospital suffering injuries sustained in road accidents.

The New South Wales legislation has been widely acknowledged as having been successful in contributing to a decrease in the number of accidents occurring as a direct consequence of alcohol consumption. A comparison has been made between the number of road fatalities occurring in New South Wales in 1950 (634) and 1994 (651) as indicating that the methods of alcohol detection being employed are being used

efficiently and cost-effectively.<sup>29</sup> However, despite acknowledged improvement, the Road and Traffic Authority of New South Wales still estimates that alcohol consumption remains a factor in one in six fatal accidents in that State.<sup>30</sup>

The aims of the legislative changes in 1982 were two-fold: firstly, to provide a basis for the widest net possible to catch drink drivers who had been involved in accidents and secondly, to provide penalties of a sufficient level that would be interpreted by the community as a serious attempt to confront the level of drink driving. Overall, the New South Wales legislation in a number of respects is regarded as having provided conclusive long-term results in reducing alcohol related road fatalities.<sup>31</sup>

## 8.2 SOUTH AUSTRALIA

Similarly to the New South Wales legislation, s 47I of the *Road Traffic Act 1961* provides for the compulsory taking of blood tests from road accident victims who attend or are admitted to hospital. The time limit within which this is to be done is shorter than in New South Wales and is set at 8 hours from the time of attendance at or admission into the hospital. The age of persons who are subject to this compulsory provision is one year lower than in New South Wales and is set at a minimum of 14 years of age.

Medical practitioners working at hospitals are relieved of the duty to take blood samples from accident victims who still object to the procedure after having been informed by the doctor that an objection is only valid on medical grounds. However, if the accident victim who has not had a blood sample removed for analysis dies within 8 hours of hospital admission, the doctor certifying death is duty bound to take such a sample from the deceased person.

As in New South Wales, doctors are relieved of the duty to take a blood sample for analysis if, in their opinion, to do so would be injurious to the health of the accident victim.

Unlike the New South Wales legislation, the legislation in South Australia does not provide for the mandatory taking of blood samples from pedestrians.

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<sup>29</sup> AF Moynham, J Perl, SG Anderson, SR Jennings and GR Starmer, *New South Wales Road Fatalities and Legislation on Alcohol, Drugs and Driving Since 1950*, <http://www.raru.adelaide.edu.au/T95/paper/s18p2.html> Downloaded 24 April 2002.

<sup>30</sup> New South Wales, Roads and Traffic Authority, *Road Safety 2010: A Framework for Saving 2,000 Lives by the Year 2010 in New South Wales*, [http://www.rta.nsw.gov.au/frames/safety/c\\_f.htm?frames/safety/c6&/safety/c6\\_c.htm&Road+Safety+2010&6](http://www.rta.nsw.gov.au/frames/safety/c_f.htm?frames/safety/c6&/safety/c6_c.htm&Road+Safety+2010&6) Downloaded 24 April 2002, p 5.

<sup>31</sup> Leivesley, pp 53-55.

### **8.3 NORTHERN TERRITORY**

Northern Territory provisions for the compulsory taking of blood samples for analysis from road trauma victims are covered by **ss 25-26** of the *Traffic Act*. It is a requirement that any person 15 years and over who has attended or been admitted to a hospital as a result of injuries sustained in a road accident is to have a blood sample taken for analysis unless the taking of the sample would be detrimental to the person's health. The taking of blood samples from unconscious road accident victims or from persons incapable of giving consent is authorised.

As with the New South Wales legislation, there is a 12 hour limit from the occurrence of the road accident within which the sample can be taken.

### **8.4 THE OTHER STATES AND THE AUSTRALIAN CAPITAL TERRITORY**

There is no mandatory requirement for hospital staff in Victoria, Western Australia, Tasmania and the Australian Capital Territory to take blood samples for analysis from road accident victims. In Victoria, samples are taken from drivers/riders under an agreed code of practice, subject to waiver conditions. In Western Australia, Tasmania and the Australian Capital Territory, samples may be taken by medical personnel at the request of police. In Western Australia, the time period within which the request must be made is 4 hours from the occurrence of the accident; in Tasmania, it is 3 hours and in the Australian Capital Territory it is 2 hours.

In Victoria and Tasmania a blood sample is taken where the driver/rider has not consented to the procedure because of unconsciousness. At present this cannot be done in Western Australia or Queensland.

## **9 CONCLUSION**

The provisions of the Transport (Compulsory BAC Testing) Amendment Bill 2002 are similar to those currently existing in New South Wales. The Bill provides for the indemnification of medical staff who lawfully take blood samples from accident victims. The provisions ensure that there will not be a 'loophole' for persons who cross the Queensland border with another jurisdiction to either seek treatment at a hospital in that other jurisdiction after being involved in an accident in Queensland or seek treatment in Queensland after being involved in an accident in another jurisdiction.

Compulsory BAC testing will increase the number of drivers/riders or pedestrians who are tested after being involved in road accidents which should, in turn, increase the detection rate and subsequently the deterrence factor.



## **APPENDIX A**

### **RECOMMENDATION 1**

That the Traffic Act 1949 be amended so that all drivers, motorcycle riders and pedestrians who are 15 years of age or over and attend a hospital for examination or treatment of injuries resulting from an accident involving a motor vehicle on a road, whether in Queensland or elsewhere, be required to supply a sample of breath and/or blood when requested to do so by a certified person.

### **RECOMMENDATION 2**

That the Traffic Act 1949 be amended so that doctors, nurses and other people who are appropriately trained and certified by a hospital be allowed by law to demand and take breath and/or blood samples from all drivers, motorcycle riders and pedestrians who are 15 years of age or over and attend a hospital for examination or treatment of injuries resulting from, or suspected to be resulting from, an accident involving a motor vehicle on a road, whether in Queensland or elsewhere.

### **RECOMMENDATION 3**

That BAC readings from samples taken within 4 hours of the accident be accepted as prima facie evidence for a prescribed concentration of alcohol charge, and that the BAC readings from samples taken within 12 hours of the accident be acceptable as supporting evidence.

### **RECOMMENDATION 4**

That the government consult with hospitals and relevant hospital staff to develop a 'code-of-practice' so that all drivers, motorcycle riders and pedestrians who are 15 years of age or over and attend a hospital for examination or treatment of injuries resulting from an accident involving a motor vehicle on a road, whether in Queensland, or elsewhere, have a breath and/or blood sample taken for BAC testing.

### **RECOMMENDATION 5**

That any person who is liable to be tested, but fails to supply a breath or blood sample when requested to do so by a certified person, be guilty of an offence under the act and receive a penalty that is equivalent to that for driving a motor vehicle with a BAC reading of over 0.15.

### **RECOMMENDATION 6**

That any person who hinders or obstructs a doctor, nurse or other certified person from taking a breath or blood sample be guilty of an offence and receive a penalty that reflects the seriousness of the act.

### **RECOMMENDATION 7**

That compulsory BAC testing be achieved through the collection of both breath and blood samples. Wherever possible, people who are liable to be tested should, in the first instance, be tested using a preliminary breath test

(PBT). All people whose PBT result indicates a positive BAC (regardless of the BAC level) and any people who cannot supply a breath sample should have a blood sample taken for analysis.

**RECOMMENDATION 8**

That any person who is liable to be tested and, within four hours of the accident, wilfully does anything to alter the concentration of alcohol in his/her blood (except under the direction or under the supervision of a medical practitioner or nurse and for the proper care and treatment of the person), be guilty of an offence and receive a penalty that is equivalent to that for driving a motor vehicle with a BAC of over 0.15.

**RECOMMENDATION 9**

That doctors, nurses and other people who are certified to take samples be indemnified from civil and criminal liability for anything they properly and reasonably do in the course of taking blood and/or breath samples for the purposes of the Traffic Act 1949.

**RECOMMENDATION 10**

That the conditions under which doctors, nurses and other people who are certified to take a sample, and analysts may be called to court be the same as those within section 57 of the Victorian Road Safety Act 1986.

**RECOMMENDATION 11**

That legislation in Queensland allow for the reciprocal exchange of blood and/or breath test results with other jurisdictions, and for the results from other jurisdictions to be admissible as evidence in Queensland courts.

That the Queensland Police Service negotiates with authorities in New South Wales, the Northern Territory and South Australia to establish an agreement and protocol for cross border sampling.

**RECOMMENDATION 12**

That the Minister for Transport and Main Roads lobby the Australian Transport Council to ensure all states and territories implement legislation to allow for the reciprocal exchange of blood and/or breath test results, and the admissibility of blood test results from other jurisdictions as evidence in court.

**RECOMMENDATION 13**

That police should conduct a preliminary breath test (PBT) on all drivers, riders and pedestrians who are involved in an accident, are at the accident scene and able to supply a breath sample.

Source: Queensland. Legislative Assembly, Parliamentary Travelsafe Committee, *Compulsory BAC Testing: Inquiry into Whether Blood Alcohol Content (BAC) Testing of People who Attend a Hospital for Examination or Treatment as a Result of a Motor Vehicle Accident Should be Compulsory*, Committee Report No 22, December 1997, "Summary of Recommendations", pp v –vii.

## APPENDIX B – NEWSPAPER ARTICLE

**Title**            **State to go tough blood test route.**

**Author**         **Chris Jones**

**Source**         **The Courier-Mail**

**Date Issue**   **20/04/02**

**Page**            **15**

Motorists and pedestrians involved in road accidents would be subjected to compulsory blood-alcohol tests under tough new laws introduced to State Parliament yesterday.

Under the legislation introduced by Opposition Transport spokesman Vaughan Johnson, doctors would have an obligation to test even unconscious victims of accidents within 12 hours of them being admitted to hospital.

Police officers at an accident would still be required to test the blood alcohol content of conscious drivers they believe might be to blame. But the Beattie Government is expected to oppose the Opposition's Bill because it sees it as "too simplistic" and plans to introduce its own legislation for compulsory blood alcohol tests to Parliament within months.

Hundreds of drivers with a blood alcohol content over the legal limit of 0.05 are believed to escape detection each year because they argue they are too confused to submit a test or they fake unconsciousness.

Under the Opposition's proposed legislation, a doctor would be required to take a blood sample from any car accident victim aged over 15, as long as they did not believe the procedure would harm the patient. A portion of the sample would be provided to the patient so they could have it independently tested.

The laws would protect from liability the doctor or nurse taking the sample. Unconscious drivers can be tested for blood alcohol or drugs in all states except Western Australia and Queensland.

The issue was examined in 1997 and 1999 by State Parliament's all-party Travelsafe Committee, which on both occasions recommended compulsory testing. Mr Johnson said he recognised his proposed legislation, which is based on NSW laws, raised civil liberties issues. "But just like the decision that was taken when the random breath tests were introduced, I believe that the rights of innocent motorists and the expectations of the relatives of road accident victims are more important than the civil liberty considerations," he said.

Transport Minister Steve Bredhauer said his department was in the process of developing legislation covering tougher blood alcohol testing procedures, but wide consultation was required because it was such a complex issue. RACQ external affairs general manager Gary Fites said he supported the

concept because it would deter the "small minority" who might seek to avoid prosecution by hospitalising themselves.



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