

[Act 2000 No 78]



New South Wales

Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

Currently, health care workers who take blood samples for the purposes of testing for alcohol or other drugs are required to divide a sample into 2 approximately equal portions, one to be sent to a laboratory for testing and the other to be given to the person from whom the blood was taken. In order to remove the risk to health care workers in handling blood, the main object of this Bill is to require samples taken for the purposes of testing to be sent to a laboratory for division under safer laboratory conditions, with a portion of the sample to be available to a laboratory or medical practitioner nominated by the person from whom the blood was taken if the person so requests and on payment of a fee of \$50 (or such other amount as

* Amended in committee—see table at end of volume.

may be prescribed by the regulations).

This Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* (the **Principal Act**) to this effect.

The Bill also amends the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*, the *Marine Safety Act 1998* and the *Rail Safety Act 1993* to the same effect. The provisions of the *Marine Safety Act 1998* are largely uncommenced. When those provisions are commenced, the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* will be repealed.

The Bill makes consequential amendments to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* and the *Rail Safety Regulation 1999*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Road Transport (Safety and Traffic Management) Act 1999* set out in Schedule 1.

Clause 4 is a formal provision giving effect to an amendment to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Marine Safety Act 1998* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Rail Safety Act 1993* set out in Schedule 5.

Clause 8 is a formal provision giving effect to an amendment to the *Rail Safety Regulation 1999* set out in Schedule 6.

Explanatory note

Amendments

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

Request for blood sample to be taken

Under Division 3 of Part 2 of the Principal Act, a person who is required to submit to a breath analysis following the person's failure of, or refusal to undertake, a random breath test, may request the police officer concerned to arrange for the taking by a medical practitioner, in the presence of a police officer, of a sample of that person's blood for analysis. **Schedule 1 [1]** substitutes section 18 (1) of the Principal Act to retain a person's entitlement to undergo blood analysis but to provide that the analysis is to be conducted in accordance with the new arrangements.

Currently, section 18 requires the medical practitioner who takes the blood sample to divide the sample into 2 portions and to hand one portion to the person from whom the blood was taken. **Schedule 1 [2]** amends section 18 of the Principal Act to ensure that safe procedures will be followed in the handling of a blood sample by providing that the sample is to be sent to a laboratory prescribed by the regulations where it may be divided under safer laboratory conditions. A portion of such a sample will be made available to a medical practitioner or laboratory nominated by the person from whom the blood was taken if so requested within 12 months after the taking of the blood and on payment of \$50 (or such other amount as may be prescribed by the regulations).

Blood analysis following accidents

Under Division 4 of Part 2 of the Principal Act, a blood sample is required to be taken from each accident patient over the age of 15. Currently, section 23 of the Principal Act requires the medical practitioner or nurse who takes a sample of blood to divide the sample into 2 portions, one to be used for analysis by the hospital, and the other to be made available for the purpose of analysis to the person from whom the blood was taken. **Schedule 1 [3]** amends section 23 of the Principal Act to provide that samples are instead to be submitted to a laboratory prescribed by the regulations where they may be divided under safer laboratory conditions. A portion of such a sample will be made available for the purpose of analysis to a medical practitioner or laboratory nominated by the person from whom the blood was taken, if so requested within 12 months after the taking of the blood and on payment of \$50 (or such other amount as may be prescribed by the regulations).

Explanatory note

Schedule 1 [4] and [5] make consequential amendments.

Blood analysis following arrest

Under Division 5 of Part 2 of the Principal Act, a person who refuses to submit to an assessment of his or her sobriety or whom, after the assessment has been made, a police officer reasonably believes is under the influence of a drug, may be arrested. Section 27 of the Principal Act provides that a police officer may require a person who has been so arrested to provide samples of the person's blood and urine (whether or not the person consents). Currently such samples are to be divided into 2 portions and one portion is to be handed to the person from whom the sample was taken. **Schedule 1 [6]** amends section 27 of the Principal Act to provide that, in the case of a blood sample, the sample is not to be divided by the medical practitioner, but is instead to be submitted to a laboratory prescribed by the regulations for division under safer laboratory conditions. A portion of such a sample will be made available to a medical practitioner or laboratory nominated by the person from whom the blood was taken if so requested within 12 months after the taking of the blood and on payment of \$50 (or such other amount as may be prescribed by the regulations).

Schedule 1 [7]–[19] make consequential amendments.

Schedule 1 [20] enables the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

Schedule 2 makes a consequential amendment to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* to ensure that the laboratory currently prescribed by the regulations, namely, the laboratory at Lidcombe of the Department of Health's Division of Analytical Laboratories, is prescribed for the purposes of all the provisions added by the amendments to the Principal Act.

Schedules 3–6 Amendment of other Acts and instruments

Schedules 3–6 amend the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*, the *Marine Safety Act 1998*, the *Rail Safety Act 1993* and the *Rail Safety Regulation 1999* to the same effect.