

# Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000 No 78

[2000-78]



New South Wales

## Status Information

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2003](#)

### Authorisation

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# Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000 No 78



New South Wales

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# Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000 No 78



New South Wales

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* and certain other Acts and statutory instruments in relation to the analysis of blood samples; and for other purposes.

## 1 Name of Act

This Act is the *Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Road Transport (Safety and Traffic Management) Act 1999 No 20*

The *Road Transport (Safety and Traffic Management) Act 1999* is amended as set out in Schedule 1.

## 4 Amendment of *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*

The *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* is amended as set out in Schedule 2.

## 5 Amendment of *Marine (Boating Safety—Alcohol and Drugs) Act 1991 No 80*

The *Marine (Boating Safety—Alcohol and Drugs) Act 1991* is amended as set out in Schedule 3.

## 6 Amendment of *Marine Safety Act 1998 No 121*

The *Marine Safety Act 1998* is amended as set out in Schedule 4.

## 7, 8 (Repealed)

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

(Section 3)

### **[1] Section 18 Procedure to be followed for breath analysis**

Omit section 18 (1). Insert instead:

- (1) A person who is required under section 15 (1) to submit to a breath analysis may request the police officer making the requisition to arrange for a medical practitioner to take, in the presence of a police officer, a sample of that person's blood, for analysis in accordance with this section at that person's own expense.

### **[2] Section 18 (3)-(7)**

Omit section 18 (3) and (4). Insert instead:

- (3) A medical practitioner by whom a sample of a person's blood is taken under an arrangement referred to in subsection (1) must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
  - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the police officer who was present at the time the sample was taken.
- (4) The police officer to whom a sample of blood is handed under subsection (3) must, as soon as reasonably practicable after the sample is handed to the officer, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol in the blood.
- (5) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (6) An analyst at the laboratory to which a sample of blood is submitted for analysis under this section may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other

drugs) in the blood.

- (7) An analysis referred to in subsection (6) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood to be analysed and the breaking of any seal securing the sample) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

**[3] Section 23 Analysis of samples of blood taken under this Division**

Omit section 23 (1)–(3). Insert instead:

- (1) The medical practitioner or nurse by whom a sample of a person's blood is taken in accordance with this Division must:
- (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2) The medical practitioner or nurse must, as soon as reasonably practicable after the sample is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol in the blood.

Maximum penalty: 20 penalty units.

- (3) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

**[4] Section 23 (5)**

Omit the subsection. Insert instead:

- (5) A police officer may arrange for a sample of a person's blood taken in accordance with this Division to be submitted to a laboratory prescribed by the regulations for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood.

**[5] Section 23 (7) and (8)**

Omit the subsections. Insert instead:

- (7) An analyst to whom a sample of blood, or a portion of a sample of blood (under subsection (4)), is submitted for analysis under this section may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (8) An analysis referred to in subsection (7) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

**[6] Section 27 Procedure for taking samples following arrest**

Insert after section 27 (2):

- (2A) The medical practitioner by whom or under whose directions a sample of blood is taken in accordance with this Division must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2B) The medical practitioner must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains a drug.

Maximum penalty: 20 penalty units.

- (2C) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

**[7] Section 27 (3)**

Omit “blood or”.

**[8] Section 27 (4) (b)**

Omit “blood or”.

**[9] Section 33 Certificate evidence about breath or blood analysis in proceedings for offences under section 9**

Omit “a portion of” from section 33 (5) (a).

**[10] Section 33 (5) (b)**

Omit “portion”. Insert instead “sample”.

**[11] Section 33 (6) (a)**

Omit “a portion of”.

**[12] Section 33 (6) (d) and (i)**

Omit “portion” wherever occurring. Insert instead “sample”.

**[13] Section 33 (6) (h)**

Omit “portion of the”.

**[14] Section 34 Evidence of drugs revealed by blood or urine analysis in proceedings for offence under section 12**

Omit “a portion of” from section 34 (a).

**[15] Section 35 Certificate evidence about blood or urine analysis in proceedings for offences under section 12**

Omit “a portion of” from section 35 (2) (a).

**[16] Section 35 (2) (b)**

Omit “portion”. Insert instead “sample”.

**[17] Section 35 (3) (a)**

Omit “a portion of”.

**[18] Section 35 (3) (d), (e) and (i)**

Omit “portion” wherever occurring. Insert instead “sample”.



**[19] Section 35 (3) (h)**

Omit “portion was a portion of the”. Insert instead “sample was a”.

**[20] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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

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

(Section 4)

**Clause 129**

Omit the clause. Insert instead:

**129 Analysis of blood samples—prescribed laboratory**

For the purposes of sections 18, 23 and 27 of the Act, the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service is prescribed.

**Schedule 3 Amendment of Marine (Boating Safety—Alcohol and  
Drugs) Act 1991 No 80**

(Section 5)

**[1] Section 13 Breath analysis following breath testing**

Omit section 13 (5). Insert instead:

(5) A person who is required to submit to a breath analysis may request the police officer making the requisition to arrange for a medical practitioner to take, in the presence of a police officer, a sample of that person’s blood, for analysis in accordance with this section at that person’s own expense.

**[2] Section 13 (7)-(11)**

Omit section 13 (7) and (8). Insert instead:

(7) A medical practitioner by whom a sample of a person’s blood is taken under an arrangement referred to in subsection (5) must:

- (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
  - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the police officer who was present at the time the sample was taken.
- (8) The police officer to whom a sample of blood is handed under subsection (7) must, as soon as reasonably practicable after the sample is handed to the officer, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (9) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (10) An analyst to whom a sample of blood, or a portion of a sample of blood, is submitted for analysis under this section may carry out an analysis of the sample, or of a portion of the sample, submitted for analysis to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (11) An analysis referred to in subsection (10) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

**[3] Section 16A**

Insert after section 16:

**16A Action by medical practitioner or nurse with respect to samples of blood taken under section 14 or 15**

- (1) The medical practitioner or nurse who takes a sample of blood under section 14 or 15 must:
- (a) place the sample into a container, and

- (b) fasten and seal the container, and
- (c) mark or label the container for future identification, and
- (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2) The medical practitioner or nurse must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains a drug.

Maximum penalty: 20 penalty units.

- (3) An analyst to whom a sample of blood is submitted for analysis under this section may carry out an analysis of the sample to determine whether the blood contains a drug and, where required, the concentration of the drug in the blood.
- (4) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this section for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

**[4] Section 17 Action by medical practitioner or nurse with respect to samples of urine**

Omit "blood or" from section 17 (1).

**[5] Sections 18 and 18A**

Omit section 18. Insert instead:

**18 Analysis of samples of urine**

- (1) A police officer may arrange for a portion of a sample of a person's urine taken in accordance with this Part to be submitted for analysis by an analyst to determine whether the urine contains a drug.
- (2) An analyst to whom a portion of a sample of urine is submitted for analysis under this section may carry out an analysis of the portion to determine whether the urine contains alcohol or any other drug.

**18A Limitation on arrangements for analysis of samples of blood and urine taken under section 14**

If a blood or urine sample was taken under section 14, a police officer may not make

arrangements under this Part for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances:

- (a) where the police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol, and
- (b) where:
  - (i) no police officer attended the scene of the accident that led to the taking of the sample, or
  - (ii) although a police officer or police officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with section 15, to a breath test or assessment of his or her sobriety.

**[6] Section 19 Destruction of blood samples**

Omit “a portion of” from section 19 (1).

**[7] Section 19 (2)**

Omit section 19 (2). Insert instead:

- (2) A person is not guilty of an offence under this section if the sample is destroyed by an analyst in the course of or on completion of an analysis of the sample.

**[8] Section 25 Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood**

Omit “a portion of” from section 25 (1).

**[9] Section 25 (3) (c)**

Omit “17”. Insert instead “16A”.

**[10] Section 25 (5) (h)**

Omit “portion of the”.

**[11] Section 25 (5) (i)**

Omit “portion”. Insert instead “sample”.

**[12] Section 26 Certificate evidence of presence of drugs**

Omit “a portion of” from section 26 (1) (a).

**[13] Section 26 (2) (c)**

Insert "16A or" before "17".

**[14] Section 26 (3) (a)**

Omit "a portion of".

**[15] Section 26 (3) (b)**

Omit "portion". Insert instead "sample".

**[16] Section 26 (4) (a)**

Omit "a portion of".

**[17] Section 26 (4) (d), (e) and (i)**

Omit "portion" wherever occurring. Insert instead "sample".

**[18] Section 26 (4) (h)**

Omit "portion was a portion of the". Insert instead "sample was a".

**[19] Section 29 Blood samples taken in another State or Territory**

Insert "16A," after "14," in section 29 (1) (b).

**[20] Section 29 (1)**

Insert "the sample or" before "a portion".

**[21] Section 29 (2)**

Insert "16A," after "14,".

**[22] Schedule 1 Savings, transitional and other provisions**

Omit "this Act." from clause 1 (1). Insert instead:

the following Acts:

this Act

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

**[23] Schedule 1**

Omit "this Act" from clause 1 (2).

Insert instead "the Act concerned or a later date".

## **Schedule 4 Amendment of Marine Safety Act 1998 No 121**

(Section 6)

### **[1] Schedule 1 Alcohol and drugs—breath analysis and related matters**

Omit clause 4 (5). Insert instead:

- (5) A person who is required to submit to a breath analysis may request the authorised officer making the requisition to arrange for a medical practitioner to take, in the presence of an authorised officer, a sample of that person's blood, for analysis in accordance with this clause at that person's own expense.

### **[2] Schedule 1, clause 4 (7)-(11)**

Omit clause 4 (7) and (8). Insert instead:

- (7) A medical practitioner by whom a sample of a person's blood is taken under an arrangement referred to in subclause (5) must:
- (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
  - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the authorised officer who was present at the time the sample was taken.
- (8) The authorised officer to whom a sample of blood is handed under subclause (7) must, as soon as reasonably practicable after the sample is handed to the authorised officer, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (9) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this clause for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (10) An analyst to whom a sample of blood, or a portion of a sample of blood, is submitted for analysis under this clause may carry out an analysis of the sample, or of a portion of the sample, submitted for analysis to determine the concentration of

alcohol (and, where required, of other drugs) in the blood.

- (11) An analysis referred to in subclause (10) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

**[3] Schedule 1, clause 7A**

Insert after clause 7:

**7A Action by medical practitioner or nurse with respect to samples of blood taken under clause 5 or 6**

- (1) The medical practitioner or nurse who takes a sample of blood under clause 5 or 6 must:
- (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2) The medical practitioner or nurse must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine whether the blood contains a drug.

Maximum penalty: 20 penalty units.

- (3) An analyst to whom a sample of blood is submitted for analysis under this clause may carry out an analysis of the sample to determine whether the blood contains a drug and, where required, the concentration of the drug in the blood.
- (4) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the laboratory prescribed under this clause for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

**[4] Schedule 1, clause 8 Action by medical practitioner or nurse with respect to samples**

**of urine**

Omit “blood or” from clause 8 (1).

**[5] Schedule 1, clauses 9 and 9A**

Omit clause 9. Insert instead:

**9 Analysis of samples of urine**

- (1) An authorised officer may arrange for a portion of a sample of a person’s urine taken in accordance with this Part to be submitted for analysis by an analyst to determine whether the urine contains a drug.
- (2) An analyst to whom a portion of a sample of urine is submitted for analysis under this clause may carry out an analysis of the portion to determine whether the urine contains alcohol or any other drug.

**9A Limitation on arrangements for analysis of samples of blood and urine taken under clause 5**

If a blood or urine sample was taken under clause 5, an authorised officer may not make arrangements under this Part for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances:

- (a) where the authorised officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol, and
- (b) where:
  - (i) no authorised officer attended the scene of the accident that led to the taking of the sample, or
  - (ii) although an authorised officer or authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with clause 6, to a breath test or assessment of his or her sobriety.

**[6] Schedule 1, clause 10**

Omit “a portion of a sample” from clause 10 (1).

Insert instead “a sample, or a portion of a sample,”.

**[7] Schedule 1, clause 10 (2) and (3)**

Omit clause 10 (2). Insert instead:



- (2) A person is not guilty of an offence under this clause if the sample, or the portion of the sample, of blood or urine is destroyed by an analyst in the course of or on completion of an analysis of the sample.
- (3) A person is not guilty of an offence under this clause in relation to a portion of a sample of urine if the portion is destroyed:
- (a) in the case of a portion of a sample of urine referred to in clause 8 (2) (a)—by or at the direction of the person from whom the sample was taken or after the expiration of one month commencing on the day on which the sample was taken, or
  - (b) in the case of a portion of a sample of urine referred to in clause 8 (2) (b)—by or at the direction of an authorised officer if the portion is not required for analysis.

**[8] Schedule 1, clause 16**

Omit “a portion of” from clause 16 (1).

**[9] Schedule 1, clause 16 (3) (c)**

Omit “8”. Insert instead “7A”.

**[10] Schedule 1, clause 16 (5) (h)**

Omit “portion of the”.

**[11] Schedule 1, clause 16 (5) (i)**

Omit “portion”. Insert instead “sample”.

**[12] Schedule 1, clause 17**

Omit “a portion of” from clause 17 (1) (a).

**[13] Schedule 1, clause 17 (2) (c)**

Insert “7A or” before “8”.

**[14] Schedule 1, clause 17 (3) (a)**

Omit “a portion of”.

**[15] Schedule 1, clause 17 (3) (b)**

Omit “portion”. Insert instead “sample”.

**[16] Schedule 1, clause 17 (4) (a)**

Omit “a portion of”.

**[17] Schedule 1, clause 17 (4) (d), (e) and (i)**

Omit “portion” wherever occurring. Insert instead “sample”.

**[18] Schedule 1, clause 17 (4) (h)**

Omit “portion was a portion of the”. Insert instead “sample was a”.

**[19] Schedule 1, clause 20**

Insert “7A,” after “5,” in clause 20 (1) (b).

**[20] Schedule 1, clause 20 (1)**

Insert “the sample or” before “a portion”.

**[21] Schedule 1, clause 20 (2)**

Insert “7A,” after “5,”.

**[22] Schedule 1, clause 21**

Omit “portions of” from clause 21 (c) and (d) wherever occurring.

**[23] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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

**Schedules 5, 6 (Repealed)**