

2006

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Road Transport (Alcohol and Drugs) Amendment Bill 2006

Explanatory Statement

Circulated by authority of
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OVERVIEW

This Bill amends the *Road Transport (Alcohol and Drugs) Act 1977* (the Act):

1. to make it clear that a doctor or nurse is only required to take a blood sample from a person under section 15AA if the doctor or nurse has reasonable grounds to believe that the person was a driver involved in an accident that occurred less than 6 hours before the person arrived at hospital; and
2. to update the procedural requirements for analysing samples taken under the Act. The Bill removes the requirement that an analyst analyse the sample and replaces it with a requirement that the approved analyst arrange for the analysis to occur at an approved laboratory.

CLAUSES 1 TO 3: FORMAL CLAUSES

Clauses 1 to 3 are formal clauses which:

- state the name of the Act being created;
- provide for commencement of the Act; and
- state the name of the Act being amended.

CLAUSE 4: SECTIONS 3 AND 4

Clause 4 renumbers sections 3 and 4 as sections 2 and 3.

CLAUSE 5: NEW SECTION 4

This clause notes that other legislation applies in relation to offences against the Act. The *Criminal Code* applies to s 15AA(1) of the Act.

CLAUSE 6: SECTION 6

Clause 6 amends section 6 of the Act to enable the Minister to approve a laboratory or other entity (however described) as an approved laboratory for the Act. It is envisaged that the Minister will only approve a laboratory if satisfied it has the staff, equipment and procedures to be entrusted with the task of analysing samples for the purpose of the Act.

This clause also amends section 6(2) to remove the reference to the making of an appointment 'in writing'. This reference is unnecessary because section 6(4) makes it clear that an appointment is a notifiable instrument, which by its very nature must be evidenced in writing to enable its notification and publication on the ACT Legislation Register.

CLAUSE 7: SECTION 15AA HEADING

This clause substitutes a new heading for section 15AA that more accurately reflects the contents of the section.

CLAUSE 8: SECTION 15AA(1)

Clause 8 amends section 15AA(1) of the Act to include a time limit on the period for taking samples under the section. Section 15AA(1) is amended to make it clear that a doctor or nurse is only required to take a blood sample if they attend to a person whom they have reasonable grounds to believe was a driver involved in an accident less than 6 hours before the person arrived at hospital.

Section 17 sets out some exemptions from the requirement to take a blood sample under section 15AA.

CLAUSE 9: SECTION 15A(1)

Section 15A sets out the procedure for analysing a blood sample taken under section 15 or section 15AA of the Act. The doctor or nurse that has taken a sample under these sections is required to divide the sample into 2 containers and place 1 container in a one-way box for collection by an approved analyst. The other container is to be given to the person from whom the sample was taken. If the person from whom the sample was taken is incapable of understanding the procedures that have been applied to him or her, both containers must be placed in the one way box for collection.

Section 15A(1) currently provides that if only one container has been placed in the one way box for analysis, the analyst shall analyse the blood to ascertain the concentration of alcohol in the blood.

Clause 9 amends s 15A(1) to replace the requirement for an approved analyst to analyse the sample and replaces it with a requirement that the approved analyst arrange for the analysis to occur at an approved laboratory.

CLAUSE 10: SECTION 15A(2)

Section 15A(2) currently provides that if 2 containers have been put in the one way box for collection by an approved analyst, the analyst shall analyse 1 of the containers and keep the other container sealed under refrigeration. Clause 10 amends s 15A(2) to replace the requirement that the approved analyst analyse the sample and replaces it with a requirement that the approved analyst arrange for the analysis to occur at an approved laboratory.

CLAUSE 11: SECTION 15A(3)

Section 15A(3) enables a police officer to request that an approved analyst analyse a sample taken from a person for drugs other than alcohol. Clause 11 amends section 15A(3) to replace the requirement that the analyst analyse the sample, with a requirement that the analyst arrange for the sample to be analysed in an approved laboratory.

CLAUSE 12: SECTION 16A(1)

Section 16A sets out the procedure for analysing a body sample taken under section 16 of the Act. The doctor or nurse that has taken a sample under section 16 is required to divide the sample into 2 containers, and place 1 container in a one-way box for collection by an approved analyst. The other container is to be given to the person from whom the sample was taken. If the person from whom the sample was taken is incapable of understanding the procedures that have been applied to him or her, both containers must be placed in the one way box for collection.

Section 16A(1) currently provides that if only one container has been placed in the one way box for analysis, the analyst shall analyse the sample for drugs.

Clause 12 removes the requirement that the analyst that collects the sample from the box analyse it and replaces it with a requirement that the analyst by whom the sample is collected arrange for analyse in an approved laboratory.

CLAUSE 13: SECTION 16A(2)(a)

Section 16A(2) currently provides that if 2 containers have been put in the one way box for collection by an approved analyst, the analyst shall analyse 1 of the containers and keep the other container sealed under refrigeration. Clause 13 amends section 16A(2)(a) to replace the requirement that the approved analyst analyse the sample and replaces it with a requirement that the approved analyst arrange for the analysis to occur at an approved laboratory.

CLAUSE 14: SECTION 17(2)(B)

Clause 14 amends section 17(2)(b) to make it clear that a doctor or nurse is not required to take a blood sample under section 15AA from a person if the person objects to the taking of the sample and persists in so objecting after a doctor, nurse or police officer has informed the person that, unless the objection is based on religious or other conscientious grounds or on medical grounds, the refusal may constitute an offence.

CLAUSE 15: SECTION 19(2)(a) AND (b)

Clause 15 amends section 19(2)(a) and (b) to provide that in a proceeding for a drink driving offence against section 19 of the Act, evidence may be given of the concentration of alcohol in the person's blood as determined by an analysis of a sample of the person's blood carried out at an approved laboratory and certified accurate by an approved analyst.

CLAUSE 16: SECTION 41(1)(h)(ii)

Clause 16 removes the requirement that the certificate of evidence completed by the approved analyst state that he or she analysed the sample and replaces it with a requirement that the certificate state that the analysis of the sample of the person's blood was carried out at an approved laboratory and certified accurate by an approved analyst.

CLAUSE 17: SECTION 41(1)(h)(iv)

Because the approved analyst will no longer personally carry out each step of the analysis procedure, Clause 17 inserts an additional requirement that the certificate of evidence completed by the analyst state that the analysis was accurate.

CLAUSE 18: NEW PART 20

Clause 18 includes a transitional part to deal with samples already taken in accordance with a provision of the Act. The part is necessary to ensure that the revised provisions only apply to samples taken after the commencement of the the Amendment Act.

Where a sample was taken before commencement of the Amendment Act, and the analysis was carried out, or started to be carried out, before commencement of the Amendment Act, a certificate issued under section 41(1)(h) as in force before commencement of the Amendment Act can be issued and will be evidence of the matters stated in the certificate.

A certificate issued under section 41(1)(h) before commencement of the Amendment Act will also continue to be evidence of the matters stated in the certificate.

The transitional part expires 3 years after it commences.

CLAUSE 19: DICTIONARY, NEW DEFINITION OF APPROVED LABORATORY

This clause inserts a new definition of approved laboratory for the purpose of the Act.