

7. Drink and Drug driving

7.1 INTRODUCTION	3
7.2 INTERCEPTION	3
7.3 BREATH TEST	3
7.3.1 AUTHORITY TO BREATH TEST	3
7.3.2 THE BREATH TEST	4
7.3.3 THE REQUIREMENT	5
7.3.4 FAIL TO PROVIDE A SPECIMEN OF BREATH FOR A BREATH TEST	5
7.3.5 BREATH TEST RESULT BELOW RELEVANT ALCOHOL LIMIT	6
7.4 BREATH ANALYSIS	6
7.4.1 AUTHORITY TO REQUIRE A SPECIMEN OF BREATH FOR ANALYSIS	6
7.4.2 THE BREATH ANALYSIS	6
7.4.3 THE REQUIREMENT	7
7.4.4 FAIL TO PROVIDE A SPECIMEN OF BREATH FOR ANALYSIS	8
7.4.5 BREATH ANALYSIS CERTIFICATE BY OPERATOR	8
7.4.6 BREATH ANALYSING INSTRUMENT LOCATION	9
7.5 BLOOD ANALYSIS	9
7.5.1 AUTHORITY TO REQUIRE A SPECIMEN OF BLOOD	9
7.5.2 PERSONS AUTHORISED TO TAKE SPECIMENS OF BLOOD	10
7.5.3 OBTAINING A SPECIMEN OF BLOOD FROM A CONSCIOUS/COMMUNICATIVE PERSON	10
7.5.4 THE REQUIREMENT TO A CONSCIOUS/COMMUNICATIVE PERSON	11
7.5.5 FAIL TO PROVIDE A SPECIMEN OF BLOOD	12
7.5.6 CERTIFICATE BY ANALYST – BLOOD	12
7.5.7 REQUIRING A DOCTOR OR NURSE TO TAKE A SPECIMEN OF BLOOD FROM A PERSON WHO IS UNABLE TO CONSENT	13
7.6 URINE ANALYSIS	14
7.6.1 AUTHORITY TO REQUIRE A SPECIMEN OF URINE	14
7.6.2 THE REQUIREMENT – URINE	15
7.6.3 OBTAINING A SPECIMEN OF URINE	15
7.6.4 FAIL TO PROVIDE A SPECIMEN OF URINE	15
7.7 SALIVA TEST	15
7.7.1 AUTHORITY TO SALIVA TEST	15
7.7.2 THE SALIVA TEST	16
7.7.3 THE REQUIREMENT – SALIVA TEST	17
7.7.4 FAIL TO PROVIDE A SPECIMEN OF SALIVA FOR A SALIVA TEST	17
7.8 SALIVA ANALYSIS	18
7.8.1 AUTHORITY TO REQUIRE A SPECIMEN OF SALIVA FOR ANALYSIS	18
7.8.2 THE SALIVA ANALYSIS	19
7.8.3 THE REQUIREMENT – SALIVA ANALYSIS	20
7.8.4 FAIL TO PROVIDE A SPECIMEN OF SALIVA FOR ANALYSIS	21
7.8.5 ISSUING SALIVA ANALYSIS CERTIFICATE OR NOTICE AND THE COMMENCEMENT OF PROCEEDINGS	21
7.8.6 CERTIFICATE OF ANALYSIS – SALIVA	22
7.8.7 SALIVA ANALYSING INSTRUMENT LOCATION	22
7.8.8 LIMITATION ON USE OF SALIVA FOR SALIVA TEST OR SALIVA ANALYSIS	22

7.9 HANDLING OF BLOOD, URINE AND SALIVA SPECIMENS	22
7.10 TWENTY-FOUR HOURS SUSPENSION ENDORSEMENT – DRIVER LICENCE	23
7.11 IMMEDIATE SUSPENSION OR DISQUALIFICATION OF HIGH RISK DRINK AND DRUG DRIVERS	24
7.12 BREATH AND SALIVA ANALYSING INSTRUMENT OPERATORS	26
7.12.1 OPERATORS' AUTHORITY	26
7.12.2 TRAINING OF OPERATORS	26
7.12.3 OPERATOR'S RESPONSIBILITY	27
7.12.4 WITHDRAWAL OF OPERATOR'S INSTRUMENT OF AUTHORITY	27
7.13 RANDOM BREATH AND SALIVA TESTING	27
7.13.1 AUTHORITY TO CONDUCT RANDOM BREATH TESTING AND RANDOM SALIVA TESTING	27
7.13.2 SITE SELECTION	27
7.14 STATISTICAL RETURNS AND CALIBRATION FOR BREATH ANALYSES AND BREATH TESTS	28
7.14.1 STATISTICAL RETURNS FOR BREATH TESTS	28
7.14.2 BIENNIAL CALIBRATION OF ROADSIDE BREATH TESTING DEVICES	28
7.15 BREATH OR SALIVA ANALYSING INSTRUMENT NOT TO BE PRODUCED IN COURT	28
7.16 SERVICING OF BREATH OR SALIVA ANALYSING INSTRUMENTS	28
7.17 ARREST – NO BREATH TEST	28
7.18 EXCULPATORY PROVISIONS (DEFENCES)	29
7.18.1 THE CRIMINAL CODE	29
7.18.2 PERSONS IN CHARGE OF MOTOR VEHICLES	29
7.19 PRESENCE OF LEGAL REPRESENTATIVES DURING BLOOD SAMPLING, BREATH OR SALIVA ANALYSIS TESTS	30
7.20 PRIVATE MEDICAL EXAMINATION	30
7.21 ANALYSIS CHALLENGED BY DEFENCE	30
7.22 OBSERVING THE SUBJECT PERSON AND NOTING OF INDICIA RELATING TO THE CONSUMPTION OF LIQUOR/DRUGS	31
7.23 CHILDREN	32
7.24 DIPLOMATIC AND CONSULAR IMMUNITY	32
APPENDIX 7.1 DRINK AND DRUG DRIVING FLOWCHART	33
APPENDIX 7.2 DELETED	37
APPENDIX 7.3 OBSERVATION SHEET	38

7.1 Introduction

Persons affected by the consumption of liquor and/or drugs have an impaired driving ability. Officers should take all necessary safety precautions when attempting to intercept a vehicle when it is suspected that its driver is affected by the consumption of liquor and/or drugs.

7.2 Interception

Authority to intercept vehicles

In accordance with s. 60: 'Stopping vehicles for prescribed purposes' of the PPRA officers may require the person in control of a vehicle to stop the vehicle to allow the officer to conduct a breath test or saliva test.

7.3 Breath test

A breath test (see SMD) is commonly referred to as a roadside breath test.

7.3.1 Authority to breath test

Section 80(2): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A provides the authority for an officer to require a person to provide a specimen of breath for a breath test if the officer has found such person, or suspects on reasonable grounds that such person, was during the last preceding three hours:

- (i) driving a motor vehicle, tram or train on a road or elsewhere;
- (ii) attempting to put in motion a motor vehicle, tram or train on a road or elsewhere;
- (iii) in charge of a motor vehicle, tram or train on a road or elsewhere; or
- (iv) driving or in charge of or attempting to put in motion a vessel being used or apparently about to be used in navigation.

Section 80(2A) of the TO(RUM)A provides that an officer may require a person to provide a specimen of breath for a breath test where a motor vehicle, tram, train or vessel is involved in an incident resulting in injury to or death of any person or damage to property if the officer suspects, on reasonable grounds, that such person was:

- (i) driving or attempting to drive the motor vehicle, tram or train on a road or elsewhere;
- (ii) in charge of the motor vehicle, tram or train on a road or elsewhere; or
- (iii) driving or in charge of or attempting to drive the vessel;

at the time of the incident.

Officers may require a person to provide as many specimens of breath as the officer considers reasonably necessary to carry out the breath test (see s. 80(1A), (2B) and (2C) of the TO(RUM)A). Circumstances in which officers may require a person to provide more than one specimen of breath for a breath test include circumstances where:

- (i) the specimen has not been sufficient to enable the test to be carried out;
- (ii) the specimen is not provided in a way that enables the objective of the test to be satisfactorily achieved;
- (iii) the device used for the test is or becomes defective precluding its satisfactory operation;
- (iv) for any reason it is not possible to use or continue using the device to conduct the breath test; and
- (v) for any reason it is not possible to complete the breath test.

Section 80(4) of the TO(RUM)A provides that a requirement shall not be made under s. 80(2) or (2A) of the Act unless it is made as soon as practicable and within three hours after the occurrence of the event whereby the police officer is authorised by that section to make such a requirement.

No authority exists to require a specimen of breath for a breath test when investigating an offence against s. 79(7): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A, i.e. being in charge of a horse or bicycle etc. whilst under the influence of liquor or drugs. An officer may however require a specimen of breath for analysis or blood for a laboratory test once a subject person has been arrested for such offence.

Where a subject person is at a hospital for treatment and it is intended to require that person to provide a specimen of breath for a breath test (as distinct from a specimen of breath for analysis) the requirement should be made only with the approval of the doctor who is familiar with the person's injuries and apparent state of health at the time.

Breath testing the supervisor of a learner driver

Section 79AA: 'Provisions applying to supervisor of a learner' of the TO(RUM)A applies to a person who is the supervisor of a learner, while the learner is driving a motor vehicle under the direction of the supervisor.

Section 79AA(2) of the TO(RUM)A provides that the supervisor is in charge of the motor vehicle for the purposes of ss. 79: 'Vehicle offences involving liquor or other drugs' and 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A, and other provisions of the TO(RUM)A applying in relation to any charge, proceedings, conviction or sentence for an offence against ss. 79 and 80.

The definition of 'supervisor' of a learner excludes a person accredited as a driver trainer under a regulation while the person is acting in the person's professional capacity as a driver trainer (see ss. 79AA(4) and 79(2C)(f) of the TO(RUM)A).

7.3.2 The breath test

ORDER

Officers are not to use any type of breath testing device unless they have been trained in the use and maintenance procedures (if any) of that type of breath testing device.

Officers who intend to conduct breath tests are to make the requirement of the subject person as soon as practicable and within three hours after the occurrence of the event to which the test relates (see s. 7.3.1: 'Authority to breath test' of this chapter).

Officers are to use a new mouthpiece for each person tested.

When using a breath testing device officers are to:

- (i) remove the mouthpiece from the sealed packet and fit it to the testing device in the view of the subject person;
- (ii) ensure that a period of twenty minutes has elapsed since the subject person's last drink of liquor or aromatic drink, use of mouth spray, or aerosol type medication before using the device on the subject person. (This delay is not to restrict an officer from making the requirement within the three hour period restriction imposed by s. 80(4): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A);
- (iii) ensure that a period of five minutes has elapsed since the subject person's last inhalation of tobacco smoke before the device is used on the subject person;
- (iv) make the requirement as outlined in s. 7.3.3: 'The requirement' of this chapter;
- (v) ensure there are no obstructions in the mouthpiece prior to use;
- (vi) listen carefully to ascertain if the subject person is blowing correctly or not;
- (vii) ensure that used mouthpieces are disposed of properly;
- (viii) advise the subject person when the device indicates a result over the relevant limit, without stating the exact breath alcohol concentration reading indicated by the test. The following wording should be used:

'This test indicates to me that you are over the [no alcohol limit or general alcohol limit, whichever is applicable in the circumstances] and you are required to accompany me to a [state whether a police station, hospital, doctor's surgery, vehicle, vessel or other place] for the purpose of further tests.'

OR

'As you have elected not to provide a specimen of your breath as required, I now require you...'

OR

'As you have failed to provide a specimen of your breath in the manner directed by me, I now require you...'

OR

'As you have declined to wait a reasonable time to enable the test to be carried out, I now require you...'

- (ix) record in their official police notebook the time and the result of the breath test; and
- (x) if the result of the breath test is not over the relevant limit, thank the subject person tested for cooperating and allow them to leave.

It should be noted however, that a subject person may be affected by substances other than liquor and that the result indicated by the breath test may not be consistent with the subject person's indicia. In such cases and providing that the observable indicia (see s. 7.22: 'Observing the subject person and noting indicia relating to the consumption of liquor/drugs' of this chapter) together with other evidence is sufficient to prove that the subject person is under the influence of liquor or a drug, consideration should be given to arresting the subject person for an offence under s. 79(1): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A (see ss. 365, 376, 377 and 380 of the PPR).

7.3.3 The requirement

ORDER

Officers may require a person to provide a specimen of breath for a breath test, under s. 80(2) or 80(2A): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A and may make the requirement as many times as the officer considers reasonably necessary to carry out the breath test.

When an officer has determined that authority exists to require a person to provide a specimen of breath for a breath test (commonly referred to as a roadside breath test), the officer should make the requirement in the following manner:

'You have been stopped for [outline the reason e.g. random breath test]. I now require you to provide a specimen of breath for a breath test.'

The officer should then direct the subject person how to provide the specimen of breath as required in the following manner:

'This is a breath testing device. To comply with my requirement, I direct you to place your mouth over the mouthpiece of the device and blow directly and continuously through that mouthpiece until told to stop by me. Commence blowing now.'

7.3.4 Fail to provide a specimen of breath for a breath test

A person commits an offence under s. 80(5A): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A by failing to provide a specimen of breath or failing to provide a specimen of breath in the manner directed by the police officer making the requirement. In normal circumstances the subject person should not be arrested immediately. Instead, the person should be detained for the purpose of making a requirement to provide a specimen of breath for analysis or specimen of blood for laboratory test pursuant to s. 80(8) of the TO(RUM)A. At the conclusion of such analysis, enforcement action may be taken by way of notice to appear, complaint and summons or where justified, by arrest (see s. 3.5: 'The institution of proceedings' of the OPM).

In the event that subject persons are arrested for an offence against s. 80(5A) of the TO(RUM)A, the arresting officer is to inform them that they are also detained for the purposes of either obtaining a specimen of breath for analysis or a specimen of blood for a laboratory test under s. 80(8) of the TO(RUM)A.

When an officer has required a subject person to provide a specimen of breath for a breath test and the subject person fails to provide or fails to provide a specimen of breath in the manner directed by the police officer, the officer should:

- (i) not rely solely on indicator lights or sounds of the testing device to judge whether the subject person is blowing correctly or not;
- (ii) note if the subject person may be puffing the cheeks, sucking instead of blowing, placing the tongue over the mouthpiece hole, or is blowing from the side of the mouth;
- (iii) test the device with a fresh mouthpiece to ensure it is working correctly;
- (iv) advise the subject person that it is an offence not to provide the specimen of breath in the manner directed; and
- (v) give the subject person a further opportunity to provide the specimen of breath and further explain to that person how to comply with the requirement.

If the subject person again fails to provide a specimen of breath, fails to provide a specimen of breath in the manner directed by the police officer or declines to wait for such time as is reasonable in the circumstances to allow the test to be carried out satisfactorily, the requiring officer should:

- (i) for the purposes of requiring the subject person to provide a specimen of breath for analysis or a specimen of blood for a laboratory test:
 - (a) detain and take the subject person to a police station, vehicle or vessel, where facilities are available for the analysis by a breath analysing instrument or to a hospital or other place where reasonable grounds for believing that a doctor or nurse is available; and/or
 - (b) detain the subject person at a police station, vehicle, vessel, hospital or other place authorised under s. 80 of the TO(RUM)A; or
- (ii) if the subject person produces a certificate issued under the provisions of s. 80(5B) of the TO(RUM)A excusing the subject person from providing the specimen, detain the subject only where the officer suspects the subject is affected by liquor or a drug because of exhibited external signs and require the subject person to provide a specimen of blood for a laboratory test (see ss. 80(6)(ba) and 80(8) of the TO(RUM)A); and
- (iii) proceed by way of notice to appear, complaint and summons or, where justified, by arrest (see s. 3.5: 'The institution of proceedings' of the OPM) as appropriate for an offence against s. 80(5A) of the TO(RUM)A.

7.3.5 Breath test result below relevant alcohol limit

When the result of a breath test indicates that the concentration of alcohol in the subject person's breath is not over the relevant alcohol limit the subject person cannot be again required to provide a specimen of breath for a breath test nor be required to provide a specimen of breath for analysis or a specimen of blood for a laboratory test based on such breath test.

However, in cases where the officer has formed an opinion that the subject person is under the influence of liquor or drug, the officer may arrest that person. A requirement for the subject person to provide a specimen of breath for analysis or a specimen of blood for a laboratory test should be made resulting from the arrest (see s. 7.17: 'Arrest – no breath test' of this chapter).

7.4 Breath analysis

7.4.1 Authority to require a specimen of breath for analysis

Section 80(8): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A authorises officers to require a person to provide a specimen of breath for analysis by a breath analysing instrument where a person has been:

- (i) required to provide a specimen of breath for a breath test (commonly referred to as a roadside breath test) and:
 - (a) that test has indicated the subject person has a breath alcohol concentration over the relevant limit; or
 - (b) the subject person has either failed to provide such specimen, failed to provide such specimen in the manner directed or has declined to wait for such time as is reasonable in the circumstances to enable the test to be carried out satisfactorily;
- (ii) arrested for an offence against ss. 79: 'Vehicle offences involving liquor or other drugs' or 83: 'Careless driving of motor vehicles' of the TO(RUM)A; or
- (iii) arrested for any indictable offence in connection with or arising out of the driving of a motor vehicle by the person (including any offence against any provision of s. 328A: 'Dangerous operation of a vehicle' of the CC).

Additionally s. 80(8C) of the TO(RUM)A provides for a requirement to be made of a subject person to provide a specimen of breath for analysis where a person whom a police officer may require under ss. 80(2) or 80(2A) of the TO(RUM)A to provide a specimen of breath for a breath test is at a hospital for treatment. Any such requirement to provide a specimen of breath for breath analysis can only be made subject to the approval of a doctor who is familiar with the subject person's injuries and apparent state of health at the time (e.g. the subject person was the driver of a motor vehicle involved in a traffic crash and is at a hospital being treated for injuries).

ORDER

Officers are not to make a requirement under s. 80(8C) for a specimen of breath for analysis in circumstances where a person is at a hospital for treatment unless it is made as soon as practicable and within three hours after the occurrence of the event whereby the officer is authorised under ss. 80(2) or 80(2A) of the TO(RUM)A to require a person to provide a specimen of breath for a breath test (see s. 80(8D) of the TO(RUM)A).

Under normal circumstances when a person is at a hospital for treatment, officers should require the subject person to provide a specimen of blood for a laboratory test and not a specimen of breath for analysis (see s. 7.5: 'Blood analysis' of this Manual).

Relevant assault offences

In accordance with s. 548A: 'Purposes of ch 18A' of the PPRA the taking of specimens of breath, saliva, blood and urine is also authorised from persons suspected of committing a relevant assault offence (see SMD) and to conduct testing and to produce certificates for use as evidence. This occurs through extended application of the provisions of s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A.

7.4.2 The breath analysis

Breath analysing operator who is also the investigating officer

ORDER

The officer who operates a breath analysing instrument may also be the investigating officer who:

- (i) required the person to provide the specimen of breath for a breath test or analysis; or
- (ii) arrested the person concerned for an offence referred to in s. 80(8): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A,

only in circumstances where the officer holds a current authorisation to operate the relevant breath analysing instrument.

The investigating officer conducting their own breath analysis is to electronically record the breath analysis (see s. 4.4: 'Body worn cameras' of the DERIE).

The breath analysis

Officers who intend to require subject persons to provide a specimen of breath for analysis are to observe such subject persons for a period of twenty minutes prior to the provision of the specimen.

When a subject person is at a station, vehicle, vessel, hospital or other place authorised under s. 80(8) of the TO(RUM)A for the purpose of providing a specimen of breath for analysis, the investigating officer should:

- (i) if the subject person is:
 - (a) a child (see Chapter 5: 'Children' of the OPM); or
 - (b) a person under disability (see Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' of the OPM),ensure the person understands the procedure and wherever practicable have an independent person in attendance who may assist the subject person to understand the procedure;
- (ii) where the investigating officer is not the operator, inform the operator of the subject's arrival at the location where the breath analysis is to occur;
- (iii) wait with the subject person in a designated place for the breath analysis. Where the investigating officer is not the operator, wait for further instructions from the operator;
- (iv) advise the subject person not to place anything in the subject's mouth prior to the breath analysis being conducted and ensure the subject person does not place any substance in the subject's mouth;
- (v) complete the appropriate sections of the T 64: 'Breath analysis statistical card' prior to the conducting of the breath analysis;
- (vi) where the investigating officer is not the operator, on advice from the operator, enter the breath analysis room/area with the subject person and follow the procedure outlined in s. 7.4.3: 'The requirement' of this chapter;
- (vii) remain with the subject person whilst the analysis is being conducted. Where the investigating officer is not the operator, do not intervene in the proceedings unless requested by the operator;
- (viii) when shown the original and copy of the certificate of analysis at the conclusion by the operator, ensure they are correct. Investigating officers who are the operator should ensure the original and copy of the certificate are correct;
- (ix) where the investigating officer is not the operator, take possession of the original certificate of analysis from the operator, or retain the certificate if also the operator; and
- (x) where a subject person is not under arrest, no enforcement action should be taken in respect to that matter until the issue of the breath analysis certificate.

The operator is to:

- (i) follow the procedure outlined in s. 7.4.3: 'The requirement' of this chapter;
- (ii) ensure the subject person understands the requirement; and
- (iii) at the completion of the breath analysis, complete and sign a certificate and, deliver one copy of such certificate to the officer who made the requisition and the other copy to the subject person (or to another person on behalf of the subject person), or if the operator is also the investigating officer, retain a copy of the certificate.

7.4.3 The requirement

An officer may require a person to provide as many specimens of breath as the officer considers reasonably necessary to carry out the analysis (see s. 80(8M): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A).

Breath analysing operator who is not the investigating officer

A requirement made of a subject person for the purpose of obtaining a specimen of breath for analysis should be made in the following manner:

- (i) the investigating officer should introduce the operator to the subject person and hand the T 64: 'Breath analysis statistical card' to the operator. The wording of the introduction should be:
 - 'This is [name of the operator], a police officer, authorised to operate an approved breath analysing instrument.'
- (ii) the investigating officer should then wait for further advice from the operator. The operator should then question the subject person on issues relating to consumption of liquor or other substances, health etc. All questions and the subject person's answers should be recorded in the operator's official police notebook. The operator should advise the investigating officer once the breath analysing instrument is in proper working order by stating:

'The instrument is in proper working order.'

(iii) the investigating officer should then require the subject person to provide a specimen of breath for analysis using the following words:

'I now require you to provide a specimen of your breath for analysis on this approved breath analysing instrument [indicating the breath analysing instrument to the subject person] and same will be operated by [restate the name of the operator], who has informed me that such instrument is in proper working order.'

(iv) the operator should direct the subject person how to provide a specimen of breath in accordance with s. 80(8F) of the TO(RUM)A using the following words;

'I direct you to place your mouth over the mouthpiece of the instrument and blow directly and continuously (and without escape of breath otherwise) through that mouthpiece into the instrument until told to stop by me. Commence blowing now.'

Breath analysing operator who is also the investigating officer

A requirement made of a subject person by an officer who will also be the breath analysis instrument operator should be made in the following manner:

(i) the requiring officer should re-introduce themselves to the subject person as the operator of the breath analysing instrument. The wording of the introduction should be:

'My name is [state name], a police officer, authorised to operate an approved breath analysing instrument.'

(ii) the officer should then enter all data required into the breath analysing instrument. Once the instrument has satisfactorily performed its internal check the officer is to require the subject person to provide a specimen of breath for analysis using the following words:

'I now require you to provide a specimen of your breath for analysis on this approved breath analysing instrument [indicating the breath analysing instrument to the subject person] and same will be operated by me and such instrument is in proper working order.'

(iii) the officer should direct the subject person how to provide a specimen of breath in accordance with s. 80(8F) of the TO(RUM)A using the following words:

'I direct you to place your mouth over the mouthpiece of the instrument and blow directly and continuously (and without escape of breath otherwise) through that mouthpiece into the instrument until told to stop by me. Commence blowing now.'

7.4.4 Fail to provide a specimen of breath for analysis

A person who, when required by an officer, fails to provide a specimen of breath for analysis commits an offence under s. 80(11): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A.

ORDER

If a person, when required to provide a specimen of breath for analysis, produces a medical certificate pursuant to s. 80(8E) of the TO(RUM)A excusing the person from providing a specimen of breath, an officer shall not continue to require a specimen of breath from the subject person but shall require a specimen of the subject person's blood for a laboratory test (see s. 7.5: 'Blood analysis' of this chapter).

The breath analysing instrument operator should:

- (i) determine when the subject person has failed to provide the required specimen; and
- (ii) comply with s. 80(15B) of the TO(RUM)A in relation to the issue and handling of the PT 65: 'Fail to provide specimen of breath certificate'.

7.4.5 Breath analysis certificate by operator

The breath analysing instrument operator should:

- (i) determine when the subject person has provided the required specimen; and
 - (ii) prepare, sign and disseminate two copies of a PT 64BrAC: 'Breath analysis certificate' (available from Richlands Supply Services). One copy of the certificate is to be delivered to the:
 - (a) subject person (or an agent for that person); and
 - (b) requisitioning officer,
- (see s. 80(15): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A).

Where the operator issues a certificate indicating the subject person is:

(i) over the relevant limit or failed to provide a specimen of breath for analysis, enforcement action should be commenced by the investigating officer. The investigating officer is to scan the certificate into QPRIME and the original of the certificate is to be attached to the police prosecutor's copy of the court brief (QP9);

(ii) over the relevant limit where the no alcohol limit applies, but equal to or less than 0.020 grams of alcohol in 210 litres of breath, investigating officers should:

(a) inform the subject person of the result;

(b) not commence proceedings for an offence against s. 79: 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A (see also s. 3.4.10: 'Drink driving offences' of the OPM);

(c) issue a F4394: 'Notice of Suspension or Disqualification' (available from Richlands Supply Services and in QPRIME) pursuant to s. 80(22A) of the TO(RUM)A; and

(d) release the person from police custody, unless the officer believes that the result of the analysis is inconsistent with the subject person's indicia (see s. 7.5.1: 'Authority to require a specimen of blood' of this chapter); or

(iii) not over the relevant limit, the subject person should be informed of the result and released from police custody, unless the officer believes that the result of the analysis is inconsistent with the subject person's indicia (see s. 7.5.1: 'Authority to require a specimen of blood' of this chapter).

7.4.6 Breath analysing instrument location

Section 80(6): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A provides that an officer may take a person to a police station, hospital, other authorised place, vehicle or vessel (where facilities are available for the analysis by breath analysing instrument of a specimen of breath) for the purpose of requiring a specimen of breath for analysis.

ORDER

Officers responsible for the deployment of breath analysing instruments should ensure that such instruments are located only at places authorised by s. 80(6) of the TO(RUM)A.

7.5 Blood analysis

7.5.1 Authority to require a specimen of blood

Officers may require a person to provide a specimen of blood for a laboratory test in the same circumstances where a specimen of breath may be required of a person, refer to s. 7.4.1: 'Authority to require a specimen of breath for analysis' of this chapter.

Additionally an officer may require a person to provide a specimen of blood for a laboratory test in circumstances where:

(i) the subject person has supplied a specimen of breath for analysis on an approved breath analysing instrument or a specimen of saliva for analysis on an approved saliva analysing instrument and the result is inconsistent with the external signs (indicia) exhibited by the person (see s. 80(9): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A);

(ii) the subject person has been required to provide a specimen of breath for analysis or a specimen of saliva for analysis and the person has provided a specimen that was:

(a) insufficient to enable the analysis to be carried out; or

(b) not provided in a way that enables the objective of the analysis to be satisfactorily achieved; or

(c) provided for analysis by a breath analysing instrument or saliva analysing instrument respectively; but:

- the respective analysing instrument is or becomes defective precluding its satisfactory operation to analyse the specimen; or
- for any reason it is not possible to use or continue using the respective analysing instrument for the purpose of analysing the breath specimen or saliva specimen; or
- in relation to breath analysis, the breath analysing instrument indicates to the authorised police officer operating the instrument that alcohol or some other substance is present in the mouth of the person supplying the breath specimen; or
- for any other reason it is not possible to complete the analysis; (see ss. 80(8L) and 80(8M) of the TO(RUM)A); or

(iii) a person whom a police officer may require under ss. 80(2) or 80(2A) of the TO(RUM)A to provide a specimen of breath for a breath test or saliva for a saliva test is at a hospital for treatment. Any such requirement can only be made subject to the approval of a doctor who is familiar with the subject person's injuries and apparent state

of health at the time (e.g. the subject person was the driver of a motor vehicle involved in a traffic crash and is at a hospital being treated for injuries) (see ss. 80(8C) and 80(8D) of the TO(RUM)A and s. 7.8.1: 'Authority to require a specimen of saliva for analysis' of this chapter).

An officer may require a doctor or nurse who is attending a person who is at a hospital for treatment to obtain a specimen of the person's blood for a laboratory test if the person is, or apparently is, unconscious or otherwise unable to communicate (see s. 80(10) of the TO(RUM)A and s. 7.5.7: 'Requiring a doctor or nurse to take a specimen of blood from an unconscious person' of this chapter).

ORDER

Officers are not to make a requisition pursuant to s. 80(8C) of the TO(RUM)A unless:

- (i) such requirement has the approval of a doctor who is familiar with the subject person's injuries and apparent state of health at the time; and
- (ii) it is made as soon as practicable and within three hours after the occurrence of the event whereby the officer is authorised under ss. 80(2) or 80(2A) of the TO(RUM)A to require a person to provide a specimen of breath for a test; or
- (iii) it is made as soon as practicable and within three hours after the occurrence of the event whereby the officer is authorised under ss. 80(2AA) or 80(2A) of the TO(RUM)A to require a person to provide a specimen of breath for a breath test, or a specimen of saliva for a saliva test (see ss. 80(8C) and 80(8D) of the TO(RUM)A).

7.5.2 Persons authorised to take specimens of blood

Officers requiring blood specimens pursuant to s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A should use the services of a forensic medical officer or a general practitioner government medical officer (GP-GMO), except where:

- (i) the person is at a hospital for treatment, in which case the services of a doctor or nurse at the hospital should be used unless that doctor or nurse or a qualified assistant directed by the doctor or nurse is not willing to take the blood from the subject person; or
- (ii) time constraints or other exceptional circumstances dictate otherwise; or
- (iii) the appropriate FMO or GP-GMO is not available; or
- (iv) no FMO or GP-GMO is appointed to the relevant area.

Where the services of a FMO or GP-GMO are not available, the services of another doctor or nurse should be obtained.

Officers should adhere to appointments made with a FMO or GP-GMO, and should immediately notify the FMO or GP-GMO where any delay occurs.

Officers should be aware that they may require up to three blood sampling kits to ensure that sufficient specimen containers are available for police use and for subject person's and urine specimens if required.

7.5.3 Obtaining a specimen of blood from a conscious/communicative person

An officer who has required a person to provide a specimen of blood for analysis is to remain present while the specimen of blood is being taken by a doctor, nurse or qualified assistant taking the specimen of blood at the direction of a doctor or nurse.

Where a breath test or a breath analysis has been performed prior to the taking of a blood specimen, officers should record the:

- (i) breath test/breath analysis result; and
- (ii) relevant alcohol limit (i.e. 0.00 or 0.05),

on the Queensland Health Forensic and Scientific Services (green) copy of the PT 61A: 'Blood Specimen Certificate'.

Officers requiring a person to provide a specimen of blood for analysis should:

- (i) prior to making the requirement, obtain:
 - (a) one or more blood sampling kit(s) as required i.e. one sample for the investigating officer, and one sample for the subject person if requested (see 'Request for specimen by person' of this section) (available from Richlands Supply Services);
 - (b) a PT 66: 'Failure to Provide Specimen of Blood Certificate' book;
 - (c) a PT 61A book; and
 - (d) a needle disposal container (sharps container);
- (ii) ensure that a doctor or nurse is present;

- (iii) make the requirement for the subject person to provide a specimen of blood or a laboratory test as outlined in s. 7.5.4: 'The requirement' of this chapter;
- (iv) when appropriate, discretely advise the health care professional prior to taking a blood specimen of the concise instructions contained in the blood sampling kit and the requirements of s. 178: 'Blood specimens' of the Traffic Regulation;
- (v) ensure the health care professional complies with the instructions contained in the blood sampling kit;
- (vi) ensure that after taking the specimen:
 - (a) the health care professional completes and signs a PT 61A;
 - (b) where there is a suspicion of drugs and a drug analysis is required, the health care professional completes the appropriate section on the triplicate copy of the PT 61A;
 - (c) where a breath test or a breath analysis has been performed prior to taking the specimen, the breath test/breath analysis result and relevant alcohol limit are recorded in the appropriate section on the triplicate copy of the PT 61A; and
 - (d) the specimen of blood is packaged according to the instructions contained in the blood sampling kit;
- (vii) ensure that the specimen of blood is delivered using the approved blood sampling kit as soon as practicable to the Queensland Health Forensic and Scientific Services laboratory in accordance with the IATA Regulations (see s. 7.7: 'Handling of blood and urine specimens' of this chapter); and
- (viii) record the name of the health care professional(s) who authorised and obtained the blood specimen from the subject person as an 'involved person' in the relevant QPRIME occurrence.

Request for specimen by person

Section 80(20): 'Person providing specimen of blood or saliva may request specimen' of the TO(RUM)A allows the person providing the specimen of blood for analysis to request the health care professional for a specimen of their blood.

Where a person requests a specimen of their blood an officer requiring to provide a specimen of blood, in addition to the procedure above should:

- (i) provide a second blood sampling kit to the health care professional;
- (ii) ensure the health care professional takes two specimens of blood. Officers should note that failure by the health care professional to take a second specimen of blood is not an offence (see s. 80(10F) of the TO(RUM)A);
- (iii) ensure after taking the specimen:
 - (a) the same identifying number (from the first blood kit) is placed on each copy of the PT 61A and the blood specimen tube to be given to the officer;
 - (b) the identifying number (from the second blood kit) that is placed on the blood specimen tube to be given to the subject person is recorded in the requiring officer's official police notebook. The remaining identifying numbers should be destroyed; and
 - (c) the specimens of blood are packaged according to the instructions contained in the blood sampling kit; and
- (iv) give the second sample of blood to the person from whom it was taken as soon as practicable.

7.5.4 The requirement to a conscious/communicative person

An officer may require a person to provide as many specimens of blood as the officer considers reasonably necessary to carry out the laboratory test (see s. 80(8M): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A).

ORDER

An officer is not to make a requirement for a specimen of blood for a laboratory test under the provisions of s. 80(8C) of the TO(RUM)A without the approval of a doctor who is familiar with the person's injuries and apparent state of health at the time.

Officers requiring a subject person, who is conscious and able to communicate, to provide a specimen of blood for a laboratory test should use the following wording:

'[Name of subject person], this is Doctor/Nurse [state doctor's or nurse's name]. I now require you to provide a specimen of your blood for a laboratory test. You shall permit this specimen of your blood to be taken by Doctor/Nurse [restate doctor's or nurse's name] or a qualified assistant directed by Doctor/Nurse (restate doctor's or nurse's name) who is authorised by the *Transport Operations (Road Use Management) Act* to take such specimen.'

[If at a hospital for treatment state 'and a doctor who is familiar with your present injuries and state of health approves for you to provide the specimen'.]

The doctor or nurse may direct a qualified assistant to take the specimen (see s. 80(9B) of the TO(RUM)A). If the doctor or nurse intends to direct a qualified assistant to take the specimen of blood, officers should suggest to the doctor or nurse that the direction should be given in the following terms:

'By virtue of the provisions of s. 80(9B) of the *Transport Operations (Road Use Management) Act 1995*, I direct you, (state name of qualified assistant) to take a specimen of blood from (name of person from whom specimen is to be taken if known or indicate person if name is unknown) for a laboratory test.'

Officers making the requirement should ensure that the health care professional taking the specimen of blood directs the subject person to provide the specimen of blood using the following wording:

'[Name of subject person], as you have been required by this police officer to provide a specimen of your blood for a laboratory test, I direct you to extend your [part of body] and permit me to take a specimen of blood from a vein in [part of body] by means of this syringe.'

7.5.5 Fail to provide a specimen of blood

Officers who have made a requirement of a subject person for a specimen of blood for a laboratory test and such person has failed to provide the specimen, should:

- (i) ensure that the health care professional who was to take the specimen of blood completes, making such modifications as are necessary due to the designation of the health care professional, and signs a PT 66: 'Failure to Provide Specimen of Blood Certificate';
- (ii) compare the original and copy of the issued certificate to ensure they are correct;
- (iii) take possession of the original certificate from the health care professional;
- (iv) ensure that a copy of the certificate is given to the person who failed to provide the specimen of blood by the health care professional; and
- (v) proceed by way of notice to appear, complaint and summons or, where justified, arrest as appropriate for an offence against s. 80(11) of the TO(RUM)A or if the subject person is already under arrest, charge the subject person accordingly if not already charged (see s. 3.5: 'The institution of proceedings' of the OPM).

7.5.6 Certificate by analyst – blood

When a blood analysis certificate ('**Certificate by Analyst**') issued by Queensland Health Forensic and Scientific Services indicates that a subject person's blood alcohol concentration was over the relevant limit, the investigating officer should ensure a copy is uploaded into the relevant QPRIME occurrence and take enforcement action as soon as practicable following the receipt of the analyst's certificate. Such officer is to attach the original of the certificate to the police prosecutor's copy of the court brief (QP9).

The presence of a drug in a person's blood is not proof in itself that the subject person was under the influence of that drug. A doctor should be consulted to ascertain the effects of the drug on a person before making a decision to institute proceedings.

If using the services of the Forensic Medical Officer, Brisbane, the officer seeking information regarding the effects of drugs in a subject person's blood should complete a short report briefly outlining the circumstances of the incident. The report should include the age and sex of the subject person and the results of the Queensland Health Forensic and Scientific Services laboratory analysis. The report should then be faxed to the Clinical Forensic Medicine Unit, Brisbane (see SMCD).

When taking action by way of arrest, notice to appear or alternatively by way of complaint and summons for an offence against s. 79: 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A, a copy of the relevant Certificate by Analyst should also be served on the subject person.

If a Certificate by Analyst issued as a result of a laboratory test of a person's blood indicates that no institution of proceedings is required including where the subject person's alcohol concentration is equal to or less than 20 milligrams of alcohol in 100 millilitres of blood, the officer who required the specimen is to inform the subject person of the result of the analysis and deliver a copy of the Certificate by Analyst to the subject person.

Relevant drug present in certificate of analysis

When a specimen of blood for a laboratory test is taken from a person in circumstances where a specimen of breath for breath analysis could have been required, and upon analysis the presence of a relevant drug in the person's blood is detected, but it is not possible to substantiate that the person was under the influence of a drug, officers should consider preferring a charge under s. 79(2AA): 'Offence of driving etc. while relevant drug is present in blood or saliva' of the TO(RUM)A. Where the results of the Certificate by Analyst indicates a blood alcohol offence as well as a relevant drug offence, investigating officers should only consider commencing a proceeding against the subject person for the blood alcohol offence and not the relevant drug offence.

When a specimen of blood for a laboratory test is taken from a person in circumstances where a specimen of saliva for saliva analysis could have been required, officers are to only use the results of the Certificate by Analyst from Queensland Health Forensic and Scientific Services in relation to a charge under s. 79(2AA) of the TO(RUM)A in relation

to that specimen of blood (see also s. 7.8.1: 'Authority to require a specimen of saliva for analysis' of this chapter). Any reference to alcohol or drugs other than relevant drugs on the blood Certificate by Analyst should not be used.

7.5.7 Requiring a doctor or nurse to take a specimen of blood from a person who is unable to consent

Under s. 80(10): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A, a police officer may require a doctor or nurse who is attending a person who is at a hospital for treatment to obtain a specimen of the person's blood for a laboratory test, if the person:

- (i) is a person whom a police officer may require under ss. 80(2) or 80(2A) to provide a specimen of breath for a breath test or a specimen of saliva for a saliva test; and
- (ii) is, or appears to be, unable to consent to the taking of the specimen of blood because the person is, or appears to be, unconscious or otherwise unable to communicate.

However, in accordance with ss. 80(10E) and 80(10EA), an officer must not make a requirement under s. 80(10) relating to a person if:

- (i) under this section, the person has provided a specimen of breath (the '**analysis specimen**') for analysis by a breath analysing instrument in relation to the occurrence or event in relation to which the police officer may require a specimen of breath for a breath test as mentioned in s. 80(10)(a); and
 - (a) the analysis specimen has been analysed by a breath analysing instrument; and
 - (b) there is a certificate under s. 80(15) for the analysis; or
- (ii) under this section, the person has provided a specimen of saliva for saliva analysis in relation to the occurrence or event in relation to which the police officer may require a specimen of saliva for a saliva test as mentioned in s. 80(10)(a); and
 - (a) the specimen for saliva analysis has been analysed by a saliva analysing instrument; and
 - (b) there is notice given to the police officer as mentioned in s. 80(15AB)(b)(i) for the analysis.

An officer requiring a doctor or nurse, who is attending a person who is at a hospital for treatment, to obtain a specimen of blood from an unconscious person or a person who is unable to communicate should:

- (i) prior to making the requirement of the doctor or nurse, ascertain from the doctor or nurse whether:
 - (a) the person is, or appears to be, unable to consent to the taking of a specimen of blood because the person is, or appears to be, unconscious or otherwise unable to communicate; and
 - (b) the doctor or nurse reasonably believes that the taking of a specimen of blood would be prejudicial to the person's treatment, or the doctor or nurse has another reasonable excuse for not taking a specimen of blood from the person (see 'Refusal to take sample' of this section);
- (ii) if the doctor or nurse advises that the person is unconscious or unable to communicate and the taking of a specimen of blood would not be prejudicial to the person's treatment, require the doctor or nurse to take a specimen of blood from the person in the following terms:

'By virtue of the provisions of s. 80(10) of the *Transport Operations (Road Use Management) Act 1995*, I require you, (doctor or nurse) (state name of doctor or nurse) to obtain a specimen of blood from (name of person from whom specimen is to be taken if known or indicate person if name is unknown) for a laboratory test.'

The doctor or nurse may direct a qualified assistant to take the specimen (see s. 80(10A) of the TO(RUM)A). If the doctor or nurse intends to direct a qualified assistant to take the specimen of blood, officers should suggest to the doctor or nurse that the direction should be given in the following terms:

'By virtue of the provisions of s. 80(10A) of the *Transport Operations (Road Use Management) Act 1995*, I direct you, (state name of qualified assistant) to take a specimen of blood from (name of person from whom specimen is to be taken if known or indicate person if name is unknown) for a laboratory test.'

(iii) provide the health care professional with:

- (a) two blood sampling kits i.e. one sample for the investigating officer and one sample for the subject person (available from Richlands Supply Services); and
- (b) a PT 61A: 'Blood Specimen Certificate' book;

(iv) when appropriate, advise the health care professional prior to taking a blood specimen of the concise instructions contained in the blood sampling kit, s. 80(10C) of the TO(RUM)A and ss. 178 and 183 of the Traffic Regulation;

(v) ensure the health care professional takes two specimens of blood. Officers should note that failure by the health care professional to take a second specimen of blood is not an offence (see s. 80(10F) of the TO(RUM)A);

(vi) ensure after taking the specimen:

- (a) the same identifying number (from the first blood kit) is placed on each copy of the PT 61A and the blood specimen tube to be given to the officer;
 - (b) the identifying number (from the second blood kit) that is placed on the blood specimen tube to be given to the subject person is recorded in the requiring officer's official police notebook;
 - (c) the health care professional completes and signs a PT 61A for the specimen to be given to the officer. A PT 61A is not completed in relation to the specimen given to the person;
 - (d) where there is a suspicion of drugs and a drug analysis is required, the health care professional completes the appropriate section on the triplicate copy of the PT 61A; and
 - (e) the specimens of blood are packaged according to the instructions contained in the blood sampling kit;
- (vii) advise the health care professional that one sample of blood is to be given to the person from whom it was taken as soon as practicable;
- (viii) ensure the specimen of blood given to the officer is delivered using the approved blood sampling kit as soon as practicable to the Queensland Health Forensic and Scientific Services laboratory in accordance with the IATA Regulations (see s. 7.9: 'Handling of blood and urine and saliva specimens' of this chapter);
- (ix) send a notification to the Officer in Charge, Specialist Programs, Road Policing Group, RP&RSC via email to 'Specialist Programs RPG' providing:
- (a) advice that a blood specimen was taken from a person who was unable to consent;
 - (b) the requiring officer's name, rank and station;
 - (c) the name of the hospital at which the specimen was taken; and
 - (d) the name of the health care professional taking the specimen; and
- (x) record the name of the health care professional(s) who authorised and obtained the blood specimen from the subject person as an 'involved person' in the relevant QPRIME occurrence.

Refusal to take sample

When a doctor or nurse:

- (i) refuses to take a blood specimen for a laboratory test (e.g. due to the medical condition of the person); or
- (ii) fails to ensure that a specimen of blood is taken by a qualified assistant,

the officer making the requirement should note the name of the doctor or nurse and any reason given for their refusal. Officers should note that a refusal to take a specimen of blood, or ensure that a specimen of blood is taken by a qualified assistant, is not an offence (see s. 80(10F) of the TO(RUM)A).

7.6 Urine analysis

7.6.1 Authority to require a specimen of urine

Officers may only require a person to provide a specimen of urine after a specimen of blood has been obtained from the subject person, and the subject person has previously provided a specimen of breath for analysis on an approved breath analysing instrument or a specimen of saliva for analysis on approved saliva analysing instrument and the result of such analysis is inconsistent with the person's indicia (see s. 80(9): 'Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A).

The officer making the requirement for a specimen of urine may detain the person, at the place where the breath analysis was conducted or where a specimen of blood was taken, for a period of time that is reasonable in the circumstances to enable a doctor to attend there in connection with the provision by the person of a specimen of urine (see s. 80(9A) of the TO(RUM)A).

Officers may not take a person to any place for the purpose of obtaining a specimen of urine. Though in the circumstance where a specimen of blood and urine may be required, it is permissible to take a person to a place where an officer reasonably believes that a doctor or nurse is available for the purpose of the provision by the person of a specimen of the person's blood (see s. 80(9A) of the TO(RUM)A).

A person may not be detained to enable a nurse to attend a police station, vehicle, vessel, hospital or other place authorised under s. 80 of the TO(RUM)A in connection with the provision of a specimen of urine.

Prior to requiring a person to provide a specimen of urine for analysis an officer is to first require the subject person to provide a specimen of blood for analysis.

Prior to requiring a person to provide a specimen of urine for analysis the investigating officer is to consult with the doctor or nurse as to the necessity for such a specimen. The necessity to take a urine specimen is determined by the assistance such a specimen will provide in identifying any drugs used by the subject person.

7.6.2 The requirement – urine

Either a doctor or a nurse is authorised under s. 80(9): ‘Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A to take a specimen of urine.

Officers requiring a subject person to provide a specimen of urine should use the following wording:

‘This is Doctor/Nurse... [state doctor’s/nurse’s name]. I now require you to provide a specimen of your urine for a laboratory test. You shall provide such specimen when and as directed by Doctor/Nurse ... [state doctor’s/nurse’s name].’

Officers making the above requirement should ensure that the doctor/nurse taking the specimen of urine directs the subject person to provide the specimen of urine using the following wording:

‘I am Doctor/Nurse ... [state name] I direct you to provide a specimen of your urine as required by... [name of officer] by urinating into this receptacle.’

7.6.3 Obtaining a specimen of urine

Officers requiring a person to provide a specimen of urine for analysis should:

- (i) prior to making the requirement, obtain:
 - (a) a blood sampling kit (available from Richlands Supply Services); and
 - (b) a PT 61A: ‘Blood Specimen Certificate’ book;
- (ii) when using the blood sampling kit for a urine sample, discard the blood specimen tube (opaque cap) and use the primary receptacle (smaller of two tubes with white closure), for the urine specimen;
- (iii) for the purpose of identifying the urine specimen use a PT 61A: ‘Blood Specimen Certificate’. The PT 61A does not have any evidentiary value in the case of a urine sample and is used as an identifying document only;
- (iv) ensure that a doctor or nurse is present;
- (v) make the requirement for the subject person to provide a specimen of urine for a laboratory test as outlined in s. 7.6.2: ‘The requirement – urine’ of this chapter;
- (vi) ensure that the same identifying number is placed on each of the copies of the PT 61A: ‘Blood Specimen Certificate’ as is placed on the urine specimen tube to be given to the officer;
- (vii) ensure that after taking the specimen the doctor or nurse completes and signs the PT 61A: ‘Blood Specimen Certificate’, making any necessary alterations to the form to indicate that it relates to a urine specimen;
- (viii) ensure that:
 - (a) the specimen of urine is delivered as soon as practicable to the Queensland Health Forensic and Scientific Services laboratory in accordance with the IATA Regulations (see s. 7.9: ‘Handling of blood and urine specimens’ of this chapter); and
 - (b) any specimen of urine being forwarded by Registered Post is packed using the approved blood sampling kit (available from Richlands Supply Services).

7.6.4 Fail to provide a specimen of urine

A person does not commit an offence by failing to provide a specimen of urine.

7.7 Saliva test

A saliva test (see SMD) may be conducted as a result of a roadside interception or as part of an investigation into a relevant assault offence (see SMD).

7.7.1 Authority to saliva test

Section 80(2): ‘Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A provides the authority for an officer to require a person to provide a specimen of saliva for a saliva test if the officer has found such person, or suspects on reasonable grounds that such person, was during the last preceding three hours:

- (i) driving a motor vehicle, tram or train on a road or elsewhere;
- (ii) attempting to put in motion a motor vehicle, tram or train on a road or elsewhere;
- (iii) in charge of a motor vehicle, tram or train on a road or elsewhere; or
- (iv) driving or in charge of or attempting to put in motion a vessel being used or apparently about to be used in navigation.

Section 80(2A) of the TO(RUM)A provides an officer may require a person to provide a specimen of saliva for a saliva test where a motor vehicle, tram, train or vessel is involved in an incident resulting in injury to or death of any person or damage to property if the officer suspects, on reasonable grounds, that such person was:

- (i) driving or attempting to drive the motor vehicle, tram or train on a road or elsewhere;
- (ii) in charge of the motor vehicle, tram or train on a road or elsewhere; or
- (iii) driving or in charge of or attempting to drive the vessel;

at the time of the incident.

Officers may require a person to provide as many specimens of saliva as the officer considers reasonably necessary to carry out the saliva test (see s. 80(1A), (2B) and (2C) of the TO(RUM)A). Circumstances in which officers may require a person to provide more than one specimen of saliva for a saliva test include circumstances where:

- (i) the specimen has not been sufficient to enable the test to be carried out;
- (ii) the specimen is not provided in a way that enables the objective of the test to be satisfactorily achieved;
- (iii) the device used for the test is or becomes defective precluding its satisfactory operation;
- (iv) for any reason it is not possible to use or continue using the device to conduct the saliva test; and
- (v) for any reason it is not possible to complete the saliva test.

Section 80(4) of the TO(RUM)A provides that a requirement shall not be made under s. 80(2) or 80(2A) of the TO(RUM)A unless it is made as soon as practicable and within three hours after the occurrence of the event whereby the police officer is authorised by that section to make such a requirement.

No authority exists to require a specimen of saliva for a saliva test when investigating an offence against s. 79(7): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A, i.e. being in charge of a horse or bicycle etc. whilst under the influence of liquor or drugs. An officer may however require a specimen of breath for breath analysis, saliva for saliva analysis or blood for a laboratory test once a subject person has been arrested for such offence (see also s. 80(8)(a) of the TO(RUM)A).

Where a subject person is at a hospital for treatment and it is intended to require that person to provide a specimen of saliva for a saliva test (as distinct from a specimen of saliva for analysis) the requirement should be made only with the approval of the doctor who is familiar with the person's injuries and apparent state of health at the time.

Relevant assault offences

In accordance with s. 548A: 'Purposes of ch 18A' of the PPRA the taking of specimens of breath, saliva, blood and urine is also authorised from persons suspected of committing a relevant assault offence (see SMD) and to conduct testing and to produce certificates for use as evidence. This occurs through extended application of the provisions of s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A.

Saliva testing the supervisor of a learner driver

Section 79AA: 'Provisions applying to supervisor of a learner' of the TO(RUM)A applies to a person who is the supervisor of a learner, while the learner is driving a motor vehicle under the direction of the supervisor.

Section 79AA(2) of the TO(RUM)A provides that the supervisor is in charge of the motor vehicle for the purposes of ss. 79: 'Vehicle offences involving liquor or other drugs' and 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A, and other provisions of the TO(RUM)A applying in relation to any charge, proceedings, conviction or sentence for an offence against ss. 79 and 80.

The definition of 'supervisor' of a learner excludes a person accredited as a driver trainer under a regulation while the person is acting in the person's professional capacity as a driver trainer (see ss. 79AA(4) and 79(2C)(f) of the TO(RUM)A).

7.7.2 The saliva test

ORDER

Officers are not to use any type of saliva testing device unless they have been trained in the use and maintenance procedures (if any) of that type of saliva testing device.

Officers who intend to conduct saliva tests are to make the requirement of the subject person as soon as practicable and within three hours after the occurrence of the event to which the test relates (see s. 7.7.1: 'Authority to saliva test' of this Manual).

Officers are to use a new saliva collection device for each person tested.

When using a saliva testing device officers are to:

- (i) remove the saliva collection device from the sealed packet in the view of the subject person;
- (ii) make the requirement as outlined in s. 7.7.3: 'The requirement – saliva test' of this Manual;

- (iii) ensure there are no obstructions or defects present in the saliva collection device prior to use;
- (iv) observe carefully to ascertain if the subject person is providing a saliva specimen or not;
- (v) ensure that used saliva collection device is disposed of properly;
- (vi) advise the subject person when the device indicates the presence of a relevant drug. The following wording should be used:

'This test indicates to me that there may be present in your saliva a relevant drug and you are required to accompany me to a [state whether a police station, hospital, doctor's surgery, vehicle, vessel or other place] for the purpose of further tests.'

OR

'As you have elected not to provide a specimen of your saliva as required, I now require you...'

OR

'As you have failed to provide a specimen of your saliva in the manner directed by me, I now require you...'

OR

'As you have declined to wait a reasonable time to enable the test to be carried out, I now require you...'

(vii) record with a QLITE device a negative drug test/street check occurrence with the time and date of the negative result of the roadside saliva test. Where the QLITE device does not work, the relevant information, (e.g. subjects name, licence number and vehicle registration number) should be recorded in the officer's official police notebook until the QLITE device is working, so a negative drug test/street check occurrence can then be created in QPRIME; or

(viii) record with a QLITE device a positive roadside saliva test with the time and date of the positive result of the roadside saliva test. Where the QLITE device does not work, the relevant information, (e.g. subjects name, licence number and vehicle registration number) should be recorded in the officer's official police notebook until the QLITE device is working, so a QPRIME occurrence can then be created; and

(ix) if the result of the saliva test does not indicate the presence of a relevant drug, thank the subject person tested for cooperating and allow them to leave.

Officers involved in saliva testing operations for a relevant assault offence are to ensure that, where practicable, a breath test is conducted of a person before a saliva test (see s. 7.3: 'Breath test' of this Manual), see SMD.

Where the subsequent breath analysis fails to support the commencement of a proceeding for a circumstance of aggravation for a relevant assault offence, officers should conduct a saliva test of the person with a view to commencing a proceeding where sufficient evidence exists.

7.7.3 The requirement – saliva test

ORDER

Officers may require a person to provide a specimen of saliva for a saliva test, under ss. 80(2) or 80(2A): 'Breath and saliva tests, and analysis and laboratory tests' and may make the requirement as many times as the officer considers reasonably necessary to carry out the saliva test (see s. 80(2C) of the TO(RUM)A).

When an officer has determined that authority exists to require a person to provide a specimen of saliva for a saliva test, the officer should make the requirement in the following manner:

'This is a saliva collection device. I require you to provide a specimen of your saliva for a saliva test in the manner directed by me.'

The officer should then direct the subject person how to provide the specimen of saliva as required in the following manner:

'I direct you to rotate your tongue around the inside of your mouth three times and then place this collection device inside your mouth and wipe it down your tongue. Commence now.'

The officer should then secure the return of the saliva collection device.

7.7.4 Fail to provide a specimen of saliva for a saliva test

A person commits an offence under s. 80(5A): 'Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A by failing to provide a specimen of saliva or failing to provide a specimen of saliva in the manner directed by the police officer making the requirement. The person should be detained for the purpose of making a requirement to provide a specimen of saliva for analysis or specimen of blood for laboratory test pursuant to s. 80(8) of the TO(RUM)A. Upon receipt of Certificate by Analyst from Queensland Health Forensic and Scientific Services, enforcement action may be taken by way of notice to appear, complaint and summons or, where justified, by arrest (see s. 3.5: 'The institution of proceedings' of the OPM).

In the event that subject persons are arrested for an offence against s. 80(5A) of the TO(RUM)A, the arresting officer is to inform them that they are also detained for the purposes of either obtaining a specimen of saliva for analysis or a specimen of blood for a laboratory test under s. 80(8) of the TO(RUM)A.

When an officer has required a subject person to provide a specimen of saliva for a saliva test and the subject person fails to provide or fails to provide a specimen of saliva in the manner directed by the police officer, the officer should:

- (i) note if the subject person may be preventing the collection of the saliva specimen by the manner in which they use the saliva collection device;
- (ii) advise the subject person that it is an offence not to provide the specimen of saliva in the manner directed; and
- (iii) give the subject person a further opportunity to provide the specimen of saliva and further explain to that person how to comply with the requirement.

If the subject person again fails to provide a specimen of saliva, fails to provide a specimen of saliva in the manner directed by the police officer or declines to wait for such time as is reasonable in the circumstances to allow the test to be carried out satisfactorily, the requiring officer should:

- (i) for the purposes of requiring the subject person to provide a specimen of saliva for analysis or a specimen of blood for a laboratory test:
 - (a) detain and take the subject person to a police station, vehicle or vessel, where facilities are available for the analysis by a saliva analysing instrument or to a hospital or other place where reasonable grounds for believing that a doctor or nurse is available; and/or
 - (b) detain the subject person at a police station, vehicle, vessel, hospital or other place authorised under s. 80 of the TO(RUM)A; or
- (ii) if the subject person produces a certificate issued under the provisions of s. 80(5B) of the TO(RUM)A excusing the subject person from providing the specimen, detain the subject only where the officer suspects the subject is affected by liquor or a drug because of exhibited external signs, require the subject person to provide a specimen of blood for a laboratory test (see ss. 80(6)(ba) and 80(8) of the TO(RUM)A); and
- (iii) proceed by way of notice to appear, complaint and summons or, where justified, by arrest (see s. 3.5: 'The institution of proceedings' of the OPM) as appropriate for an offence against s. 80(5A) of the TO(RUM)A.

7.8 Saliva analysis

7.8.1 Authority to require a specimen of saliva for analysis

Section 80(8): 'Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A authorises officers to require a person to provide a specimen of saliva for analysis by a saliva analysing instrument where a person has been:

- (i) required to provide a specimen of saliva for a saliva test and the:
 - (a) test has indicated the subject person has a relevant drug in their system; or
 - (b) subject person has either failed to provide such specimen, failed to provide such specimen in the manner directed or has declined to wait for such time as is reasonable in the circumstances to enable the test to be carried out satisfactorily;
- (ii) arrested for an offence against ss. 79: 'Vehicle offences involving liquor or other drugs' or 83: 'Careless driving of motor vehicles' of the TO(RUM)A; or
- (iii) arrested for any indictable offence in connection with or arising out of the driving of a motor vehicle by the person (including any offence against any provision of the CC, s. 328A: 'Dangerous operation of a vehicle').

Relevant assault offences

In accordance with s. 548A: 'Purposes of ch 18A' of the PPRA the taking of specimens of breath, saliva, blood and urine is also authorised from persons suspected of committing a relevant assault offence (see SMD) and to conduct testing and to produce certificates for use as evidence. This occurs through extended application of the provisions of s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A.

Inability to provide specimen of saliva for analysis

Persons may physically be unable to provide a sufficient specimen of saliva for saliva analysis, for example a person may have a dry mouth. In such cases s. 80(8)(f) of the TO(RUM)A provides that where a specimen of saliva for saliva analysis can be required, a specimen of the person's blood for a laboratory test can also be required.

Where a specimen of blood for a laboratory test is taken from a person pursuant to s. 80(8)(f) of the TO(RUM)A as a result of the person being unable to provide a sufficient specimen of saliva for a saliva analysis, officers are to only use

the results of the blood Certificate by Analyst in relation to relevant drugs. Any reference to alcohol or drugs other than relevant drugs on the blood Certificate by Analyst should not be used.

Specimen of saliva for analysis at a hospital

Section 80(8C) of the TO(RUM)A provides for a requirement to be made of a subject person to provide a specimen of saliva for analysis where a person whom a police officer may require under ss. 80(2) or 80(2A) of the TO(RUM)A to provide a specimen of saliva for a saliva test is at a hospital for treatment. Any such requirement to provide a specimen of saliva for saliva analysis can only be made subject to the approval of a doctor who is familiar with the subject person's injuries and apparent state of health at the time (e.g. the subject person was the driver of a motor vehicle involved in a traffic crash and is at a hospital being treated for injuries).

Persons may physically be unable to provide a sufficient specimen of saliva for saliva analysis whilst they are at a hospital for treatment or there may not be a saliva analysing instrument available for use at the hospital. In such cases s. 80(8C)(b) of the TO(RUM)A provides that where a specimen of saliva for saliva analysis can be required, a specimen of the person's blood for a laboratory test may alternatively be taken (see s. 7.5: 'Blood analysis' of this Manual). In such cases, the three hour time limitation period from the time of the event that authorises the officer to make the authorising requirement will apply to the taking of a specimen of a person's blood for a laboratory test (see ss. 80(8C) and 80(8D) of the TO(RUM)A).

ORDER

Officers are not to make a requirement under s. 80(8C) for a specimen of saliva for analysis in circumstances where a person is at a hospital for treatment unless:

- (i) a doctor who is familiar with the person's injuries and apparent state of health at the time of the requirement first approves of the person providing a specimen; and
- (ii) the authorising requirement for the specimen of saliva is made as soon as practical and within three hours of the event that authorises the police officer to make the authorising requirement under ss. 80(2) or 80(2A) of the TO(RUM)A to require a person to provide a specimen of saliva for saliva analysis (see s. 80(8D) of the TO(RUM)A).

Where a specimen of blood for a laboratory test is taken from a person pursuant to s. 80(8C)(b) of the TO(RUM)A, officers are to only use the results of the blood Certificate by Analyst in relation to relevant drugs. Any reference to alcohol or drugs other than relevant drugs on the blood Certificate by Analyst should not be used.

Under normal circumstances when a person is at a hospital for treatment, officers should require the subject person to provide a specimen of blood for a laboratory test and not a specimen of saliva for saliva analysis. In such cases the authorising requirement for the specimen of blood is to be made as soon as practical and within three hours of the event that authorises the police officer to make the authorising requirement see s. 7.5.1: 'Authority to require a specimen of blood' of this Manual.

7.8.2 The saliva analysis

Saliva analysing operator who is also the investigating officer

The officer who operates a saliva analysing instrument may also be the investigating officer who:

- (i) required the person to provide the specimen of saliva for a saliva test or analysis; or
- (ii) arrested the person concerned for an offence referred to in s. 80(8): 'Breath and saliva tests, and analysis and laboratory test' of the TO(RUM)A.

Officers must hold a current authorisation to operate the relevant saliva analysing instrument.

Where the investigating officer is also the officer who operates the saliva analysing instrument, the investigating officer is to electronically record the saliva analysis on a body worn camera (see s. 4.4: 'Body worn cameras' of the DERIE).

Investigating officer's procedures

An officer who intends to require a subject person to provide a specimen of saliva for analysis is to observe the subject persons for a period of at least ten minutes prior to the provision of the specimen.

When a subject person is at a station, vehicle, vessel, hospital or other place authorised under s. 80(8) of the TO(RUM)A for the purpose of providing a specimen of saliva for analysis, the investigating officer should:

- (i) if the subject person is:
 - (a) a child (see Chapter 5: 'Children' of the OPM); or
 - (b) a person under disability (see Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' of the OPM),

ensure the person understands the procedure and wherever practicable have an independent person attend to assist the subject person to understand the procedure;

- (ii) inform the operator of the subject's arrival at the location where the saliva analysis is to occur;

- (iii) wait with the subject person in a designated place for further instructions from the operator;
- (iv) advise and ensure the subject person does not place any substance in the subject's mouth;
- (v) on advice from the operator, enter the saliva analysis room/area with the subject person and follow the procedure outlined in s. 7.8.3: 'The requirement – saliva analysis' of this Manual;
- (vi) remain with the subject person whilst the analysis is being conducted and do not intervene in the proceedings unless requested by the operator;
- (vii) ensure the original and copy of the applicable QP 0779: 'Saliva analysis notice (Traffic Offence)' or QP 1009: 'Saliva analysis notice (Relevant assault offence)' are both correct;
- (viii) take possession of the applicable QP 0779 notice or QP 1009 from the operator;
- (ix) where a subject person is not under arrest relating to an investigation into traffic offences, no enforcement action is to be taken until the issue of the Certificate by Analyst from Queensland Health Forensic and Scientific Services. Subject persons for relevant assault offences are to be dealt with in accordance with the provisions of s. 2.32.4: 'Obtaining breath, saliva, blood or urine specimens for relevant assault offences' of the OPM; and
- (x) the specimen of saliva is to be sent to Queensland Health Forensic and Scientific Services in accordance with the provisions of s. 7.9: 'Handling of blood, urine and saliva specimens' of this Manual.

An operator who is the investigating officer is to comply with (i), (iv), (vii), (ix) and (x) of this subsection.

Operator's procedures

The operator should:

- (i) follow the procedure outlined in s. 7.8.3: 'The requirement – saliva analysis' of this Manual;
- (ii) ensure the subject person understands the requirement; and
- (iii) at the completion of the saliva analysis, complete and sign a QP 0779 or QP 1009 (as applicable), retain a copy personally, and deliver:
 - (a) if not also the investigating officer, the original notice and a copy to the officer who made the requisition; and
 - (b) a copy to the subject person (or to another person on behalf of the subject person).

7.8.3 The requirement – saliva analysis

Saliva analysing operator who is not the investigating officer

An officer may require a person to provide as many specimens of saliva as the officer considers reasonably necessary to carry out the analysis (see s. 80(8M): 'Requiring as many specimens as considered reasonably necessary' of the TO(RUM)A).

A requirement made of a subject person to provide a specimen of saliva for analysis should be made in the following manner:

- (i) the investigating officer (IO) should introduce the operator to the subject person. The wording of the introduction should be:
 - 'This is [name of the operator], a police officer, authorised to operate an approved saliva analysing instrument.'
- (ii) the IO should wait for further advice from the operator. The operator should question the subject person about consumption of drugs or other substances, health etc (see s. 5.3.4: 'Saliva Test' of the TEH). All questions and answers should be recorded in the operator's official police notebook. The operator should advise the IO once the saliva analysing instrument is in proper working order by stating:
 - 'The instrument is in proper working order.'
- (iii) the IO is to require the subject person to provide a specimen of saliva for analysis using the following words:
 - 'I now require you to provide a specimen of your saliva for analysis on this approved saliva analysing instrument [indicating the saliva analysing instrument to the subject person] and same will be operated by [restate the name of the operator], who has informed me that such instrument is in proper working order.'
- (iv) the operator is to direct the subject person how to provide a specimen of saliva in accordance with s. 80(8FA) of the TO(RUM)A using the following words:
 - 'I direct you to place this saliva collection unit into your mouth and move it around in a continuous motion so that it contacts the inside of your mouth or tongue or both until told to stop by me, commence now.'

Saliva analysing operator also the investigating officer

A requirement made of a subject person by an officer who will also be the saliva analysing instrument operator should be made in the following manner:

(i) the requiring officer should re-introduce themselves to the subject person as the operator of the saliva analysing instrument. The wording of the introduction should be:

'My name is [state name], a police officer, authorised to operate an approved saliva analysing instrument'.

(ii) once the instrument has satisfactorily performed its internal check, the officer is to require the subject person to provide a specimen of saliva for analysis using the following words.

'I now require you to provide a specimen of your saliva for analysis on this approved saliva analysing instrument [indicating the saliva analysing instrument to the subject person] and same will be operated by me and such instrument is in proper working order'.

(iii) the officer is to direct the subject person how to provide a specimen of saliva in accordance with s. 80(8FA): 'Providing a specimen of saliva' of the TO(RUM)A using the following words:

'I direct you to place this saliva collection unit in your mouth and move it around in a continuous motion so that it contacts the inside of your mouth or tongue or both until told to stop by me, commence now'.

7.8.4 Fail to provide a specimen of saliva for analysis

A person who, when required by an officer, fails to provide a specimen of saliva for analysis commits an offence under s. 80(11): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A.

ORDER

If a person, when required to provide a specimen of saliva for analysis, produces a medical certificate pursuant to s. 80(8E) of the TO(RUM)A excusing the person from providing a specimen of saliva, an officer shall not continue to require a specimen of saliva from the subject person but shall require a specimen of the subject person's blood for a laboratory test.

The saliva analysing instrument operator should:

(i) determine when the subject person has failed to provide the required specimen; and

(ii) comply with s. 80(15B) of the TO(RUM)A in relation to the issue and handling of the QP 0778: 'Fail to provide a specimen of saliva certificate' regarding the failure to provide a specimen of saliva.

7.8.5 Issuing saliva analysis certificate or notice and the commencement of proceedings

Saliva analysis certificate or notice by operator

Upon a person providing a saliva specimen for analysis, as directed by an analysing instrument operator (see ss. 80(15AB) and 80(15AC): 'Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A), the operator will issue, for a:

(i) positive or negative saliva analysis test, a QP 0779: 'Saliva Analysis (Traffic) Notice' or QP 1009: 'Saliva Analysis (Relevant Assault Offence) Notice; or

(ii) failure to provide specimen of saliva, a QP 0778: 'Fail to Provide Specimen of Saliva Certificate'.

A copy of the notice or certificate is to be given to the person who provided the sample and the original to the investigating officer.

Commencement of proceedings

Enforcement action should be commenced upon an offender being issued with a:

(i) QP 0778, by instituting proceedings; or

(ii) QP 0779 or QP 1009 by:

(a) forwarding the remaining saliva specimen to the Queensland Health Forensic and Scientific Services for analysis (see s. 7.9: 'Handling of blood, urine and saliva specimens' of this chapter); and

(b) instituting proceedings (a notice to appear is to have an appearance date 8 weeks from the issue date of the saliva analysis notice); or

(c) instituting proceedings upon receipt of a certificate of analysis from the Queensland Health Forensic and Scientific Services (Health Services Support Agency) indicating a person had a relevant drug present in their saliva.

The original of the analyst certificate or fail to provide specimen of saliva certificate is to be attached to the prosecutor's copy of the court brief (QP9). A copy of the analyst certificate is to be provided to the defendant.

For a negative test result the investigating officer is to:

- (i) inform the subject person of the result of the negative analysis and that no further action will be taken; or
- (ii) if the officer believes that the result of the analysis is inconsistent with the subject person's indicia, consider taking a blood sample (see s. 7.5.1: 'Authority to require a specimen of blood' of this chapter).

7.8.6 Certificate of Analysis – saliva

When a saliva analysis certificate ('**Certificate of Analysis**') issued by Queensland Health Forensic and Scientific Services indicates a subject person's saliva contained the presence of a relevant drug, the investigating officer is to ensure:

- (i) a copy of the certificate is uploaded on the relevant QPRIME occurrence;
- (ii) complete a PIR2 report online to solve the QPRIME report with the relevant drug identified or 'No Drugs Detected';
- (iii) take enforcement action as soon as practicable following the receipt of the certificate; and
- (iv) attach the certificate to the police prosecutor's copy of the court brief (QP9).

A Certificate of Analysis stating the presence of a relevant drug in a person's saliva is proof in itself that the subject person had the presence of a relevant drug in their saliva. There is no need to consult a doctor to ascertain the effects of the drug on a person before making a decision to institute proceedings against a person under s. 79(2AA): 'Offence of driving etc. while relevant drug is present in blood or saliva' of the TO(RUM)A.

When taking action by way of arrest, notice to appear or alternatively by way of complaint and summons for an offence against s. 79: 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A, or if a circumstance of aggravation applies to a relevant assault offence in accordance with s. 108B: 'When community service order must be made' of the *Penalties and Sentences Act*, a copy of the relevant Certificate of Analysis should also be served on the subject person.

If a Certificate of Analysis issued as a result of a laboratory test of a person's saliva indicates that no institution of proceedings is required, the officer who required the specimen is to inform the subject person of the result of the analysis and deliver a copy of the certificate to the subject person.

ORDER

Where there is insufficient evidence of an offence against s. 79(1): 'Offence of driving etc. while under the influence' of the TO(RUM)A and a Certificate of Analysis issued by Queensland Health Forensic and Scientific Services indicates that a subject person's saliva contained the presence of a relevant drug, officers are to only consider charges against s. 79(2AA): 'Offence of driving etc. while relevant drug is present in blood or saliva' of the TO(RUM)A and not an offence against s. 79(1) of the TO(RUM)A.

7.8.7 Saliva analysing instrument location

Section 80(6): 'Breath and saliva tests, and analysis and laboratory tests of the TO(RUM)A provides that an officer may take a person to a police station, hospital, other authorised place, vehicle or vessel (where facilities are available for the analysis by saliva analysing instrument of a specimen of saliva) for the purpose of requiring a specimen of saliva for analysis.

ORDER

Officers responsible for the deployment of saliva analysing instruments should ensure that such instruments are located only at places authorised by s. 80(6) of the TO(RUM)A.

7.8.8 Limitation on use of saliva for saliva test or saliva analysis

ORDER

A specimen of saliva for a saliva test or for saliva analysis obtained under s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A from a person must not be used for:

- (i) DNA analysis to help decide whether or not the person may be a suspect in relation to an offence; or
- (ii) for a purpose stated in s. 537: 'Purpose of ch 18' of the PPRA.

7.9 Handling of blood, urine and saliva specimens

Blood, saliva and urine specimens other than if personally delivered must be dispatched in accordance with International Air Transport Association Dangerous Goods Regulations (see s. 183: 'Delivery of blood, saliva and urine specimens' of the Traffic Regulation) and are classified as 'biological substances category B'.

Blood and/or urine specimen laboratory tests

ORDER

Officers who have required and obtained specimens of blood and/or urine for laboratory tests are to:

- (i) use the blood sampling kit from Richlands Supply Services for specimens of blood and urine obtained in connection with prosecutions; and
- (ii) ensure the relevant copy of the PT61A: 'Blood specimen certificate' issued by the health care professional is forwarded with the specimen.

Saliva specimen laboratory tests

ORDER

Officers who have required and obtained a sample of saliva for analysis are to:

- (i) use the saliva sampling kit from Richlands Supply Services for saliva specimens obtained in connection with prosecutions; and
- (ii) ensure a copy of the applicable QP 0779: 'Saliva analysis (traffic offence) notice' or QP 1009: 'Saliva analysis (relevant assault offence) notice' issued by the saliva analysing instrument operator is forwarded with the specimen.

Dispatch of specimens

ORDER

Officers are to dispatch all specimens to the analyst in a timely manner and in accordance with s. 183 of the Traffic Regulation. Either by:

- (i) delivering specimens personally to the analyst, or having another officer deliver it if the original officer is unable to do so; or
- (ii) if not able to deliver it personally, sending the specimens via tracked postage (i.e. express post) to the Forensic Toxicology section at the Queensland Health Forensic and Scientific Services (QHFSS) facility (see SMCD).

Retention and disposal of specimens

Upon receipt at QHFSS specimens will be retained for a period of 12 months from the date of analysis. In circumstances where a specimen is required beyond the 12 month retention period, the reporting officer is to advise QHFSS or the Officer in Charge, Specialist Programs, Road Policing Group of the need and reason to retain the specimen prior to its scheduled disposal date.

7.10 Twenty-four hours suspension endorsement – driver licence

Section 80(22): 'Application of subsection (22AA)' and 80(22AA): 'Suspension of driver licence for 24 hours in particular circumstances' of the TO(RUM)A provide for a twenty-four hour suspension of a person's driver licence after a person has been required to provide a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test subject to the provisions of ss. 79B(1) and 79B(6): 'Immediate suspension or disqualification' of the TO(RUM)A.

When a person has been charged with an offence to which s. 79B of the TO(RUM)A applies, the authority to suspend a person's driver licence under s. 79B will supersede any provisions for a twenty-four hour suspension of a person's driver licence (see s. 7.11: 'Immediate suspension or disqualification of high risk drink and drug drivers' of this chapter).

ORDER

Officers who require a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test, in accordance with s. 80(22A): 'Police officer to give statement of suspension' of the TO(RUM)A, are to sign and deliver to the subject person a copy of a F4394: 'Notice of Suspension or Disqualification' (available in QPRIME and from Richlands Supply Services) stating that the person's driver licence is suspended for a period of twenty-four hours from the time:

- (i) of the breath analysis;
- (ii) of the saliva analysis on a saliva analysing instrument;
- (iii) where a blood specimen has been taken pursuant to s. 80(8): 'Particular persons under arrest or detained may be required to provide specimen' of the TO(RUM)A and the person has not been charged, the requiring officer shall require the subject person to provide a second specimen of breath for a breath test or a specimen of saliva for a saliva test to obtain an indication of whether the subject person:
 - (a) is over the relevant alcohol limit; or
 - (b) has a relevant drug present in their saliva,

for the purpose of suspending the subject person's driver licence. If the person:

- (a) fails to provide such specimen, the suspension commences at the time of the requirement; or
- (b) provides a specimen of:

- breath, and the concentration of alcohol in their breath is over the relevant limit, the suspension commences from the time when the breath test was carried out; or
- saliva, and the device indicates a relevant drug is present in their saliva, the suspension commences from the time when the saliva test was carried out;

(iv) the certificate in writing is given by the doctor or nurse. Where a blood specimen has been taken pursuant to s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A and the person has not been charged, a person's driver licence may be suspended for twenty-four hours if the doctor or nurse taking the blood specimen issues a QP 1025: 'Proper case for 24 hours suspension certificate' (available in the PT 61A: 'Blood specimen certificate' book);

(vi) the person was arrested for an offence under s. 79(1): 'Offence of driving etc. while under the influence' of the TO(RUM)A, but had not been required by a police officer to provide a specimen of breath for analysis or a specimen of blood for a laboratory test under ss. 80(8): 'Particular persons under arrest or detained may be required to provide specimen' or 80(8C): 'Police officer may require specimen if person at hospital' of the TO(RUM)A because:

- (a) the person was violent;
- (b) of the external signs exhibited by the person, the police officer reasonably believed the person was so affected by alcohol or a drug as to be unable to provide the specimen; or
- (c) of the remoteness of the area:
 - a breath analysing instrument was not available to analyse a specimen of the person's breath; or
 - a doctor or nurse was not available to take a specimen of blood from the person for a laboratory test or to direct a qualified assistant to take the specimen.

Officers who have delivered a copy of the F4394 to a person are to:

- (i) complete the service details on the form;
- (ii) prior to the completion of the officer's shift create a QPRIME occurrence and ensure a flag is created against the person in QPRIME indicating the twenty-four hour suspension of the person's driver licence; and
- (iii) attach a copy of the form to the prosecution copy of the Court Brief (QP9).

If the F4934 was:

- (i) completed in QPRIME, after serving the form on the person, the service details and electronic signature are to be completed; or
- (ii) not completed within QPRIME, a copy of the signed form is to be scanned into the relevant occurrence.

See also s. 7.11: 'Immediate suspension or disqualification of high risk drink drug drivers' of this chapter.

7.11 Immediate suspension or disqualification of high risk drink and drug drivers

Section 79B: 'Immediate suspension or disqualification' of the TO(RUM)A provides the power to immediately suspend or disqualify the driving privileges of high risk drink and drug drivers, who have committed offences outlined in s. 79B(1) of the Act.

A person who commits an offence outlined in s. 79B(1) of the TO(RUM)A, and:

- (i) holds:
 - (a) a Queensland driver licence, the driver licence is suspended; or
 - (b) a driver licence issued in another jurisdiction, the authority to drive on a Queensland road is suspended,
- from the time:
- (a) the person is charged, if the person is arrested for the offence;
 - (b) a notice to appear is issued and served on the person for the offence; or
 - (c) a complaint and summons is served on the person for the offence,

until the immediate suspension ends when:

- (a) the charge is dealt with by a court or is withdrawn or otherwise discontinued; or
- (b) the person has successfully made application to have that suspension lifted and a replacement licence under s. 79F: 'Replacement licence if there is an order under s. 79E' of the TO(RUM)A, is issued to that person; or

(ii) does not hold a driver licence, the person is disqualified from obtaining a Queensland driver licence until the charge is dealt with by a court or is withdrawn or otherwise discontinued.

(See Appendix 7.1 'Drink and Drug Driving Flowchart' of this chapter.)

An immediate licence suspension under s. 79B of the TO(RUM)A will supersede any existing twenty-four hour licence suspension under the existing s. 80(22AA) of the TO(RUM)A.

Where a person's driver licence has been suspended for twenty-four hours under the provisions of s. 80(22AA) of the TO(RUM)A, and:

- (i) a F4394: 'Notice of Suspension or Disqualification' has not been given to the person; and
- (ii) that person's driver licence is later suspended under s. 79B of the TO(RUM)A when the person is charged with a s. 79B(1) offence;

the F4394 (available from Richlands Supply Services and in QPRIME) should be given only for the suspension under s. 79B(6) of the TO(RUM)A.

Prior to an officer charging a person under ss. 79(2), (2AA), (2A), (2B), (2J), (2K) or (2L) of the TO(RUM)A, the officer is to ensure inquiries are made to determine if the person has:

- (i) been previously charged with another ss. 79(2), (2AA), (2A), (2B), (2J), (2K) or (2L) offence that has not been dealt with by a court, or withdrawn or otherwise discontinued; or
- (ii) committed the ss. 79(2), (2AA), (2A), (2B), (2J), (2K) or (2L) offence after a replacement licence under s. 79F had been issued and whilst a s. 79E order applied to the person.

(See Appendix 7.1: 'Drink and drug driving flowchart' of this chapter.)

ORDER

Officers who charge a person with a drink or drug driving offence to which s. 79B: 'Immediate suspension or disqualification' of the TO(RUM)A applies are to ensure:

- (i) prior to the release of the subject person from custody, a copy of the F4394 is served and explained to the subject person;
- (ii) the service details on the F4394 are completed;
- (iii) prior to the completion of the officer's shift:
 - (a) a QPRIME occurrence is created;
 - (b) a flag is created against the person in QPRIME indicating the immediate suspension/disqualification;
 - (c) a task is sent to Policelink operations (Org Unit [1227]), requesting the TRAILS traffic history be updated; and
- (iv) a copy of the F4394 with service details is attached to the prosecution copy of the Court Brief (QP9).

If the F4394 was:

- (i) completed in QPRIME, after serving the form on the person, the service details and electronic signature are to be completed; or
- (ii) not completed within QPRIME, a copy of the signed form is to be scanned into the relevant occurrence.

Application by a person to lift their immediate suspension

A person whose Queensland driver licence is suspended under s. 79B(2) of the TO(RUM)A can apply, if eligible, to a court under s. 79E: 'Court may allow particular person whose licence is suspended under s. 79B to drive' of the TO(RUM)A to have the suspension lifted.

The suspension of such a person's Queensland driver licence ends when the first of the following happens:

- (i) a replacement licence is issued to the person under s. 79F of the TO(RUM)A; or
- (ii) the charge is dealt with by a court or is withdrawn or otherwise discontinued.

Prosecutor's responsibility, s. 79B(1) offences

The suspension or disqualification under s. 79B(2), (3) or (4) of the TO(RUM)A ends when:

- (i) the charge is dealt with by a court or is withdrawn or otherwise discontinued; or
- (ii) the court issues an order under s. 79E of the TO(RUM)A, to conditionally authorise the person to continue to drive a motor vehicle.

ORDER

The prosecutor in a proceeding for a s. 79B(1) of the TO(RUM)A offence that:

- (i) has been dismissed by the court in any way; or
- (ii) is withdrawn; or
- (iii) is otherwise discontinued;

prior to the completion of their shift, is to:

- (i) update QPRIME; and
- (ii) expire the flag on the person's record.

As soon as reasonably practicable thereafter, the relevant prosecutor is to ensure that a QPRIME task is sent to Policelink operations (Org Unit [1227]), requesting the TRAILS traffic history be updated.

Breaching an immediate suspension or disqualification under s. 79B

The following information will appear on the TRAILS traffic history of a person that has been immediately suspended or disqualified under the provisions of s. 79B of the TO(RUM)A:

- (i) immediate suspension: 'SUSP – IMSU';
- (ii) immediate suspension of a person's authority to drive under a non-Queensland driver licence: 'SUSP – IMWA';
- (iii) immediate disqualification: 'DISQ – IMDA'.

An officer who suspects a person of driving a motor vehicle whilst their driver licence has been immediately suspended, or the person is disqualified from obtaining or holding a Queensland driver licence under the provisions of s. 79B of the TO(RUM)A, is to:

- (i) make inquiries of the relevant QPRIME occurrence, relevant prosecutions office or court house to determine if the immediate suspension or disqualification has ended. (Note: the suspension or disqualification has ended if the relevant offence has been dealt with by a court, is withdrawn or otherwise discontinued); and
- (ii) investigate the incident with a view to commencing a proceeding (see s. 78: 'Driving of motor vehicle without a driver licence prohibited' of the TO(RUM)A).

7.12 Breath and saliva analysing instrument operators

7.12.1 Operators' authority

An officer is to only perform duties as a breath or saliva analysing instrument operator where:

- (i) they are the holder of a current relevant instrument of authority to operate a breath or saliva analysing instrument; and
- (ii) their authority to operate a breath or saliva analysing instrument has not been withdrawn.

A superintendent or above can authorise breath and saliva analysing instrument operators as being competent to operate the relevant instrument (see Delegation D 25.3 and s. 80(8G): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A).

An approved instructor is a member who holds a current approval from the Officer in Charge, Specialist Programs, Road Policing Group (OICSPRPG), RP&RSC. To train authorised breath analysing instrument operators, approved instructors are to have:

- (i) a current breath operator qualification; and
- (ii) successfully completed Ignite course code QC1611.

At the completion of each instructor's training course, the OICSPRPG is to approve successful participants as approved instructors. RP&RSC is responsible for all training and approval of instructors.

7.12.2 Training of operators

Breath and saliva analysing instruments

The relevant education and training office, PCAP (see ETO Network webpage of Service Intranet) is responsible for:

- (i) coordinating the delivery of courses in the operation of breath and saliva analysing instruments;
- (ii) maintaining records of training courses conducted and authorised operators;
- (iii) recommending to the authorised delegate (see Delegation D 25.3) an officer who has successfully completed training in the operation of a breath or saliva analysing instrument, is competent to operate a breath or saliva analysing instrument and should be authorised to operate a breath or saliva analysing instrument; and
- (iv) organising courses in the training of instructors for breath and saliva analysing operators.

Reporting the outcome of training courses

Members conducting training courses in the operation of a breath or saliva analysing instrument should furnish a report, to the relevant superintendent (district or group).

The report should contain the:

- (i) name of the members responsible for conducting the course;
- (ii) type of instrument subject of the training;
- (iii) start and finish dates of the course;
- (iv) type of instruction given;
- (v) type of assessment made of participants; and
- (vi) full name, rank, registered number and station or establishment of participants who were successful at the course, and who as a result of the course are to be recommended to the Commissioner's delegate to be authorised as operators.

7.12.3 Operator's responsibility

ORDER

Operators are to operate breath and saliva analysing instruments strictly in accordance with their training.

Operators who are called upon or likely to be called upon to perform breath or saliva analysis duties are to ensure that their competencies remain current in accordance with s. 7.12.1: 'Operators' authority' of this chapter for the operation of a breath or saliva analysing instrument.

Unless otherwise directed by the OIC, the senior operator at a station where a breath or saliva analysing instrument is allocated, should:

- (i) be responsible for the care and servicing of that breath or saliva analysing instrument, ensuring that it is properly maintained in accordance with the operator's training manual and that the room in which it is housed is kept in a clean and tidy condition; and
- (ii) maintain an adequate supply of consumables for the breath or saliva analysing instrument(s).

7.12.4 Withdrawal of operator's Instrument of Authority

Generally, it is a requirement that officers authorised as breath or saliva analysis instrument operators will continue to undertake duties as operators regardless of their station or establishment. However, there may be circumstances where the officer cannot perform such duties due to transfer, promotion, ill health etc. In these cases, officers should make application to have their 'Instrument of Authority to Operate a Breath or Saliva Analysing Instrument' withdrawn.

Officers who can no longer perform duties as a breath or saliva analysis instrument operator should complete a report with the reasons for no longer continuing as an operator and forward it through the chain of command, to their relevant superintendent for consideration of approval.

The superintendent should forward written advice to the applicant officer that the instrument of authority has or has not been withdrawn. On withdrawal, the officer ceases to be an authorised breath or saliva analysis instrument operator.

7.13 Random breath and saliva testing

Random roadside drug driving testing is commonly referred to as random saliva testing (RST). Random breath testing (RBT) and RST operations maximise the public perception that there is a high risk that motorists affected by liquor or drugs will be apprehended by police thereby deterring the incidence of such activity.

RBT and RST are to be conducted by officers as an integral part of the Queensland Police Service campaign against road trauma.

Drivers of vehicles intercepted at RBT and RST interception sites or as a result of other traffic enforcement activities should be required to provide a specimen of breath for a breath test and, where available, a specimen of saliva for a saliva test.

7.13.1 Authority to conduct random breath testing and random saliva testing

Section 60: 'Stopping vehicles for prescribed purposes' of the PPRA provides that for the purpose of conducting breath tests or saliva tests, officers may require the person in control of a vehicle other than a train or aircraft to stop the vehicle.

7.13.2 Site selection

Officers in command of random breath or saliva testing interception sites should comply with the provisions of Chapter 3: 'Interception by police' of this Manual.

7.14 Statistical returns and calibration for breath analyses and breath tests

7.14.1 Statistical returns for breath tests

ORDER

OICs of stations/establishments where roadside breath testing devices are located are to ensure the statistical data on the roadside breath testing devices is downloaded weekly or more regularly as required during specified periods.

OICs of stations/establishments are to ensure that:

- (i) the statistical data is downloaded using the dedicated computer program;
- (ii) if a breath testing device is not used during the previous week, a 'Training' test is to be conducted prior to downloading the stored data at the end of the week;
- (iii) prior to forwarding a device to the QPS Calibration Laboratory for routine servicing or repairs, if possible, the statistical data of the device is to be downloaded using the dedicated computer program; and
- (iv) if required for administrative or operational reasons, statistical data regarding the use of breath testing devices is downloaded daily.

The downloading procedures for roadside breath testing devices are published on the RP&RSC webpage on the Service Intranet.

7.14.2 Biannual Calibration of roadside breath testing devices

ORDER

OICs of stations/establishments where roadside breath testing devices are located are to ensure the biannual calibration of devices.

OICs of stations/establishments are to ensure that:

- (i) Roadside breath testing devices are calibrated on a biannual basis, using dry gas 'in field' calibration where available;
- (ii) Where a roadside breath testing device is unable to be calibrated using dry gas 'in field' calibration, then it is to be returned to the Calibration Laboratory, RP&RSC; and
- (iii) prior to forwarding a device to the Calibration Laboratory, RP&RSC for calibration, routine servicing or repairs, if possible, the statistical data of the device is to be downloaded using the dedicated computer program.

7.15 Breath or saliva analysing instrument not to be produced in court

Officers are not to produce to a court a breath or saliva analysing instrument unless ordered by a court.

Officers who have been ordered by a court to produce to the court a breath or saliva analysing instrument should advise the Officer in Charge, Specialist Programs, Road Policing Group, RP&RSC and the OIC QPS Calibration Laboratory.

7.16 Servicing of breath or saliva analysing instruments

OICs of stations/establishments where breath analysing instruments are located should, when any such instrument requires repair or memory downloading, send advice to the QPS Calibration Laboratory.

The advice should include:

- (i) the station/establishment where the breath or saliva analysing instrument is located;
- (ii) the serial number of the breath or saliva analysing instrument; and
- (iii) the type of action requested regarding the breath or saliva analysing instrument and if the breath or saliva analysing instrument has malfunctioned, a description of the fault.

The OIC of the QPS Calibration Laboratory should make all necessary arrangements for the routine servicing, repair or memory downloading of Service breath analysing instruments.

The Officer in Charge, Specialist Programs, Road Policing Group, RP&RSC should make all necessary arrangements for the routine servicing, repair or memory downloading of Service saliva analysing instruments.

7.17 Arrest – no breath test

An officer may arrest a person for an offence against s. 79(1): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A based solely on the officer's observations (see Appendix 7.3: 'Observation sheet' of this chapter) of the

person (indicia alone). The officer must have formed an opinion that the person was under the influence of liquor or a drug prior to requiring the person to provide a specimen of breath for analysis or a specimen of blood for a laboratory test (see s. 80(8): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A).

Where an analysis of breath or blood is conducted to determine the person's alcohol concentration, despite the provisions of s. 79(4) of the TO(RUM)A, if the result shows the subject person had an alcohol concentration which:

- (i) is over the high alcohol limit, the officer should continue the prosecution;
- (ii) is over the no alcohol limit, general alcohol limit or middle alcohol limit as applicable but is not over the high alcohol limit, the officer should consider whether:
 - (a) sufficient evidence to continue the original prosecution is available (see ss. 3.4.3: 'Factors to consider when deciding to prosecute' and 3.4.4: 'Withdrawal of charges' of the OPM); and
 - (b) if the original prosecution is not to be continued, a proceeding for any offence relating to the breath or blood alcohol concentration found in the subject person should be commenced.

Where an analysis of blood is conducted to determine the concentration of drugs in the person's blood, if the result of the analysis together with the opinion of a doctor (see s. 7.5.6: 'Certificate of analysis – blood' of this chapter) does not indicate that the subject person was under the influence of a drug, officers should consider whether sufficient evidence to continue the original prosecution is available (see ss. 3.4.3: 'Factors to consider when deciding to prosecute' and 3.4.4: 'Withdrawal of charges' of the OPM).

ORDER

When persons are suspected of committing an offence under s. 79(7) of the TO(RUM)A (such as a person riding a bicycle or a horse whilst under the influence of liquor or a drug) no authority exists to require that such persons provide a specimen of breath for a breath test. However following the arrest of such persons a requirement may lawfully be made for the subject persons to provide a specimen of breath for analysis or a specimen of blood for a laboratory test.

Where a person has been arrested for an offence under s. 79(7) of the TO(RUM)A and upon requirement made and direction given that person fails to provide a specimen of breath for analysis or a specimen of blood for a laboratory test, no charge should be preferred against that person for the offence under s. 80(11) of the TO(RUM)A.

7.18 Exculpatory provisions (defences)

Persons charged with offences under the provisions of s. 79: 'Vehicle offences involving liquor or other drugs' and s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A may have available to them a number of defence provisions which may exculpate them. However there are a number of provisions which are specifically provided for within the TO(RUM)A.

7.18.1 The Criminal Code

Section 79(12): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A provides that s. 24: 'Mistake of Fact' of the CC does not apply to an offence under s. 79 of the TO(RUM)A.

7.18.2 Persons in charge of motor vehicles

Officers should be aware that s. 79(6): 'Vehicle offences involving liquor or other drugs' of the TO(RUM)A, which relates to offences committed whilst being in charge of motor vehicles, provides that:

'If on the hearing of a complaint of an offence against subsection (1)(c), (1F)(c), (2)(c), (2AA)(c), (2B)(c), (2J)(c), (2K)(c) or (2L)(c) in respect of a motor vehicle the court is satisfied beyond reasonable doubt by evidence on oath that at the material time –

- (a) the defendant –
 - (i) by occupying a compartment of the motor vehicle in respect of which the offence is charged other than the compartment containing the driving seat of that motor vehicle; or
 - (ii) not being in that motor vehicle, by some action;

had manifested an intention of refraining from driving that motor vehicle whilst the defendant was under the influence of liquor or a drug, as the case may be, whilst the defendant was over the general alcohol limit or, if at the material time the defendant was a person to whom subsection (2A), (2B), (2J), (2K) or (2L) referred, the defendant was over the no alcohol limit; and

- (b) the defendant –
 - (i) was not under the influence of liquor or a drug to such an extent; or as the case may be;
 - (ii) was not, by virtue of the concentration of alcohol in the defendant's blood or breath influenced thereby to such an extent;

as to be incapable of understanding what the defendant was doing or as to be incapable of forming the intention referred to in paragraph (a); and

(c) the motor vehicle in respect of which the offence is charged was parked in such a manner as not to constitute a source of danger to other persons or other traffic; and

(d) the defendant had not previously been convicted of an offence under subsection (1), (1F), (2), (2AA), (2B), (2D), (2J), (2K) or (2L) within a period of 1 year prior to the date in respect of which the defendant is charged;

the court shall not convict the defendant of the offence charged.'

7.19 Presence of legal representatives during blood sampling, breath or saliva analysis tests

Where a legal representative is in the company of a person required to provide a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test, the legal representative may be permitted to remain for the duration of the procedure.

When a request is made for the services of a legal representative by a person who is at a police station or authorised place for the purpose of providing a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test under the provisions of the TO(RUM)A, the provisions of ss. 3.18: 'Judges Rules' and 3.20: 'Whereabouts of persons being interviewed to be disclosed' of the Digital Electronic Recording of Interviews and Evidence Manual apply.

Normal procedures for obtaining a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test are to be followed and no delays should occur simply because the subject person's legal representative has not arrived.

The investigating officer should ensure that a legal representative is aware of the mandatory requirements placed on the subject person by the provisions of the TO(RUM)A.

Where the operator is of the opinion that a legal representative is hindering or obstructing the process, such operator should advise the legal representative that any continued hindrance or obstruction may result in the legal representative's removal.

Where a specimen of blood is to be required and the investigating officer is of the opinion that a legal representative is hindering or obstructing a health care professional who is to take the specimen of blood and/or urine, the officer making the requirement should advise the legal representative that any continued hindrance or obstruction may result in the legal representative's removal and prosecution under s. 80A: 'Obstructing the taking of a blood specimen' of the TO(RUM)A.

If at a hospital, officers have no right to remove a legal representative from an examination room, cubicle, etc., such right is vested in the hospital staff of the particular hospital. Likewise when in a doctor's surgery, the doctor or the staff at that doctor's surgery has that right.

7.20 Private medical examination

Where a person has been arrested for an offence against ss. 79: 'Vehicle offences involving liquor or other drugs' or 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A and the person requests a private medical examination, a doctor of the subject person's choice should be permitted to examine the person in cases where the person is to be detained in custody.

See s. 16.12.10: 'Requests by prisoners or legal representatives for attendance of doctor at watchhouse' of the OPM.

7.21 Analysis challenged by defence

In accordance with s. 80(26): 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A, a defendant may give notice in writing to the complainant or arresting officer where that defendant proposes to lead evidence to prove that the:

- (i) breath analysing instrument was defective or not properly operated;
- (ii) result of a laboratory test of a specimen of blood or saliva was not a correct result; or
- (iii) signature or other matter in a certificate issued by a:
 - (a) health care professional;
 - (b) authorised police officer; or
 - (c) analyst,

was not correct.

When officers are served with any such notice they should notify the prosecutor responsible for the case. When notice is received in relation to a breath analysis matter, the prosecutor responsible for the case should notify and liaise with the Officer in Charge, Specialist Programs, Road Policing Group, RP&RSC as soon as possible regarding the matter/s outlined in the notice so that any required expert witnesses may be called to give evidence.

7.22 Observing the subject person and noting of indicia relating to the consumption of liquor/drugs

Observed indicia associated with, and resulting from, the consumption of liquor and/or drugs may, in some circumstances, be explained by a subject person. However without any explanation and subject to acceptance by a court, evidence of indicia alone may be sufficient to prove that a subject person was under the influence of liquor and/or drugs. Officers should observe a subject person to form an opinion as to whether or not that person is under the influence of liquor and/or a drug. Observations should include:

- (i) manner of driving:
 - (a) observe the subject person's manner of driving; and
 - (b) if it is necessary for police to drive the subject person's vehicle, note the vehicles performance compared to that when driven by the subject (e.g., steering, road handling);
- (ii) physical appearance and condition:
 - (a) demeanour before and after arrest;
 - (b) appearance before and after arrest;
 - (c) state of dress (whether tidy or untidy, vomit on clothing, buttons undone or wrongly fastened);
 - (d) eyes (whether bloodshot, watery, glassy, pupils dilated or pin pointed, or nystagmus which is where eyes are seen to move more or less in a rhythmical manner either from side to side or up and down from a point of fixation);
 - (e) face – flushed, pallid, otherwise abnormal;
 - (f) hair – untidy or tidy;
 - (g) smell of liquor on breath and/or clothing; and
 - (h) excessive salivation on mouth;
- (iii) behaviour – talkative, abusive, insolent, excited, sullen, cooperative, uncooperative, lively, aggressive, hostile, sleepy;
- (iv) speech – slurred, grossly mispronounced, thick, etc.;
- (v) coordination swaying, manner of walking, need for support etc.;
- (vi) memory: can the subject person remember:
 - (a) the date and day of the week;
 - (b) place of residence; and
 - (c) movements prior to interception by police;
- (vii) handwriting – if possible, obtain a specimen of the subject person's handwriting for comparison purposes; and
- (viii) health:
 - (a) has the subject person recently:
 - suffered any injury or illness;
 - received medical treatment and if so what treatment was received, when, where and by whom. Has the subject person taken any medicine and if so, what type, how long since last dose, quantities taken; and
 - received dental treatment; and
 - (b) is the subject person a diabetic and if so, what medication has been administered. How long since the subject person's last dose;
- (ix) conduct at watchhouse and at any other time including at court – has the subject person's conduct changed when compared to prior conduct; and

(x) in cases where a specimen of blood for a laboratory test is taken by a doctor or when a doctor present, seek the doctor's opinion.

Questioning of the subject person should include:

- (i) consumption of liquor/drugs;
- (ii) where was the liquor/drugs consumed;
- (iii) type of liquor/drugs consumed;
- (iv) size of drinks;
- (v) quantity consumed;
- (vi) times of first and last drink;
- (vii) meals taken and time of last meal;
- (viii) has the subject person been exposed to any chemicals;
- (ix) what explanation has the subject person for the manner of driving and all of the indicia observed; and
- (x) has the subject person been involved in a traffic crash, and if so, what liquor/drugs has the subject consumed before and after the traffic crash.

A subject person suffering from a medical condition such as brain injury, skull fracture, concussion, other head injury, low blood pressure, shock, diabetes, epilepsy and other pathological conditions may exhibit similar symptoms to a person under the influence of liquor and/or a drug.

A checklist of indicia associated with the consumption of liquor is contained in Appendix 7.3: 'Observation sheet' of this chapter.

7.23 Children

Questioning of children in relation to drink driving should be done in the presence of an independent adult (see s. 7.4.2: 'The breath analysis' of this chapter).

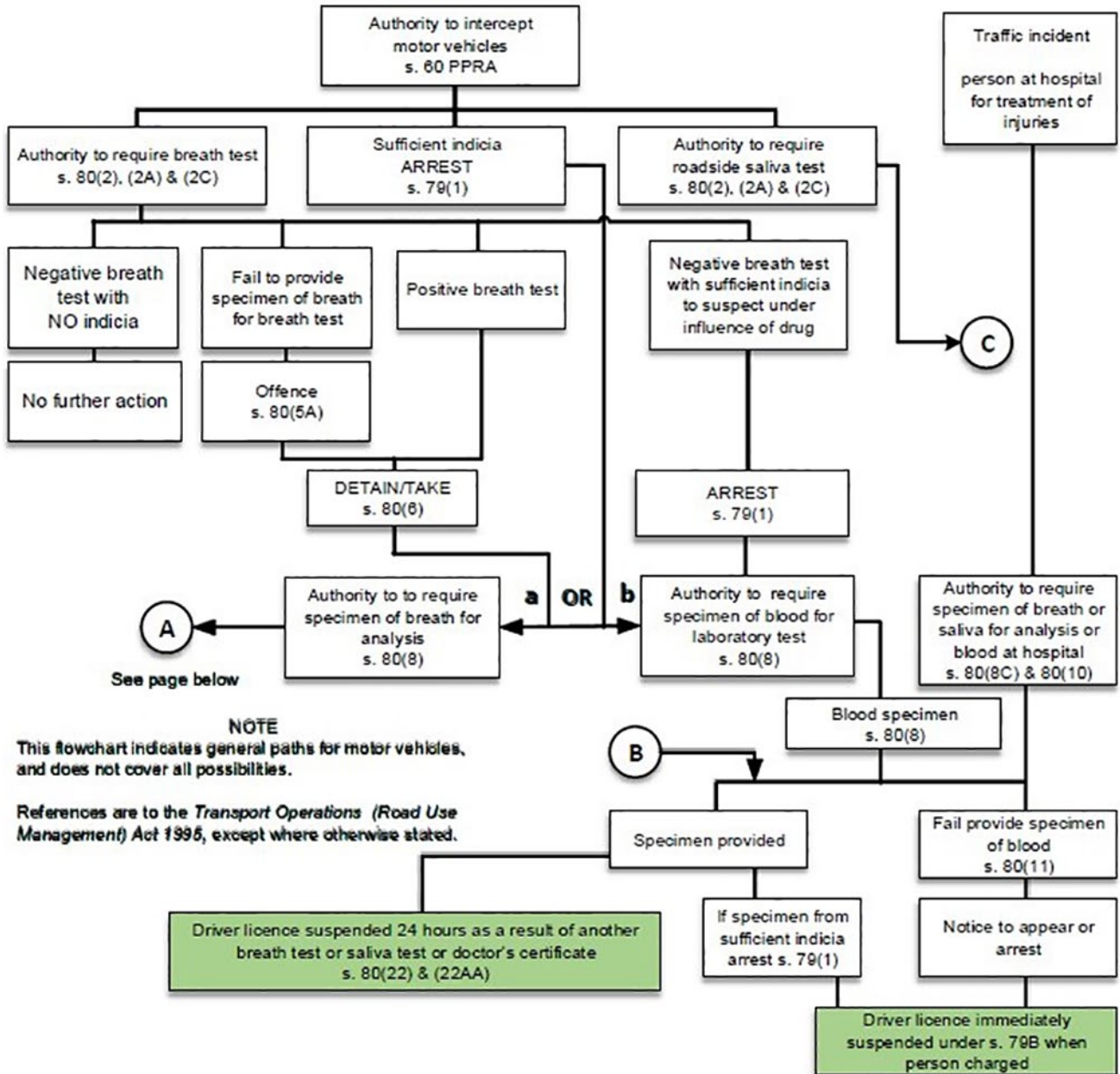
See ss. 1.9: 'Powers of arrest' and 1.7: 'General prosecution policy for traffic related offences' of this Manual and Chapter 5: 'Children' of the OPM.

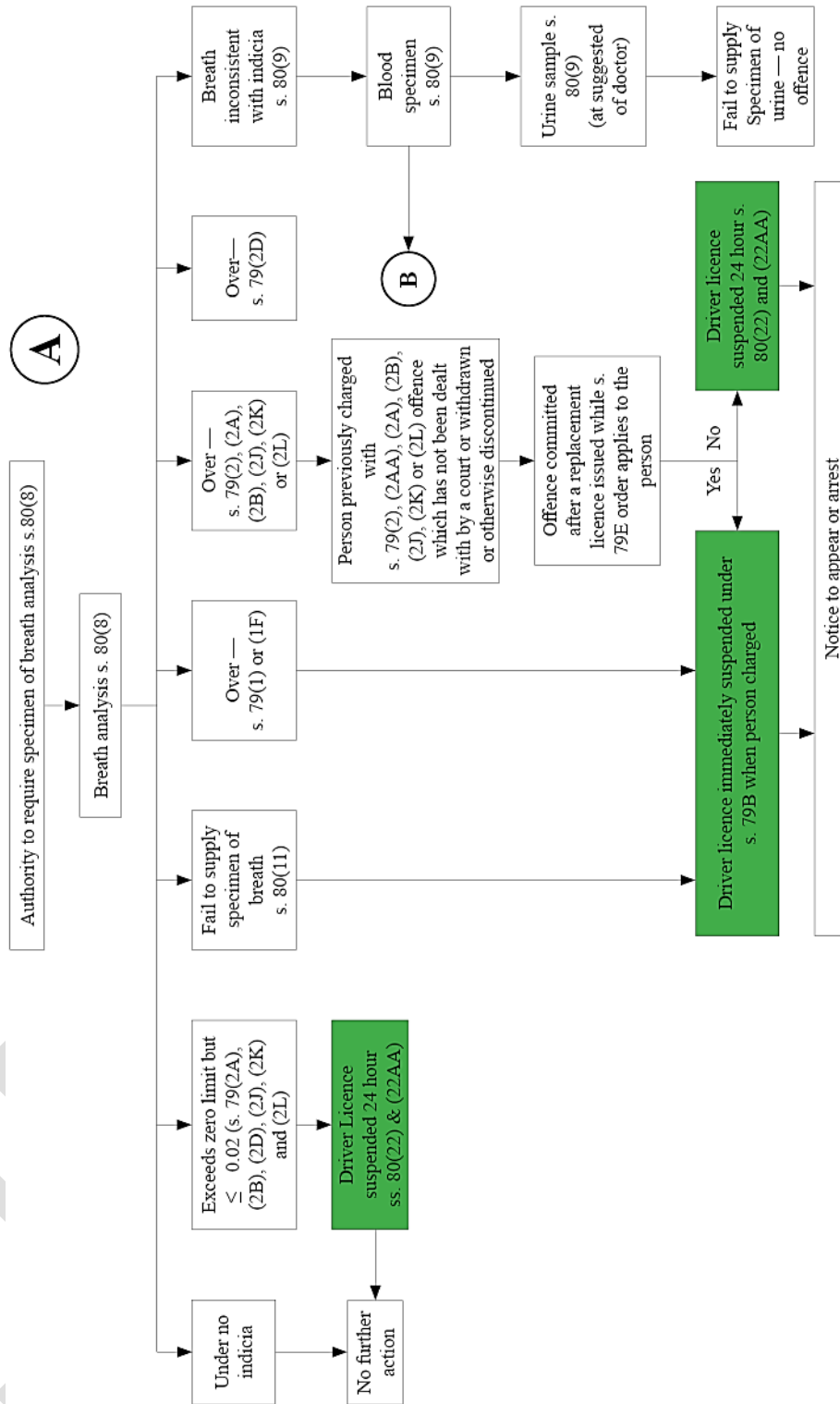
7.24 Diplomatic and consular immunity

See s. 14.4: 'Diplomatic immunity and consular immunity for traffic offences' of this Manual and s. 11.8: 'Diplomatic Privileges and Immunities Act' of the OPM.

Appendix 7.1 Drink and drug driving flowchart

(s. 7.11)





Section 79(1): Under the influence of liquor or a drug;

Section 79(1F): Over middle alcohol limit of 0.10% BAC but not over the high alcohol limit;

Section 79(2): General alcohol limit of 0.05% BAC but not over the middle alcohol limit;

Section 79(2AA): Relevant drug present in blood or saliva;

Section 79(2A): Holder of learner, or probationary, provisional or not the holder of a licence, is over no alcohol limit but not over the general alcohol limit;

Section 79(2B): Over no alcohol limit but not over general alcohol limit re specified vehicles (refer s. 79(2C));

Section 79(2D): Over no alcohol limit but not over general alcohol limit re tram, train or a vessel (refer s. 79(2E));

Section 79(2J): Restricted licence, or replacement licence under s. 79F, over no alcohol limit, but not over general alcohol limit.;

Section 79(2K): Over no alcohol limit but not over general alcohol limit re class RE licence, unless the person has held a valid class RE licence for a period of 1 year during the previous 5 year period (refer s. 79(2M));

Section 79(2L): Over no alcohol limit but not over general alcohol limit re class RE licence if learning to ride a class R motorbike (refer s. 79(2M));

A replacement licence is a form of licence that is the same kind, class or description as the licence suspended under s. 79B except for the inclusion of the X4 code (see s. 79F);

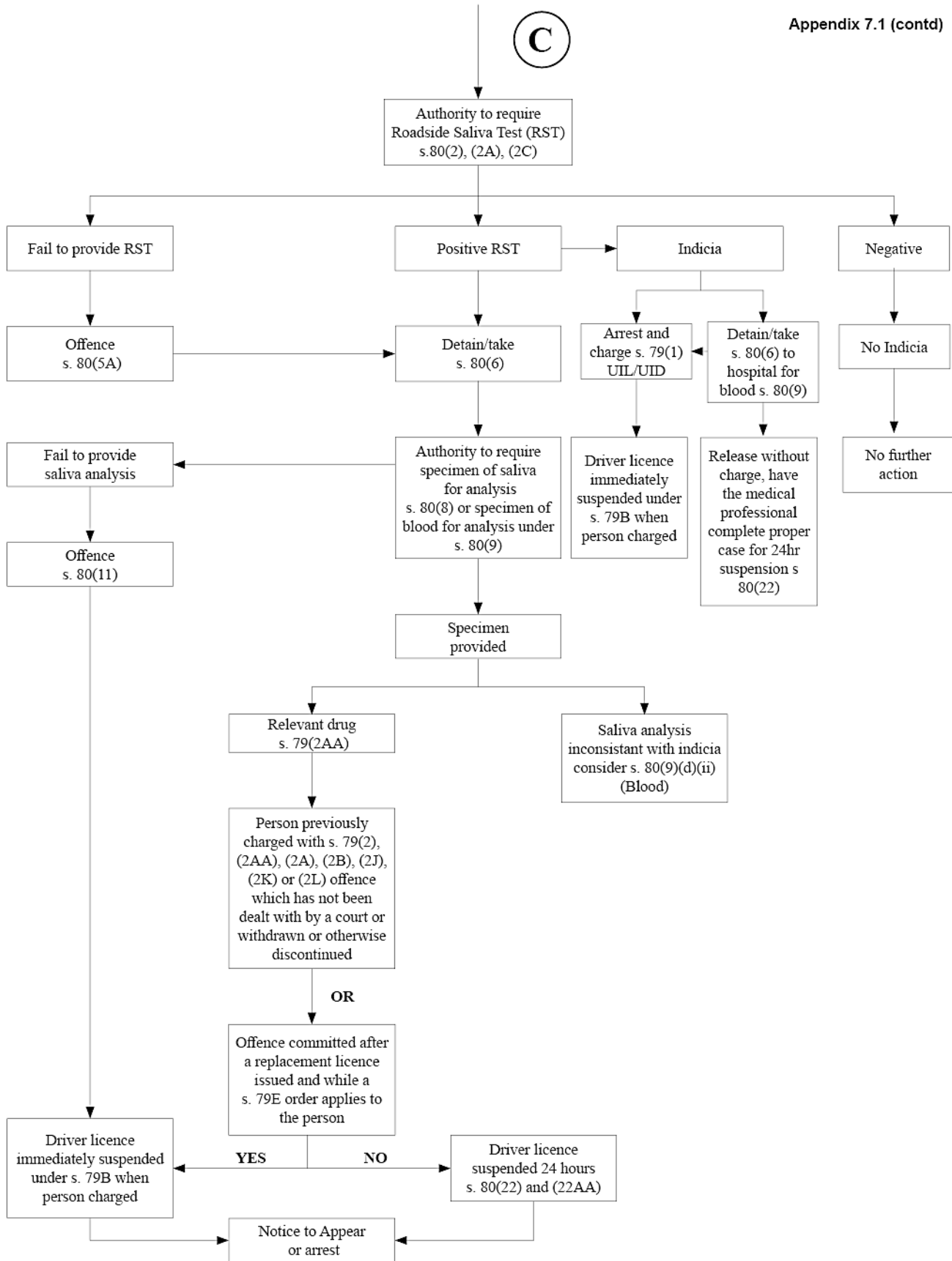
A section 79E order is a court order allowing a particular person whose Queensland driver licence is suspended under s. 79B(2) to drive (see s. 79E).

If a person does not hold a driver licence and s. 79B(1) applies, the person is immediately disqualified from obtaining or holding a Queensland driver licence when charged.

If person is charged under the CC s. 328A(1) or (4) with dangerous operation of a motor vehicle, when accompanied by the circumstance of aggravation that at the time of committing the offence the person was adversely affected by an intoxicating substance, the person's driver licence is immediately suspended in accordance with s. 79B(1)(d).

TM Issue 72
Public Edition

Appendix 7.1 (contd)



Appendix 7.2 Deleted

TM Issue 72
Public Edition

Appendix 7.3 Observation sheet

(ss. 7.15, 7.22)

BREATH: Smell of intoxicating liquor
 Nil Slight Strong

FACE COLOUR: Flushed Pale Other:

SKIN: Pale Needle marks Ulcers Abscesses
 Excessive perspiration Other:

CLOTHING: Orderly Soiled Disarranged Other:

ATTITUDE: Co-operative Talkative Anxious Dreamy
 Excited Relaxed Indifferent Sedated
 Hallucinating Hostile Irritable Cocky
 Antagonistic Depressed Unable to follow instructions
 Other:

ACTIONS: Swearing Hiccuping Belching Vomiting
 Fighting Drooling Restless Runny nose
 Itching Constant scratching
 Loss of emotional control Other:

EYES: Watery Glazed Bloodshot Nystagmus
 Pupils enlarged Pinpoint Eyelids drooping
 Reaction to light Other:

BREATHING: Normal Short Jerky Rapid
 Slow Shallow Slow Other:

SPEECH: Incoherent Clear Slurred Confused
 Fast Slow Other

BALANCE: Unsteady Swaying Sagging Falling
 Staggering Other:

MOVEMENTS: Manner of walking: Need for support Jerky
Overall performance of actions:
 Clumsy Sluggish Tremor Other:

OPINION (based on observations as to insobriety):
 Slightly Moderately Well affected
Due to: Liquor and/or Drug