



New South Wales

Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997

under the
Police Service Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Police Service Act 1990*.

Paul Whelan
Minister for Police

Explanatory note

The object of this Regulation is to improve the health, safety and welfare at work of members of the Police Service, and the safety of the general community, by:

- establishing a code of behaviour regarding alcohol and drug use by members of the Police Service, and
- providing for the random or targeted testing of police officers who are rostered on duty for the presence of alcohol or prohibited drugs in their bodies, and
- setting out the consequences (including counselling, rehabilitation and disciplinary action) for police officers found to have breached the code of behaviour by testing positive to alcohol or prohibited drugs.

This Regulation is made under the *Police Service Act 1990*, including sections 211A and 211B (as inserted by the *Police Legislation Further Amendment Act 1996*).

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Clause 1 Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997

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1 Name of Regulation

This Regulation is the *Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997*.

2 Commencement

This Regulation commences on 7th April 1997.

3 Amendment of Police Service Regulation 1990

The *Police Service Regulation 1990* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert at the end of the clause:

(2) Notes in this Regulation do not form part of this Regulation.

[2] Part 5A

Insert after Part 5:

Part 5A Provisions relating to the consumption of alcohol and the use of prohibited drugs by members of the Police Service

Division 1 Preliminary

66B Definitions

In this Part:

analyst means a person employed by the Government of New South Wales, or by an area health service, as an analyst.

authorised person means a person who is appointed as an authorised person under clause 66O.

breath analysing instrument means any instrument of a type approved by the Governor by order under the *Traffic Act 1909* as such an instrument, that is, as an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's blood.

breath analysis means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.

breath test means a test:

- (a) that is designed to indicate the concentration of alcohol present in a person's blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Traffic Act 1909*.

code of behaviour means the code of behaviour set out in clause 66D.

police uniform includes any portion of a police uniform that bears any badge, patch, insignia of rank or any other identifiable marking of the Police Service.

prescribed concentration of alcohol means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood.

prohibited drug has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

66C Operation of this Part

- (1) Nothing in this Part affects any liability for an offence relating to the consumption or supply of alcohol, or the use or supply of other drugs, arising under the *Traffic Act 1909* or the *Drug Misuse and Trafficking Act 1985* or any other Act.
- (2) Nothing in this Part affects any right to conduct breath or other tests for the presence of alcohol or other drugs in a person's body, under the *Traffic Act 1909*, the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* or any other Act.
- (3) Nothing in this Part affects any obligation or right under the *Anti-Discrimination Act 1977*, the *Occupational Health and Safety Act 1983* or any other Act.

(4) Nothing in this Part:

- (a) prevents disciplinary proceedings from being taken under Part 9 of the Act in relation to any other matter associated with the consumption of alcohol or the use of prohibited drugs by a police officer, or
- (b) prevents disciplinary proceedings from being taken under any Act in relation to any other matter associated with the consumption of alcohol or the use of prohibited drugs by a member of the Police Service who is or is not a police officer.

Division 2 Code of behaviour regarding consumption of alcohol and use of prohibited drugs

66D Code of behaviour

- (1) A member of the Police Service must not use any prohibited drug.
- (2) A member of the Police Service must not have a concentration of 0.02 grammes or more of alcohol in 100 millilitres of his or her blood while the member is rostered on duty.
- (3) A member of the Police Service must not consume alcohol while the member is on police premises. This applies whether or not the member is rostered on duty.
- (4) A police officer must not consume alcohol while the police officer is wearing a police uniform. This applies whether or not the member is rostered on duty.
- (5) A police officer must not, when required under the Act or this Part to do so, refuse or fail:
 - (a) to undergo a breath test, or
 - (b) to submit to a breath analysis, or
 - (c) to provide a sample of urine or hair,in accordance with a direction given by an authorised person.

- (6) A member of the Police Service must treat all information relating to the results of any test conducted under section 211A of the Act or this Part that comes to the member's knowledge in his or her official capacity as strictly confidential and must not divulge the information to anyone, except for the purposes of disciplinary proceedings or in connection with the assessment, counselling or rehabilitation of the police officer under this Part.
- (7) A member of the Police Service must not conspire with, or aid or abet, any police officer to breach this code of behaviour.
- (8) A breach of this code of behaviour does not constitute an offence.

66E Exemptions from compliance with the code of behaviour

- (1) The code of behaviour does not apply so as to prevent a member of the Police Service from consuming alcohol:
 - (a) in the performance of a police task, or
 - (b) in an official capacity, or
 - (c) in any other circumstances,if the member is authorised by the Commissioner to do so.
- (2) The code of behaviour does not apply so as to prevent a member of the Police Service from consuming alcohol on police premises if the member has the approval of the Patrol Commander, or manager of those premises, to do so.
- (3) An authorised officer must not direct a police officer to undergo a breath test, submit to a breath analysis, or provide a sample, if the police officer is unable on medical grounds to do so.
- (4) The code of behaviour does not prevent a member of the Police Service from divulging otherwise confidential information with the written authority of the Commander, Human Resources or the relevant police officer.

Division 3 Consequences of a breach of code of behaviour

66F Immediate action: police officer relieved from duty and reported

- (1) If the result of a test conducted under section 211A of the Act or this Part indicates that the prescribed concentration of alcohol is present in a police officer's blood while the police officer is rostered on duty (and no breath analysis indicates the opposite), the police officer is to be immediately relieved of duty and is not to carry out any duty for the duration of the officer's shift.
- (2) The Commissioner may decide that a police officer who is relieved from duty because of the operation of this clause is not entitled to be paid (whether in wages, paid sick leave or any other type of payment) for that part of the relevant shift that the officer did not work.

66G Consequences for police officers consuming alcohol

- (1) This clause applies if
 - (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by having the prescribed concentration of alcohol in his or her blood while rostered on duty, and
 - (b) the police officer has not breached the code of behaviour in that manner in the 3 years immediately preceding the breach.
- (2) In such a case, the Commissioner may ask the police officer to choose whether to undergo counselling and rehabilitation or whether to face possible disciplinary action in accordance with this clause.
- (3) If the police officer chooses to undergo counselling and rehabilitation, the Commissioner must direct the police officer:
 - (a) to attend any interview organised with the officer's Patrol Commander, and

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- (b) to attend an interview with a Police Service drug and alcohol counsellor for assessment, and
- (c) to participate in any rehabilitation program recommended by that counsellor.

(4) If a police officer:

- (a) chooses not to undergo counselling or rehabilitation, or
- (b) without reasonable excuse, fails to attend an interview or counselling session after choosing to do so, or
- (c) without reasonable excuse, fails to participate in a rehabilitation program after choosing to do so,

the police officer's Commander may reprimand the officer or may direct the preferment of a departmental charge against the police officer under Part 9 of the Act.

(5) The Commissioner is not required to ask the police officer to choose whether to undergo counselling if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to direct the preferment of a departmental charge against the police officer under Part 9 of the Act.

66H Consequences for police officers repeatedly consuming alcohol

(1) This clause applies if:

- (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by having the prescribed concentration of alcohol in his or her blood while rostered on duty, and
- (b) the police officer has breached the code of behaviour in that manner in the 3 years immediately preceding the breach.

- (2) In such a case, the Commissioner may direct the preferment of a departmental charge against the police officer under Part 9 of the Act.
- (3) The Commissioner may refer the police officer to the Police Medical Officer for the purpose of that officer determining the police officer's fitness to remain a police officer. The Commissioner is to have regard to any report made by the Police Medical Officer in relation to such a police officer.

66I Consequences for police officers using prohibited drugs

- (1) This clause applies if:
 - (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by using a prohibited drug, and
 - (b) the police officer has not breached the code of behaviour in that manner in the 5 years preceding the breach.
- (2) In such a case, the Commissioner may ask the police officer to choose whether to undergo counselling and rehabilitation or whether to face possible disciplinary action in accordance with this clause.
- (3) If the police officer chooses to undergo counselling and rehabilitation, the Commissioner must direct the police officer:
 - (a) to attend any interview organised with the officer's Patrol Commander, and
 - (b) to attend an interview with a Police Service drug and alcohol counsellor for assessment, and
 - (c) to participate in any rehabilitation program recommended by that counsellor.
- (4) If a police officer:
 - (a) chooses not to undergo counselling or rehabilitation, or

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- (b) without reasonable excuse, fails to attend an interview or counselling session after choosing to do so, or
- (c) without reasonable excuse, fails to participate in a rehabilitation program after choosing to do so,
the Commissioner may direct the preferment of a departmental charge against the police officer under Part 9 of the Act.

(5) The Commissioner is not required to ask the police officer to choose whether to undergo counselling if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to direct the preferment of a departmental charge against the police officer under Part 9 of the Act.

66J Consequences for police officers repeatedly using prohibited drugs

- (1) This clause applies if:
 - (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by using a prohibited drug, and
 - (b) the police officer has breached the code of behaviour in that manner in the 5 years preceding the breach.
- (2) In such a case, the Commissioner must direct the preferment of a departmental charge against the police officer under Part 9 of the Act.

66K Special provisions in relation to probationary constables

- (1) This clause applies to an officer who has been appointed on probation.
- (2) If the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that such an officer has breached the code of behaviour

by having the prescribed concentration of alcohol in his or her blood while rostered on duty or by using a prohibited drug, the Commissioner must either:

- (a) direct the officer to attend an interview with a Police Service drug and alcohol counsellor for assessment and to participate in any rehabilitation program recommended by that counsellor, or
- (b) direct that the officer's appointment be terminated.

(3) If such an officer fails, without reasonable excuse, to attend an interview or counselling session after being directed to do so, the Commissioner must direct that the officer's appointment be terminated.

(4) The Commissioner may at any time refer the officer to the Police Medical Officer for the purpose of that officer determining the officer's fitness for duty. The Commissioner is to have regard to any report made by the Police Medical Officer in relation to such an officer.

66L Other breaches of code of behaviour

(1) This clause applies to a police officer who breaches the code of behaviour:

- (a) by consuming alcohol while wearing a police uniform (while not rostered on duty), or
- (b) by consuming alcohol while on police premises (while not rostered on duty), or
- (c) by refusing or failing to undertake a breath test when required to do so under this Part, or
- (d) by refusing to submit to a breath analysis or to provide a sample of urine or hair when required to do so under this Part,

and who is not exempt from complying with the code of behaviour by reason of clause 66E.

(2) In such a case, the Commissioner may take disciplinary action under Part 9 of the Act in relation to the breach of the code of behaviour by any such police officer.

66M Special follow-up testing

- (1) The Commissioner may direct an authorised officer to conduct special follow-up testing of police officers whom the Commissioner has previously considered to be in breach of the code of behaviour.
- (2) That special testing may involve breath testing, breath analysis or a requirement to supply a sample of urine or hair, in accordance with this Part. Any such testing must occur at least once a year. The police officer is not to be given notice of the time of testing.
- (3) Any such special testing is to continue:
 - (a) for 3 years from the most recent breach, in relation to a police officer who breached the code of behaviour by having more than the prescribed concentration of alcohol in his or her blood, or
 - (b) for 5 years from the most recent breach, in relation to a police officer who breached the code of behaviour by using a prohibited drug.
- (4) The Commissioner may at any time change or revoke any direction given under this clause.

66N Double jeopardy

- (1) A police officer is not liable to be punished under this Part for both:
 - (a) having the prescribed concentration of alcohol in his or her blood while rostered on duty, or using a prohibited drug, or consuming alcohol while wearing a police uniform or while on police premises, and
 - (b) refusing or failing to undertake a breath test, to submit to a breath analysis or to provide a sample of urine or hair in accordance with this Part.

(2) A police officer is not liable to be punished under this Part for both:

- (a) having the prescribed concentration of alcohol in his or her blood while rostered on duty, and
- (b) consuming alcohol while wearing a police uniform or while on police premises.

Division 4 Authorisation of people to conduct tests and use instruments

66O Appointment of authorised persons

- (1) The Commissioner may, by instrument in writing, appoint any person to be an authorised person for the purposes of section 211A of the Act and this Part. For those purposes, the Commissioner may appoint a police officer or any other person.
- (2) The Commissioner may appoint as an authorised person:
 - (a) a person by name, or
 - (b) the holder from time to time of a particular office by reference to the title of the office concerned.
- (3) The Commissioner must furnish authorised persons with certificates of their appointment as authorised persons.
- (4) An authorised person must, if requested to do so, produce the certificate of appointment to any police officer required by the authorised person to submit to a breath test or to do any other thing under section 211A or this Part.

Division 5 Conduct of testing

66P Breath analysis of police officers following positive breath testing

- (1) This clause applies if
 - (a) it appears to an authorised person as a result of a breath test conducted under section 211A of the Act that the prescribed concentration of alcohol may be present in a police officer's blood, or

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- (b) a police officer who is required by an authorised person to undergo a breath test under this Part refuses or fails to do so in accordance with the direction of the authorised person.
- (2) In such a case, the authorised person may require the police officer to submit to a breath analysis in accordance with the directions of the person.
- (3) A breath analysis must be carried out by an authorised person.
- (4) As soon as practicable after a police officer has submitted to a breath analysis the person who carried out the analysis must deliver to the police officer a statement in writing signed by the person specifying:
 - (a) the concentration of alcohol determined by the analysis to be present in the police officer's blood and expressed in grammes of alcohol in 100 millilitres of blood, and
 - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A police officer who is required to submit to a breath analysis may request the person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the police officer's blood for analysis, at the police officer's own expense, by:
 - (a) a medical practitioner nominated by the police officer, or
 - (b) a medical practitioner nominated by the person at the police officer's request.
- (6) The making of any such request or the taking of a sample of a police officer's blood does not absolve the police officer from the obligation imposed on the police officer to submit to a breath analysis in accordance with this clause.
- (7) If a police officer makes such a request, the authorised officer must take all reasonable steps to contact the relevant medical practitioner.

Division 6 Handling and analysis of samples

66Q Object of this Division

The object of this Division is to set out the procedure to be followed in relation to:

- (a) a sample of urine or hair provided by a police officer under section 211A of the Act (which empowers an authorised person to require a police officer to provide a sample of the officer's urine or hair for the purpose of testing for the presence of prohibited drugs), or
- (b) a sample of blood provided by a police officer under clause 66P (which allows a police officer to request that a sample of blood be taken).

66R Action with respect to samples of urine, hair or blood

- (1) This clause applies to:
 - (a) an authorised person who takes a sample of urine, hair or blood when empowered to do so under section 211A of the Act, and
 - (b) a medical practitioner who takes a sample of blood when empowered to do so under clause 66P.
- (2) A person to whom this clause applies must:
 - (a) divide the sample into 2 approximately equal portions, and
 - (b) place each portion into a container, and
 - (c) fasten and seal each container, and
 - (d) mark or label each container for future identification.
- (3) Of the 2 sealed containers:
 - (a) one must be handed by the person to whom this clause applies to the police officer from whom the sample was taken or to some other person on behalf of the police officer, and

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(b) the other must:

- (i) in the case of a sample taken by a medical practitioner under clause 66P, be handed by the medical practitioner to the authorised person present when the sample was taken, or
- (ii) in any other case, be dealt with in accordance with clause 66S.

66S Analysis of samples of urine, hair or blood

- (1) An authorised person may arrange for a portion of a sample of a police officer's urine, hair or blood taken in accordance with section 211A of the Act or this Part to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains a prohibited drug.
- (2) An analyst to whom a portion of a sample of urine, hair or blood is submitted for analysis under this clause may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains alcohol or a prohibited drug or drugs, as the case requires.
- (3) Such analysis must be carried out in accordance with Australian Standard AS 4308 "Recommended Practice for the Collection, Detection and Quantification of Drugs in Urine" or any procedure approved by the Commissioner for this purpose.
- (4) Analysis must be carried out in a laboratory accredited by the New South Wales Department of Health and nominated by the Commissioner.
- (5) If the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug in the sample, an analysis of another portion of the sample must be undertaken.

Division 7 Offence

66T Interfering with results of test

A person who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug in the police officer's urine, hair or blood before submitting to a breath analysis or providing a sample of urine, hair or blood under this Part is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the police officer.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

Division 8 Certificate evidence in proceedings

66U Certificate evidence of concentration of alcohol in blood determined by breath analysis

- (1) In disciplinary proceedings relating to a breach of the code of behaviour, evidence may be given by means of a certificate referred to in this section of the concentration of alcohol present in the blood of the police officer concerned, as determined by a breath analysing instrument operated by an authorised person.
- (2) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by an authorised person and certifying that:
 - (a) the person is an authorised person, and
 - (b) the police officer named in the certificate submitted to a breath analysis, and
 - (c) the apparatus used by the authorised person to make the breath analysis was a breath analysing instrument within the meaning of this Regulation, and
 - (d) the analysis was made on the day and completed at the time stated in the certificate, and

- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that police officer on the day and at the time stated in the certificate, and
- (f) a statement in writing required by clause 66P (4) was delivered in accordance with that subclause, is prima facie evidence of the particulars certified in and by the certificate.

- (3) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by the Commissioner that the person named in the certificate is an authorised person is prima facie evidence of the particulars certified in and by the certificate.
- (4) In any disciplinary proceedings relating to a breach of the code of behaviour, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not to be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

66V Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

- (1) In disciplinary proceedings relating to a breach of the code of behaviour, evidence may be given by means of a certificate referred to in this section of the concentration of alcohol present in the blood of the police officer concerned, as determined by an analysis under this Part of a portion of a sample of the police officer's blood.
- (2) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by a medical practitioner and certifying any one or more of the following matters:
 - (a) that the practitioner took a sample of the police officer's blood in accordance with this Part on the day and at the time stated in the certificate,

- (b) that the practitioner dealt with the sample in accordance with clause 66R,
- (c) that the practitioner used equipment of a specified description in so taking and dealing with the sample,
- (d) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(3) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by an authorised person and certifying any one or more of the following matters:

- (a) that the person received a portion of a sample of a specified police officer's blood taken in accordance with this Part,
- (b) that the person arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the Particulars certified in and by the certificate.

(4) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified police officer's blood in a container submitted for analysis under this Part,
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

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- (c) that, on receipt by the analyst of the container, the seal was unbroken,
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample,
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Part,

is prima facie evidence of the matters set out in subclause (5).

(5) A certificate under subclause (4) is prima facie evidence:

- (a) of the particulars certified in and by the certificate, and
- (b) that the sample was a portion of the sample of the blood of that specified police officer, and
- (c) that the portion had not been tampered with before it was received by the analyst.

66W Certificate evidence of presence of prohibited drugs

- (1) In disciplinary proceedings relating to a breach of the code of behaviour, evidence may be given by means of a certificate referred to in this section of the presence of drugs in the urine or hair of the police officer concerned, as determined by an analysis under this Part of a portion of a sample of the police officer's urine or hair.
- (2) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by an authorised person and certifying any one or more of the following matters:
 - (a) that the person received a portion of a sample of a specified police officer's urine or hair taken in accordance with section 211A of the Act and with this Part,

(b) that the person arranged for the portion to be submitted for analysis by an analyst to determine whether any prohibited drug was present in the sample,

(c) that the container was sealed, and marked or labelled, in a specified manner,

is *prima facie* evidence of the particulars certified in and by the certificate.

(3) In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

(a) that the analyst received, on a specified day, a portion of a sample of a specified police officer's urine or hair in a container submitted for analysis under this Part,

(b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

(c) that, on receipt by the analyst of the container, the seal was unbroken,

(d) that the analyst carried out an analysis of the portion to determine whether any prohibited drug was present in the sample,

(e) that a specified prohibited drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Part,

is *prima facie* evidence of the matters set out in subclause (3).

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- (4) A certificate under subclause (2) is *prima facie* evidence:
 - (a) of the particulars certified in and by the certificate, and
 - (b) that the portion was a portion of the sample of the urine or hair of that specified police officer, and
 - (c) that the portion had not been tampered with before it was received by the analyst.

66X Certificate evidence of authorisation

In disciplinary proceedings relating to a breach of the code of behaviour, a certificate purporting to be signed by the Commissioner and certifying that the person named in the certificate is an authorised person is *prima facie* evidence of the particulars certified in and by the certificate.