



New South Wales

# Passenger Transport (Drug and Alcohol Testing) Regulation 2010

under the

Passenger Transport Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Passenger Transport Act 1990*.

JOHN ROBERTSON, MLC  
Minister for Transport

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Passenger Transport (Drug and Alcohol Testing) Regulation 2004*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the procedures for testing transport safety employees for alcohol and other drugs and obtaining samples of blood and urine for that purpose,
- (b) offences relating to the use of drugs and alcohol by transport safety employees, failing to undergo testing or to provide a sample, failing to conduct a test or take a sample, interfering with test results, hindering or obstructing a person taking a sample and interfering or tampering with or destroying a sample,
- (c) the use of certificates as prima facie evidence in proceedings for offences,
- (d) the use of positive tests in determining whether a bus driver is a fit and proper person to hold an authority to drive a public passenger vehicle,
- (e) the requirement that bus and ferry operators notify the Director-General of the Department of Transport and Infrastructure or the Maritime Authority of certain matters,
- (f) the authorisation of persons to exercise functions under this Regulation,
- (g) savings and formal matters.

This Regulation is made under clause 3 of Schedule 5 to, and section 63 (the general regulation-making power) of, the *Passenger Transport Act 1990*.

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Passenger Transport (Drug and Alcohol Testing) Regulation 2010

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## 2010 No 484

Clause 1 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 1 Preliminary

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# Passenger Transport (Drug and Alcohol Testing) Regulation 2010

under the

Passenger Transport Act 1990

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Passenger Transport (Drug and Alcohol Testing) Regulation 2010*.

### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Passenger Transport (Drug and Alcohol Testing) Regulation 2004*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**analyst** means a person employed by the owner or operator of an approved laboratory as an analyst.

**approved laboratory** means:

- (a) in relation to blood samples—the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Sydney West Area Health Service, and
- (b) in relation to urine samples—a laboratory that has been accredited by the National Association of Testing Authorities, Australia for the purposes of AS/NZS 4308:2008.

**AS/NZS 4308:2008** means Australian/New Zealand Standard AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*.

**breath analysing instrument** and **breath analysis** have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

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**breath test** means a test for the purpose of indicating the concentration of alcohol in a person's blood, carried out on that person's breath by means of a device, not being a breath analysing instrument, of a type that complies with the requirements of AS 3547—1997, *Breath alcohol testing devices for personal use*.

**bus operator** means an accredited service operator who carries on a public passenger service by means of a bus.

**bus safety employee** means a transport safety employee who performs bus safety work.

**drug** has the same meaning it has in the *Road Transport (Safety and Traffic Management) Act 1999*.

**Note.** Drug is defined in the *Road Transport (Safety and Traffic Management) Act 1999* to include alcohol.

**ferry operator** means a person who carries on a public passenger service by means of a ferry.

**ferry safety employee** means a transport safety employee who performs ferry safety work.

**hospital** means a public or private hospital, and includes any premises, institution or establishment prescribed as a hospital for the purposes of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

**on-site drug screening device** means a device which determines the presence or absence of drugs in urine using an immunoassay technique that meets the initial test cut-off levels listed in Table 1 of AS/NZS 4308:2008.

**operator** means:

- (a) a bus operator, or
- (b) a ferry operator.

**prescribed concentration of alcohol** means a concentration of 0.02 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

**sample**, in relation to urine, includes, if the sample is divided into portions, a portion of the sample.

**test supervisor** means a person authorised under clause 30 to be a test supervisor.

**the Act** means the *Passenger Transport Act 1990*.

- (2) For the purposes of this Regulation:
  - (a) a reference to a police officer authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a police officer so authorised under the *Road Transport (Safety and Traffic Management) Act 1999*, and

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- (b) a thing is to be regarded as having been done by a medical practitioner, registered nurse or analyst if it is done by a person acting under the supervision or direction of the medical practitioner, registered nurse or analyst, and
  - (c) a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of blood or urine, or both.
- (3) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Testing for alcohol or other drugs

### 4 Random and targeted testing

- (1) A test supervisor may require any transport safety employee, who the test supervisor has reasonable cause to believe is on duty for the purpose of carrying out transport safety work, or who the test supervisor has reasonable cause to believe is about to carry out transport safety work, to do either or both of the following:
  - (a) undergo a breath test in accordance with the directions of the test supervisor,
  - (b) provide a sample of the employee's urine for the purpose of testing for the presence of drugs.
- (2) The selection of a transport safety employee for testing may be conducted on a random or targeted basis.
- (3) A transport safety employee may be:
  - (a) breath tested whether or not there is any suspicion that the employee has recently consumed alcohol, or
  - (b) required to provide a urine sample whether or not there is any suspicion that the employee has recently taken any drug.
- (4) A transport safety employee is to be regarded as being about to carry out transport safety work if the employee:
  - (a) has left home or a temporary residence for work (being transport safety work), and
  - (b) has not commenced work after having so left home or the temporary residence.
- (5) In the case of a transport safety employee who was about to carry out transport safety work, the following results may be used for the purposes of any disciplinary proceedings against the transport safety employee, but the results are not admissible in any proceedings for an offence against this Regulation:
  - (a) the result of any breath test carried out under this clause or the result of any subsequent breath or other analysis,
  - (b) the result of any test or analysis performed on a sample of the employee's urine that was provided under this clause.

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Clause 5 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 2 Testing for alcohol or other drugs

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### 5 Testing in specified situations

- (1) A test supervisor or a police officer who has reasonable cause to believe that a transport safety employee has been involved in an accident or irregular incident while carrying out transport safety work may require the employee to do either or both of the following:
  - (a) undergo a breath test in accordance with the directions of the test supervisor or police officer,
  - (b) provide a sample of the employee's urine for the purpose of testing for the presence of drugs.
- (2) Nothing in this clause limits clause 4 or 19.

**Note.** Clause 19 provides that an operator must ensure that a transport safety employee who is involved in a notifiable incident is required to undergo a breath test or provide a sample of blood or urine.

### 6 Assessment of sobriety if breath testing device not available

- (1) A test supervisor or a police officer may require a transport safety employee to submit to an assessment of the employee's sobriety in accordance with the directions of the test supervisor or police officer if:
  - (a) the test supervisor or police officer is entitled under this Regulation to require the employee to undergo a breath test, and
  - (b) the device required to carry out the breath test is not readily available.
- (2) A requirement that a transport safety employee submit to such an assessment is not open to challenge in any proceedings on the basis that the device was readily available.

### 7 Breath analysis following breath testing

- (1) A test supervisor or a police officer may require a transport safety employee to submit to a breath analysis in accordance with the directions of the test supervisor or police officer if:
  - (a) it appears to the test supervisor or police officer as a result of a breath test or assessment under this Regulation that the prescribed concentration of alcohol may be present in the employee's breath or blood, or
  - (b) the employee is required by a test supervisor or a police officer to undergo a breath test or to submit to an assessment under this Regulation and the employee refuses or fails to do so in accordance with the directions of the test supervisor or police officer.



- (2) If a police officer is entitled to require a transport safety employee to submit to a breath analysis, the police officer may:
  - (a) arrest the employee without warrant, and
  - (b) take the employee with such force as may be necessary to a police station or such other place as the police officer considers desirable, and
  - (c) detain the employee at the police station or other place for the purposes of the breath analysis.
- (3) If a test supervisor is entitled to require a transport safety employee to submit to a breath analysis, the supervisor may direct the employee to attend and submit to a breath analysis at the nearest police station or such other place as the supervisor may reasonably require, within such reasonable time as the supervisor may require.
- (4) A breath analysis must be carried out by a police officer authorised by the Commissioner of Police to operate breath analysing instruments or by a test supervisor.
- (5) As soon as practicable after a transport safety employee has submitted to a breath analysis, the test supervisor or police officer operating the breath analysing instrument must deliver to the employee and the operator who employed or contracted the employee, a statement in writing signed by the test supervisor or police officer specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the employee's breath or blood and expressed in grams of alcohol in 210 litres of breath or 100 millilitres of blood, and
  - (b) the date and time that the breath analysis was completed.
- (6) A transport safety employee who is required to submit to a breath analysis by a test supervisor or police officer may request the test supervisor or police officer to arrange for the taking (in the presence of a test supervisor or a police officer) of a sample of the employee's blood for analysis, at the employee's own expense, by a medical practitioner nominated by the employee or, if the employee so requests, a medical practitioner nominated by the test supervisor or police officer.
- (7) The making of any such request or the taking of a sample of an employee's blood does not remove the obligation that the employee submit to a breath analysis in accordance with this clause.

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Clause 8 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 2 Testing for alcohol or other drugs

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### 8 Blood or urine samples required following accidents

- (1) If a transport safety employee attends or is admitted to a hospital for examination or treatment because the employee has been involved in an accident while carrying out transport safety work, a test supervisor or police officer may require the employee to provide as soon as practicable a sample of the employee's blood or urine in accordance with the directions of a medical practitioner who attends the employee at the hospital.
- (2) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (3) Any such medical practitioner or nurse must take the sample if informed by the test supervisor or police officer that the sample is required to be taken under this Regulation.
- (4) A requirement under subclause (1) need not be made directly to the transport safety employee concerned but may be made through a medical practitioner or any such nurse who attends the employee at the hospital.

### 9 Additional circumstances when samples may be required

- (1) A test supervisor may require a transport safety employee to provide a sample of the employee's blood or urine if:
  - (a) the test supervisor is entitled under this Regulation to require the employee to submit to a breath analysis, and
  - (b) a breath analysing instrument is not readily available.
- (2) A test supervisor may require a transport safety employee to provide a sample of the employee's blood or urine if:
  - (a) the test supervisor has a reasonable belief that, by the way in which the employee acts, the employee may be under the influence of a drug, and
  - (b) the employee has undergone a breath test in accordance with this Regulation, and
  - (c) the result of the test does not permit the employee to be required to submit to a breath analysis, and
  - (d) the test supervisor has required the employee to submit to a sobriety assessment and:
    - (i) the employee refuses to submit to the assessment, or

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- (ii) after the assessment is made, the test supervisor has a reasonable belief that the employee is under the influence of a drug.

**Note.** Under clause 4, a transport safety employee may be required at any time to provide urine samples.

- (3) A requirement that a transport safety employee provide a sample is not open to challenge in any proceedings on the basis that a breath analysing instrument was readily available.

#### **10 Taking of blood or urine samples**

- (1) This clause applies if a test supervisor or a police officer is entitled under this Regulation to require a transport safety employee to provide a sample of the employee's blood or urine.
- (2) The test supervisor or police officer may require the transport safety employee to provide the sample of urine in accordance with the directions of the test supervisor or police officer.
- (3) The test supervisor or police officer may require the transport safety employee to provide the sample of blood at a hospital in accordance with the directions of a medical practitioner who attends the employee.
- (4) If there is no medical practitioner present to attend the transport safety employee at the hospital, the blood sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (5) Any such medical practitioner or nurse must take a sample of blood if informed by the test supervisor or police officer that the sample is required to be taken under this Regulation.
- (6) If a police officer is entitled to require a transport safety employee to provide a sample of blood, the police officer may:
  - (a) arrest the employee without warrant, and
  - (b) take the employee with such force as may be necessary to a hospital, and
  - (c) detain the employee at the hospital for the purposes of obtaining the sample.
- (7) If a test supervisor is entitled to require a transport safety employee to provide a sample of blood, the supervisor may direct the employee to attend and provide the sample at the nearest hospital within such reasonable time as the supervisor may require.

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Clause 11 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 2 Testing for alcohol or other drugs

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### 11 Restrictions on testing

A test supervisor or a police officer cannot require a transport safety employee to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the employee has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the employee at the hospital (or, if no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the employee, or
- (b) if it appears to the test supervisor or police officer that it would (because of injuries sustained by the employee) be dangerous to the employee's medical condition if the employee complied with the requisition, or
- (c) at any time after the expiration of 4 hours from the time the employee carried out the transport safety work (or was due to commence the transport safety work) to which the requisition relates, or
- (d) in the case of an employee other than an employee who has been involved in an accident or irregular incident while carrying out transport safety work, after the person has ceased to be on duty on a particular day, or
- (e) at the employee's home or temporary residence.

### 12 Action to be taken with respect to blood samples

- (1) A person by whom a sample of a transport safety employee's blood is taken under this Regulation must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
  - (e) if the sample is taken under clause 7 (6), as soon as reasonably practicable after the sample is taken, hand the sample to the test supervisor or police officer who was present at the time the sample was taken.

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- (2) The test supervisor or police officer to whom a sample of blood is handed under subclause (1) must:
    - (a) immediately on being handed the sample, place the sample in a security box of a type approved by the Commissioner of Police and lock the box, and
    - (b) as soon as reasonably practicable, arrange for the sample to be submitted to an approved laboratory for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
  - (3) An approved laboratory that holds a sample submitted under this clause must forward a portion of the sample to a medical practitioner or laboratory if, within 12 months after the taking of the sample, the person who provided the sample requests the laboratory to do so and pays any costs associated with forwarding the portion.

**13 Action to be taken with respect to urine samples**

- (1) A person by whom a sample of a transport safety employee's urine is taken must collect the sample in accordance with section 2 of AS/NZS 4308:2008.
- (2) The test supervisor or police officer who required the employee to provide the sample must arrange for the sample to be submitted for initial testing.
- (3) A sample that is submitted for initial testing or confirmatory analysis is to be transported in accordance with section 2 of AS/NZS 4308:2008.
- (4) Initial testing may be carried out:
  - (a) at the place where the sample was taken, using an on-site drug screening device, or
  - (b) by an analyst at an approved laboratory, in accordance with section 4 of AS/NZS 4308:2008.
- (5) If initial testing indicates that the sample contains any drug, an analyst at an approved laboratory is to conduct a confirmatory analysis of the sample in accordance with clause 14.
- (6) It is the responsibility of the test supervisor or police officer who requires an employee to provide a sample to arrange for the sample to be submitted to an analyst at an approved laboratory if the initial test is conducted at the place where the sample was taken in accordance with subclause (4) (a).

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Clause 14 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 2 Testing for alcohol or other drugs

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- (7) An approved laboratory that holds a sample on which a confirmatory analysis has been carried out must forward a portion of the sample to a medical practitioner or laboratory if, within 12 months after the taking of the sample, the person who provided the sample requests the laboratory to do so and pays any costs associated with forwarding the portion.
- (8) Samples are to be stored in accordance with section 2 of AS/NZS 4308:2008.

### 14 Analysis of samples

- (1) An analyst to whom blood is submitted for analysis under this Part may carry out an analysis of the blood to determine the concentration of alcohol in the blood or to determine whether the blood contains any drug.
- (2) An analyst to whom urine is submitted for analysis under this Part may carry out confirmatory analysis of the urine to determine whether the urine contains any drug only if initial testing in accordance with this Part indicates that the urine contains such a drug.
- (3) The confirmatory analysis carried out under subclause (2), and any report provided, must be in accordance with:
  - (a) sections 4 and 5 of AS/NZS 4308:2008, or
  - (b) such other procedure as may be directed by a regulator.
- (4) Without limiting subclause (3) (b), a regulator may, generally or in a particular case or class of cases, direct that a confirmatory analysis is to be carried out in order to determine whether there is present in a sample a drug specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*.

### 15 Medical practitioners and nurses—protection from liability

No civil or criminal liability is incurred by a person (being a person who is a medical practitioner, nurse or person acting under the supervision or direction of a medical practitioner or nurse) in respect of anything properly and necessarily done in the course of taking a sample of blood or urine from a subject, if the person:

- (a) believed on reasonable grounds that he or she was required under this Regulation to take the sample of blood or urine from the subject, or
- (b) was informed by a test supervisor or a police officer that the subject was someone from whom the person was required under this Regulation to take the sample of blood or urine.

## Part 3 Offences

### 16 Employee having prescribed concentration of alcohol

A transport safety employee who carries out transport safety work while the prescribed concentration of alcohol is present in the employee's breath or blood is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

### 17 Employee under influence of alcohol or other drug

(1) A transport safety employee who carries out transport safety work while under the influence of alcohol or any other drug is guilty of an offence.  
Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) If a person is charged with an offence under this clause:

- (a) the document commencing proceedings may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the document, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
  - (i) a drug described in the document commencing proceedings, or
  - (ii) a combination of drugs any one or more of which was or were described in the document.

### 18 Refusal to be tested

(1) If required to do so under this Regulation, a transport safety employee must, in accordance with any directions of a test supervisor or police officer:

- (a) undergo a breath test, or
- (b) submit to an assessment.

Maximum penalty: 10 penalty units.

(2) If required to do so under this Regulation, a transport safety employee must, in accordance with any directions of a test supervisor or police officer:

- (a) submit to a breath analysis, or
- (b) provide a sample of blood or urine.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

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Clause 19 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 3 Offences

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- (3) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

### 19 Failure to conduct test

- (1) An operator must ensure that a transport safety employee of the operator who is involved, or reasonably suspected of being involved, in a notifiable incident while carrying out transport safety work is required, within 4 hours after the incident:
- (a) to undergo a breath test and, if it appears to the test supervisor as a result of the breath test that the prescribed concentration of alcohol may be present in the employee's blood, a breath analysis, or
  - (b) to provide a sample of blood or urine in accordance with Part 2.  
Maximum penalty: 50 penalty units.
- (2) It is a condition of the accreditation of a bus operator that the operator must not, without reasonable excuse, fail to comply with the requirements of this clause.
- (3) In this clause, *notifiable incident* means an accident or incident that the operator reasonably believes is likely to arouse serious public concern or that results in any one or more of the following:
- (a) the death of a person,
  - (b) an injury to a person that is, in the reasonable opinion of the operator, likely to require treatment at a hospital,
  - (c) the capsize, swamping, flooding or sinking of a ferry,
  - (d) a bus being prevented from continuing its journey.

### 20 Interfering with results of test

A transport safety employee or any other person must not, for the purpose of preventing or restricting the use of results of any analysis in proceedings against the employee, do anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's breath, blood or urine before the employee submits to a breath analysis or provides a sample of blood or urine under this Regulation.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.



**21 Failure to take sample when required**

- (1) Any medical practitioner or nurse must not, when required under this Regulation to take a sample of blood or urine from a transport safety employee:
- (a) refuse or fail to take the sample, or
  - (b) fail to comply with the requirements of Part 2 with respect to any sample taken.

Maximum penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner or nurse satisfies the court that:
- (a) the practitioner or nurse believed on reasonable grounds that the taking of the sample from the transport safety employee would be prejudicial to the proper care and treatment of the employee, or
  - (b) the practitioner or nurse was, because of the behaviour of the transport safety employee, unable to take the sample, or
  - (c) there was other reasonable cause for the practitioner or nurse not to take the sample.

- (3) A person must, when taking a sample of urine from a transport safety employee, comply with the requirements of Part 2 with respect to the sample.

Maximum penalty: 10 penalty units.

- (4) A person must not hinder or obstruct a medical practitioner, nurse or other person who is attempting to take a sample of blood or urine under this Regulation.

Maximum penalty: 20 penalty units.

**22 Interfering or tampering with, or destroying, samples**

A person must not interfere or tamper with, or destroy, a sample of a person's blood or urine provided or taken under this Regulation unless the sample is destroyed:

- (a) by or at the direction of an analyst in the course of or on completion of analysis, or
- (b) in the case of a sample handed to a person on behalf of a transport safety employee, by or at the direction of the person, or
- (c) after the expiration of 12 months commencing on the day on which the sample was taken.

Maximum penalty: 20 penalty units.

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Clause 23 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 3 Offences

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### 23 Double jeopardy

- (1) A person is not liable to be convicted of more than one offence under this Part if the offences each arise out of the same circumstances.
- (2) A person is not liable to be convicted of an offence under this Part if the person has been convicted under any of the following provisions of an offence that arises out of the same circumstances:
  - (a) Schedule 1 to the *Marine Safety Act 1998*,
  - (b) Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

## Part 4 Certificate evidence in proceedings

### 24 Alcohol in breath or blood determined by breath analysis

- (1) In proceedings for an offence under clause 16, evidence may be given of the concentration of alcohol present in the breath or blood of the person charged, as determined by a breath analysing instrument operated by:
  - (a) a test supervisor, or
  - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the person at the time the person carried out the transport safety work to which the breath analysis relates if the breath analysis was made within 4 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at that time was less than 0.02 grams of alcohol in 210 litres of breath or 100 millilitres of blood.
- (3) In proceedings for an offence under clause 16, a certificate purporting to be signed by a test supervisor or a police officer and certifying each of the following is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the test supervisor is duly authorised as a test supervisor or (as the case requires) that the police officer is authorised by the Commissioner of Police to operate breath analysing instruments,
  - (b) that the person named in the certificate submitted to a breath analysis,
  - (c) that the apparatus used by the test supervisor or police officer to make the breath analysis was a breath analysing instrument within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (d) that the analysis was made on the day and completed at the time stated in the certificate,
  - (e) that a concentration of alcohol (determined by that breath analysing instrument and expressed in grams of alcohol in 210 litres of breath or 100 millilitres of blood) was present in the breath or blood of that person on the day and at the time stated in the certificate,
  - (f) that a statement in writing required by clause 7 (5) was delivered in accordance with that subclause.

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Clause 25 Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Part 4 Certificate evidence in proceedings

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- (4) In proceedings for an offence under clause 16, a certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.
- (5) In any proceedings for an offence under clause 16, 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.

### 25 Alcohol in blood determined by analysis of sample

- (1) In proceedings for an offence under clause 16, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Regulation of a portion of a sample of the person's blood.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person carried out the transport safety work to which the analysed sample of blood relates, if that sample of blood was taken within 4 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grams of alcohol in 100 millilitres of the blood.
- (3) In proceedings for an offence under clause 16, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood in accordance with this Regulation on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 12,
  - (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container was sealed, and marked or labelled, in a specified manner.

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- (4) In proceedings for an offence under clause 16, a certificate purporting to be signed by a test supervisor or a police officer and certifying any one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the test supervisor or police officer received a portion of a sample of a specified person's blood taken in accordance with this Regulation,
  - (b) that the test supervisor or police officer 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.
- (5) In proceedings for an offence under clause 16, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters is prima facie evidence of the matters set out in subclause (6):
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Regulation,
  - (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 the concentration of alcohol in the sample,
  - (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grams of alcohol in 100 millilitres of blood was present in that sample.
- (6) A certificate under subclause (5) 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 person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.

## **26 Presence of drugs**

- (1) In proceedings for an offence under clause 17:
- (a) evidence may be given of:
    - (i) the presence of a drug, or

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- (ii) the presence of a particular concentration of a drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Regulation of a portion of a sample of the person's blood or urine, and
  - (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, is taken to have been present in the blood or urine of that person at the time the person carried out the transport safety work to which the analysed sample relates, if the sample was taken within 4 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.
- (2) In proceedings for an offence under clause 17, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood or urine in accordance with this Regulation on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 12 or 13.
- (3) In proceedings for an offence under clause 17, a certificate purporting to be signed by a person and certifying any one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the person took a sample of a specified person's urine in accordance with this Regulation on the day and at the time stated in the certificate,
  - (b) that the person dealt with the sample in accordance with clause 13.
- (4) In proceedings for an offence under clause 17, a certificate purporting to be signed by a test supervisor or a police officer and certifying any one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the test supervisor or police officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Regulation,

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- (b) that the test supervisor or police officer arranged for the portion to be submitted for analysis (or testing and analysis) by an analyst to determine whether any drug was present in the sample,
- (c) that the container was sealed, and marked or labelled, in a specified manner.
- (5) In proceedings for an offence under clause 17, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters is prima facie evidence of the matters set out in subclause (6):
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis (or testing and analysis) under this Regulation,
- (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 drug was present in the sample,
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration.
- (6) A certificate under subclause (5) 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 blood or urine of that specified person, and
- (c) that the portion had not been tampered with before it was received by the analyst.
- (7) Nothing in this clause enables evidence to be given of or in relation to:
- (a) the presence of a drug other than alcohol, or
- (b) the presence of a particular concentration of a drug other than alcohol,
- in the blood or urine of a person charged with an offence under clause 17, as determined by an analysis of a sample obtained under clause 8, unless the court is satisfied that the analysis was not arranged in contravention of this Regulation.

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### **27    Person is test supervisor**

In proceedings for an offence under this Regulation, a certificate purporting to be signed by an operator or a regulator, and certifying that the person named in the certificate is a test supervisor, is prima facie evidence of the particulars certified in and by the certificate.



## Part 5 Miscellaneous

### 28 Effect of positive test

- (1) The Director-General, in determining whether a bus safety employee, who is the driver of a bus is a fit and proper person to hold an authority granted under Division 2 of Part 2 of the Act, is to take into account the results of any test of the employee that shows the presence of:
  - (a) more than 0.02 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (b) a drug other than alcohol.
- (2) The Director-General is to exercise his or her functions under this clause in accordance with any relevant guidelines published under section 9C (1) (a) of the Act.

### 29 Operator to notify regulator of certain matters

- (1) In this clause:  
*regulator* means:
  - (a) in the case of a bus operator—the Director-General, and
  - (b) in the case of a ferry operator—the Maritime Authority.
- (2) An operator must notify the regulator, in the form approved by the regulator for that purpose, of any of the following events within 48 hours of becoming aware of the event happening:
  - (a) any confirmatory analysis confirming the presence of any drug in the urine of a transport safety employee,
  - (b) any breath analysis confirming the presence of alcohol in the blood of a transport safety employee,
  - (c) any transport safety employee who, when required to do so under this Regulation, fails to undergo a breath test or breath analysis or provide a sample of blood or urine,
  - (d) any incident or suspected incident involving something being done in contravention of this Regulation to introduce, or alter the concentration of, a drug in a transport safety employee's blood or urine before the employee submitted to a breath analysis or provided a sample of blood or urine,
  - (e) in the case of a bus operator—any analysis of blood confirming the presence of any drug in the blood of a bus safety employee,
  - (f) in the case of a ferry operator—any incident involving, or suspected of involving, the interference or tampering with or destruction of a sample of blood or urine.

**Note.** Clause 3 of this Regulation provides that **drug** includes alcohol.

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- (3) Without limiting subclause (2), the approved form may require an operator to include a statement outlining the action taken (if any) or proposed to be taken in respect of the event concerned.
- (4) The regulator may, by notice in writing, require an operator to provide the regulator with the following at such times and in such form as are specified in the notice:
  - (a) in the case of a bus operator—statistical information relating to the conduct of drug testing by the operator,
  - (b) in the case of a ferry operator—records of the date and result of any drug testing carried out by the operator.
- (5) It is a condition of the accreditation of a bus operator that the operator must not, without reasonable excuse, fail to comply with the requirements of this clause.

### 30 Authorisation of test supervisors

- (1) An operator or regulator may, by instrument in writing, authorise any person to be a test supervisor for the purposes of exercising functions under this Regulation.
- (2) An authorisation may specify:
  - (a) a person by name, or
  - (b) the holder from time to time of any office, or
  - (c) in the case of an authorisation by a regulator—a member of a specified class of persons.
- (3) An authorisation is limited:
  - (a) by any conditions specified in the relevant instrument of authorisation, and
  - (b) in the case of an authorisation made by an operator—to public passenger services operated by the operator.
- (4) The operator or regulator that authorises a person by name as a test supervisor must furnish the person with a certificate of authorisation and may furnish such a certificate to any other person that the operator or regulator authorises to be a test supervisor.
- (5) A test supervisor must, if requested to do so when exercising functions under this Regulation, produce:
  - (a) the test supervisor's certificate of authorisation, or
  - (b) if the person is a test supervisor because he or she is the holder of a particular office—evidence that the person holds the office concerned, or

- (c) if the person is a test supervisor because he or she is a member of a particular class of persons—evidence that the person is a member of that class.
- (6) The operator or regulator that authorises a person to be a test supervisor may revoke that authorisation by notice in writing to the person.
- (7) A regulator may, by notice in writing to an operator, revoke the authorisation of any test supervisor authorised by the operator.
- (8) A person who is taken to be a test supervisor because of clause 31 of the *Passenger Transport (Drug and Alcohol Testing) Regulation 2004* is taken for the purposes of this clause to have been authorised as a test supervisor by the regulator or operator on behalf of whom the person exercises the functions of a test supervisor.

**31 Savings**

Any act, matter or thing that, immediately before the repeal of the *Passenger Transport (Drug and Alcohol Testing) Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.