



# Passenger Transport (Drug and Alcohol Testing) Regulation 2004

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*.

MICHAEL COSTA, M.L.C.,  
Minister for Transport Services

## Explanatory note

The object of this Regulation is to provide for the testing of transport safety employees for alcohol and other drugs.

Part 1 (Preliminary) of the Regulation contains definitions of expressions and provides for the appointment of authorised officers for the purposes of the Regulation.

Part 2 (Offences relating to alcohol or other drugs) of the Regulation contains offences relating to the use of drugs (including alcohol) by transport safety employees at work.

Part 3 (Testing for alcohol or other drugs) of the Regulation sets out the procedures for testing transport safety employees for alcohol and other drugs and obtaining samples of blood and urine for that purpose. It sets out the circumstances when tests may be carried out, including random tests and tests arising from specific situations such as accidents or irregular incidents, as well as the kinds of samples and tests that may be required. The Part also contains safeguards relating to the taking and analysis of samples. Medical practitioners or nurses, and persons acting under their direction, are excluded from civil or criminal liability in respect of things properly and necessarily done for the purposes of the Part.

Part 4 (Offences relating to testing for alcohol or other drugs) of the Regulation creates a number of offences relating to a refusal or failure to undergo testing or to provide a sample when lawfully required, interfering with test results, a refusal or failure of a

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Explanatory note

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qualified person to take a sample as required by the Regulation, hindering or obstructing a qualified person, and improperly interfering with, tampering with, or destroying samples.

Part 5 (Certificate evidence in proceedings) of the Regulation provides for certificates relating to the concentration of alcohol in blood to be prima facie evidence in proceedings for offences under the Regulation and also for certificates relating to the presence of other drugs in blood or urine samples to be prima facie evidence in such proceedings. Certificates as to the appointment of authorised officers will also be prima facie evidence of their contents.

Part 6 (Miscellaneous) of the Regulation provides that certain positive tests are relevant in determining whether a transport safety employee is a fit and proper person to be issued with an authority to drive a public passenger vehicle.

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 2004

under the

Passenger Transport Act 1990

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Passenger Transport (Drug and Alcohol Testing) Regulation 2004*.

#### 2 Commencement

This Regulation commences on 27 February 2004.

#### 3 Definitions

(1) In this Regulation:

**analyst** means:

- (a) an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, or
- (b) a person employed by the owner or operator of an approved laboratory as an analyst.

**approved laboratory** means a laboratory approved for the purposes of this Regulation by the ITSRR.

**ASNZ 4308** means Australian/New Zealand Standard AS/NZ 4308: *Procedures for the collection, detection and quantitation of drugs of abuse in urine* as in force on the commencement of this Regulation.

**authorised officer** means a person who is appointed as an authorised officer under clause 4.

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

**drug** means:

- (a) alcohol, or

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- (b) any substance that is a drug within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*.

**hospital** means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 19 of the *Road Transport (Safety and Traffic Management) Act 1999* or that is prescribed by the regulations.

**operator** means:

- (a) an accredited service operator who carries on a public passenger service by means of a bus or a ferry, or
- (b) a person who carries on a charter service, a long-distance service or a tourist service by means of a ferry.

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

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

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

**transport safety employee** has the same meaning as it has in Schedule 5 to the Act.

**transport safety work** means any of the following classes of work:

- (a) work relating to the driving or other operation of a bus or ferry (including, but not limited to, the course, propulsion or berthing of a ferry), the loading or disembarking of passengers from a bus or ferry or the movement of buses or ferries,
- (b) work relating to the repair, maintenance or upgrading of buses or ferries, bus or ferry terminals, ferry wharves or bus or ferry maintenance facilities,
- (c) work involving the development, management or monitoring of safeworking systems for public passenger services carried on by means of buses or ferries.
- (2) A reference in this Regulation 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*.
- (3) For the purposes of this Regulation, a thing is to be regarded as having been done by a medical practitioner or analyst if it is done by

a person acting under the supervision or direction of the medical practitioner or analyst.

- (4) For the purposes of this Regulation, 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.
- (5) The notes in the text of this Regulation do not form part of this Regulation.

#### **4 Appointment of authorised officers**

- (1) The ITSRR may, by instrument in writing, appoint any of the following persons to be an authorised officer for the purposes of exercising functions under this Regulation:
    - (a) an officer of the Ministry of Transport or the ITSRR,
    - (b) in the case of a specified public passenger service, a person nominated by the operator of the service,
    - (c) any other person.
  - (2) The ITSRR may appoint as an authorised officer:
    - (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 authority of an authorised officer may be limited by the relevant instrument of appointment to a particular part of the State, to a particular public passenger service or to particular transport safety employees, or otherwise.
  - (4) The authority of an authorised officer who is the nominee of an operator of a public passenger service is limited to the public passenger service operated by that operator.
  - (5) The ITSRR must furnish authorised officers with certificates of their appointment as authorised officers.
  - (6) If the ITSRR has appointed as an authorised officer the holder of an office, evidence that the authorised officer holds the office concerned has the same effect as the production of a certificate of appointment as an authorised officer.
  - (7) An authorised officer must, if requested to do so, produce the certificate of appointment to any person required by the officer to submit to a breath test or to do any other thing under this Regulation.
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Clause 5 Passenger Transport (Drug and Alcohol Testing) Regulation 2004

Part 2 Offences relating to alcohol or other drugs

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### Part 2 Offences relating to alcohol or other drugs

#### 5 Offence—carrying out transport safety work with prescribed concentration of alcohol in blood

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

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

#### 6 Offence—carrying out transport safety work while 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.

#### 7 Double jeopardy

- (1) A transport safety employee is not liable to be convicted of both an offence under clause 5 or an offence under clause 6 and an alternative offence, if the offences arose out of the same circumstances.



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- (2) For the purposes of this clause, the following offences are ***alternative offences***:
- (a) an offence under clause 20 (2),
  - (b) an offence under clause 5,
  - (c) an offence under clause 6,
  - (d) an offence under section 6 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*,
  - (e) an offence under section 7 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*,
  - (f) an offence under section 21 (2) of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*,
  - (g) an offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (h) an offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (i) an offence under section 15 (4) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (j) an offence under section 16 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (k) an offence under section 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (l) an offence under section 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*.

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Clause 8 Passenger Transport (Drug and Alcohol Testing) Regulation 2004

Part 3 Testing for alcohol or other drugs

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### Part 3 Testing for alcohol or other drugs

#### 8 Random and targeted testing of transport safety employees

- (1) An authorised officer may require any transport safety employee who the officer has reasonable cause to believe is on duty for the purpose of carrying out transport safety work, or who the officer has reasonable cause to believe is about to carry out transport safety work:
  - (a) to undergo a breath test in accordance with the directions of the officer, or
  - (b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs,or both.
- (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 breath tested or required to undergo breath analysis whether or not there is any suspicion that the employee has recently consumed alcohol.
- (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 result of any such breath test (or of any subsequent breath or other analysis) may be used for the purposes of any disciplinary proceedings against the transport safety employee, but is not admissible in any proceedings for an offence against this Regulation.

#### 9 Testing of transport safety employees in specified situations

- (1) An authorised officer 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:
  - (a) to undergo a breath test in accordance with the directions of the officer, or

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- (b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs,  
or both.

- (2) Nothing in this clause limits clause 8.

**10 Assessment of sobriety if breath testing device not available**

- (1) If:
  - (a) an authorised officer or a police officer is entitled under this Regulation to require a transport safety employee to undergo a breath test, and
  - (b) the device required to carry out the breath test is not readily available,

the officer may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the officer.

- (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.

**11 Breath analysis of transport safety employees following breath testing etc**

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

the officer may require the employee to submit to a breath analysis in accordance with the directions of the officer.

- (2) If an authorised officer or a police officer is entitled to require a transport safety employee to submit to a breath analysis, the officer may:
  - (a) arrest the employee without warrant, and

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- (b) take the employee with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the employee for the purposes of the breath analysis.
- (3) A breath analysis must be carried out by:
  - (a) an authorised officer, or
  - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments,at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a transport safety employee has submitted to a breath analysis the authorised officer or police officer operating the breath analysing instrument must deliver to the employee a statement in writing signed by the officer specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the employee'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 transport safety employee who is required to submit to a breath analysis may request the authorised officer or police officer making the requisition to arrange for the taking (in the presence of an authorised officer or a police officer) of a sample of the employee's blood for analysis, at the employee's own expense, by:
  - (a) a medical practitioner nominated by the employee, or
  - (b) a medical practitioner nominated by the officer at the employee's request.
- (6) The making of any such request or the taking of a sample of a transport safety employee's blood does not absolve the employee from the obligation imposed on the employee to submit to a breath analysis in accordance with this clause.

### **12 Blood or urine samples taken at hospitals from transport safety employees involved in accidents in carrying out transport safety work**

- (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, an authorised officer or police officer may require the employee to

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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 authorised officer or police officer that the sample is required to be taken by the practitioner or nurse 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.

### **13 Additional circumstances when blood or urine samples may be taken**

- (1) An authorised officer may require a transport safety employee to provide a sample of the employee's blood or urine if:
  - (a) the officer 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) An authorised officer who has a reasonable belief that, by the way in which a transport safety employee was acting, the employee might be under the influence of a drug, may require the employee to provide a sample of the employee's blood or urine if:
  - (a) the employee has undergone a breath test in accordance with this Regulation, and
  - (b) the result of the test does not permit the employee to be required to submit to a breath analysis, and
  - (c) the officer has required the employee to submit to a sobriety assessment and:
    - (i) the employee refuses to submit to the assessment, or
    - (ii) after the assessment is made, the officer has a reasonable belief that the employee is under the influence of a drug.

**Note.** Under clause 8, a transport safety employee may be required at any time to provide urine samples.

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Part 3 Testing for alcohol or other drugs

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- (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.

### 14 Taking of blood or urine samples

- (1) This clause applies if an authorised officer 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 officer may require the transport safety employee to provide the sample of urine in accordance with the directions of the officer.
- (3) The 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 authorised officer or police officer that the sample is required to be taken by the practitioner or nurse under this Regulation.
- (6) If an authorised officer or a police officer is entitled under this Regulation to require a transport safety employee to provide a sample of blood, the officer may:
- (a) arrest the employee without warrant, and
  - (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

### 15 Restrictions on requiring breath test, assessment, breath analysis or sample

An authorised officer or a police officer must not 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 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 3 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.

**16 Action to be taken with respect to blood samples**

- (1) A medical practitioner, nurse or other 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 11 (5), as soon as reasonably practicable after the sample is taken, hand the sample to the authorised officer or police officer who was present at the time the sample was taken.
- (2) The authorised officer 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 thereafter, arrange for the sample to be submitted to the laboratory at Lidcombe of the

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Part 3 Testing for alcohol or other drugs

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Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service, for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.

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

### 17 Action to be taken with respect to urine samples

- (1) A medical practitioner, nurse, authorised officer, police officer or other person by whom a sample of a transport safety employee's urine is taken under this Regulation 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.
- (2) Of the sealed containers:
- (a) one must be handed to the transport safety employee from whom the sample was taken or to some other person on behalf of the employee, and
  - (b) one must be kept by the authorised officer or police officer who requested the sample.
- (3) The authorised officer or police officer who obtains a sealed container containing a sample of urine under subclause (2) must:
- (a) immediately on obtaining the container, place the container in a security box of a type approved by the Commissioner of Police and lock the box, and
  - (b) as soon as reasonably practicable thereafter, arrange for the sample to be submitted for analysis by an analyst to determine the concentration of drugs other than alcohol in the urine.

### 18 Analysis of samples

- (1) If a blood or urine sample was obtained under clause 12, an authorised officer or a police officer may not make arrangements under clause 16 or 17 for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol



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except in circumstances where the authorised officer or police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no police officer or authorised officer attended the scene of the accident that led to the taking of the sample, or
  - (b) although a police officer or officers or one or more authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit to a breath test or, in accordance with clause 13 (2), an assessment of his or her sobriety.
- (2) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under clause 16 or 17 may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol in the blood or urine or to determine whether the blood or urine contains alcohol or another drug or drugs, as the case requires.
- (3) The analysis of a sample of urine must be carried out, and a report provided, in accordance with:
- (a) ASNZ 4308, except as provided by paragraph (b), or
  - (b) such other procedure as may be directed by the ITSRR.
- (4) Without limiting subclause (3) (b), the ITSRR may, generally or in a particular case or class of cases, direct that the analysis is to be carried out in order to determine whether there is present in the sample a drug specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*.

## **19 Medical practitioners and nurses—protection from liability**

No civil or criminal liability is incurred by a medical practitioner or nurse (nor by any person acting under the supervision or direction of the medical practitioner or nurse) in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:

- (a) believed on reasonable grounds that the practitioner or nurse was required under this Regulation to take the sample of blood or urine from the person, or

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Part 3 Testing for alcohol or other drugs

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- (b) was informed by an authorised officer or a police officer that the person was a person from whom the practitioner or nurse was required under this Regulation to take the sample of blood or urine.

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## **Part 4      Offences relating to testing for alcohol or other drugs**

### **20    Refusal to be tested**

- (1) Any transport safety employee who, when required under this Regulation to do so, refuses or fails:
  - (a) to undergo a breath test, or
  - (b) to submit to an assessment,in accordance with this Regulation is guilty of an offence.  
Maximum penalty: 10 penalty units.
- (2) Any transport safety employee who, when required under this Regulation to do so, refuses or fails:
  - (a) to submit to a breath analysis, or
  - (b) to provide a sample of blood or urine,in accordance with this Regulation is guilty of an offence.  
Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.
- (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.

### **21    Interfering with results of test**

- (1) A transport safety employee who does anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Regulation is guilty of an offence if the employee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.  
Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.
- (2) A person who does anything to introduce, or alter the concentration of, alcohol or any other drug in a transport safety employee's blood or urine before the employee submits to a breath analysis or provides a sample of blood or urine under this Regulation is guilty

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Part 4 Offences relating to testing for alcohol or other drugs

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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 employee.

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

### 22 Taking of samples

(1) Any medical practitioner or nurse who, when required under this Regulation to take a sample of blood or urine from a transport safety employee:

- (a) refuses or fails to take the sample, or
- (b) does not comply with the requirements of clause 16 or 17 with respect to any sample taken,

is guilty of an offence.

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 transport safety 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) Any person who, when taking a sample of urine from a transport safety employee, does not comply with the requirements of clause 16 or 17 with respect to any sample taken is guilty of an offence.

Maximum penalty: 10 penalty units.

(4) A person who hinders or obstructs a medical practitioner, nurse or other person in attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Maximum penalty: 20 penalty units.

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**23 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 24 Passenger Transport (Drug and Alcohol Testing) Regulation 2004

Part 5 Certificate evidence in proceedings

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### Part 5 Certificate evidence in proceedings

#### 24 Certificate evidence of concentration of alcohol in blood determined by breath analysis

- (1) In proceedings for an offence under clause 5, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by:
  - (a) an authorised officer, 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 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 3 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 grammes of alcohol in 100 millilitres of blood.
- (3) In proceedings for an offence under clause 5, a certificate purporting to be signed by an authorised officer or a police officer and certifying that:
  - (a) the officer is a duly appointed authorised officer or (as the case requires) the police officer is authorised by the Commissioner of Police to operate breath analysing instruments, and
  - (b) the person named in the certificate submitted to a breath analysis, and
  - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, 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 analysing instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and

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- (f) a statement in writing required by clause 11 (4) was delivered in accordance with that subclause,

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

- (4) In proceedings for an offence under clause 5, 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 5, 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 Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood**

- (1) In proceedings for an offence under clause 5, 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 3 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 grammes of alcohol in 100 millilitres of the blood.
- (3) In proceedings for an offence under clause 5, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
- (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 16,

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Part 5 Certificate evidence in proceedings

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- (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,

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

- (4) In proceedings for an offence under clause 5, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:

- (a) that the officer received a portion of a sample of a specified person's blood taken in accordance with this Regulation,
- (b) that the 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,

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

- (5) In proceedings for an offence under clause 5, 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 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 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 the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (6).



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- (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 Certificate evidence of presence of drugs**

- (1) In proceedings for an offence under clause 6:
- (a) evidence may be given of:
    - (i) the presence of a drug, or
    - (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 3 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 6, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
- (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 16 or 17,

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

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- (3) In proceedings for an offence under clause 6, a certificate purporting to be signed by a person and certifying any one or more of the following matters:
- (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 17,
- is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 6, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:
- (a) that the officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Regulation,
  - (b) that the officer arranged for the portion to be submitted for 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,
- is prima facie evidence of the particulars certified in and by the certificate.
- (5) In proceedings for an offence under clause 6, 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 person's blood or urine 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 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,

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- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (6).

- (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 6, as determined by an analysis of a sample obtained under clause 12, unless the court is satisfied that the analysis was not arranged in contravention of clause 18 (1).

## **27 Certificate evidence of appointment of authorised officer**

In proceedings for an offence under this Regulation, a certificate purporting to be signed by the ITSRR and certifying that the officer named in the certificate is an authorised officer is prima facie evidence of the particulars certified in and by the certificate.

## **2004 No 90**

Clause 28      Passenger Transport (Drug and Alcohol Testing) Regulation 2004

Part 6          Miscellaneous

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### **Part 6      Miscellaneous**

#### **28    Effect of positive test**

- (1) If a transport safety employee tests positive to the presence of:
  - (a) more than 0.02 grammes of alcohol in 100 millilitres of the employee's blood, or
  - (b) a drug other than alcohol,the Director-General is to have regard to the results of the test in determining whether the employee is a fit and proper person to be granted an authority under Division 2 of Part 2 of the Act.
- (2) The Director-General is to make a determination under this clause on the basis of any guidelines issued for the purposes of section 9C of the Act.

BY AUTHORITY

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