



New South Wales

# Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Drug Testing) Regulation 2006

under the

Road Transport (Safety and Traffic Management) Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Safety and Traffic Management) Act 1999*.

ERIC ROOZENDAAL, M.L.C.,  
Minister for Roads

## Explanatory note

The *Road Transport Legislation Amendment (Drug Testing) Act 2006* makes various amendments to the *Road Transport (Safety and Traffic Management) Act 1999* and certain other Acts with respect to random roadside oral fluid drug testing, drug testing persons involved in fatal motor vehicle accidents, and offences relating to driving a motor vehicle with any presence of certain drugs in the driver's oral fluid, blood or urine.

The object of this Regulation is to amend the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* to make complementary amendments to that Regulation to enable the *Road Transport Legislation Amendment (Drug Testing) Act 2006* to commence.

The amendments to that Regulation deal with the following matters:

- (a) prescribing certain premises, institutions and establishments where persons may be detained for the purposes of providing blood or urine samples (such places include military hospitals and sick bays),
- (b) prescribing the laboratory at which oral fluid, blood and urine samples are to be analysed,
- (c) providing for the secure custody of oral fluid, blood and urine samples,
- (d) prescribing standards that oral fluid analysing instruments and oral fluid testing devices must meet before they may be approved by the Governor for use for the purposes of the *Road Transport (Safety and Traffic Management) Act 1999*.

## **2006 No 742**

Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Drug Testing)  
Regulation 2006

Explanatory note

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This Regulation is made under the *Road Transport (Safety and Traffic Management) Act 1999*, including sections 18A, 18C, 18D, 18E, 24A, 24B and 71 (the general regulation-making power).

## **Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Drug Testing) Regulation 2006**

under the

Road Transport (Safety and Traffic Management) Act 1999

### **1 Name of Regulation**

This Regulation is the *Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Drug Testing) Regulation 2006*.

### **2 Commencement**

This Regulation commences on 15 December 2006.

### **3 Amendment of Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999**

The *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* is amended as set out in Schedule 1.

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Road Transport (Safety and Traffic Management) (Road Rules)  
Amendment (Drug Testing) Regulation 2006

Schedule 1 Amendments

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**Schedule 1 Amendments**

(Clause 3)

**[1] Clause 128 Premises, institutions and establishments prescribed for the purposes of sections 18C, 19, 24A and 26**

Omit “section 26 (b)”.

Insert instead “sections 18C (2) (c), 24A (3) (b) and (c) and 26 (b)”.

**[2] Clause 129 Analysis of oral fluid, blood and urine samples—prescribed laboratory**

Omit “23”. Insert instead “18D, 18E, 23, 24B”.

**[3] Clauses 130–130B**

Omit clause 130. Insert instead:

**130 Security of blood and urine samples taken under Divisions 3, 3A, 4, 4A and 5 of Part 2 of Act**

- (1) After a sample of blood or urine taken under Division 3, 3A, 4, 4A or 5 of Part 2 of the Act is dealt with in accordance with section 18 (3), 18E (3), 23 (1), 24B (3) or 27 (2A) of the Act (as the case may require), the sample must be placed immediately in a locked security box of a type approved by the Commissioner of Police. It is to be kept in the security box until it is submitted to the laboratory in accordance with section 18 (4), 18E (4), 23 (2), 24B (4) or 27 (2B) of the Act.
- (2) A person must not destroy or otherwise interfere or tamper with a sample, or a portion of a sample, of a person’s blood or urine taken under Division 3, 3A, 4 or 5 of Part 2 of the Act except as follows:
  - (a) after the expiration of 12 months commencing on the day the sample was taken,
  - (b) in the case of a sample—by or at the direction of an analyst:
    - (i) so as to permit a portion of the sample to be sent for analysis by a medical practitioner or laboratory nominated, under section 18 (5), 18E (5), 23 (3) or 27 (2C) of the Act, in an application made under the relevant section by the person from whom the sample was taken, or
    - (ii) in the course of, or on completion of, an analysis of the sample,

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- (c) in the case of a portion of a sample—by or at the direction of the medical practitioner or laboratory nominated under section 18 (5), 18E (5), 23 (3) or 27 (2C) of the Act by the person from whom the sample was taken.
- (3) A person must not destroy or otherwise interfere or tamper with a sample, or a portion of a sample, of a person's blood or urine taken under Division 4A of Part 2 of the Act except as follows:
- (a) after the expiration of 13 months commencing on the day the sample was taken,
- Note.** Section 24B (11) of the Act provides that a blood or urine sample that has been provided under section 24B must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no police officer has made a notification relating to a death (as provided under section 24B (8)).
- (b) in the case of a sample—by or at the direction of an analyst:
- (i) so as to permit a portion of the sample to be sent for analysis by a medical practitioner or laboratory nominated, under section 24B (5) of the Act, in an application made under the relevant section by the person from whom the sample was taken, or
- (ii) in the course of, or on completion of, an analysis of the sample,
- (c) in the case of a portion of a sample—by or at the direction of the medical practitioner or laboratory nominated under section 24B (5) of the Act by the person from whom the sample was taken.

Maximum penalty (subclauses (2) and (3)): 20 penalty units.

**130A Security of oral fluid samples taken under Division 3A of Part 2 of Act**

- (1) After a sample of oral fluid taken under Division 3A of Part 2 of the Act is dealt with in accordance with section 18D (4) (a)–(d) of the Act, the sample must be placed immediately in a locked security box of a type approved by the Commissioner of Police. It is to be kept in the security box until it is submitted to the laboratory in accordance with section 18D (4) (e) of the Act.
- (2) A person must not destroy or otherwise interfere or tamper with a sample, or a portion of a sample, of a person's oral fluid taken under Division 3A of Part 2 of the Act except as follows:

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Amendment (Drug Testing) Regulation 2006

Schedule 1 Amendments

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- (a) after the expiration of 12 months commencing on the day the sample was taken,
- (b) in the case of a sample—by or at the direction of an analyst:
  - (i) so as to permit a portion of the sample to be sent for analysis by a medical practitioner or laboratory nominated, under section 18D (5) of the Act, in an application made under that section by the person from whom the sample was taken, or
  - (ii) in the course of, or on completion of, an analysis of the sample,
- (c) in the case of a portion of a sample—by or at the direction of the medical practitioner or laboratory nominated under section 18D (5) of the Act by the person from whom the sample was taken.

Maximum penalty (subclause (2)): 20 penalty units.

**130B Standards for approved oral fluid analysing instruments and testing devices: section 18A**

- (1) For the purposes of the definition of *approved oral fluid analysing instrument* in section 18A of the Act, the following standard is prescribed:

The instrument (when calibrated and operated properly) must be capable of confirming the presence of a prescribed illicit drug in a sample of oral fluid where the concentration of the drug in the fluid is 25 ng/mL or greater.

- (2) For the purposes of the definition of *approved oral fluid testing device* in section 18A of the Act, the following standard is prescribed:

The device (when calibrated and operated properly) must be capable of indicating the presence of a prescribed illicit drug in oral fluid being tested where the concentration of the drug in the fluid is 150 ng/mL or greater.

BY AUTHORITY

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