



New South Wales

Passenger Transport (Drug and Alcohol Testing) Amendment 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*.

DAVID CAMPBELL, MP
Minister for Transport and Roads

Explanatory note

The object of this Regulation is to revise the process for the testing and analysis of urine samples provided by transport safety employees, and to allow the use of an on-site drug screening device to initially test such samples for the presence of a drug or drugs.

This Regulation also:

- (a) provides for the authorisation of test supervisors by operators of passenger transport services, and
- (b) requires the provision of certain information relating to the drug testing activities of bus and ferry operators, and
- (c) requires bus and ferry operators to test bus and ferry safety employees for drugs in certain circumstances, and
- (d) increases the time within which a test of the breath, blood or urine of a transport safety employee may be performed from 3 hours after the employee carried out transport safety work to 4 hours after the employee carried out transport safety work, and
- (e) makes other minor amendments.

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

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Clause 1

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**Passenger Transport (Drug and Alcohol Testing)
Amendment Regulation 2010**

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1 Name of Regulation

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

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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(Clause 3)

[1] Clause 3 Definitions

Omit the definition of *analyst* from clause 3 (1). Insert instead:

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

[2] Clause 3 (1), definition of “approved laboratory”

Omit the definition. Insert instead:

approved laboratory means:

- (a) in relation to blood samples—the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney 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.

[3] Clause 3 (1), definition of “ASNZ 4308”

Omit the definition. Insert instead:

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*.

[4] Clause 3 (1), definitions of “authorised officer”, “transport safety employee” and “transport safety work”

Omit the definitions.

[5] Clause 3 (1), definitions of “breath analysing instrument”, “breath analysis” and “breath test”

Omit the definitions. Insert instead in alphabetical order:

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

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

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requirements of AS 3547—1997, *Breath alcohol testing devices for personal use*.

[6] Clause 3 (1)

Insert in alphabetical order:

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.

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.

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.

test supervisor means a person authorised under clause 4 to be a test supervisor.

[7] Clause 3 (1), definition of “operator”

Omit the definition. Insert instead:

operator means:

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

[8] Clause 4

Omit the clause. Insert instead:

4 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) The authority of a test supervisor authorised under this clause is limited:
 - (a) by any conditions specified in the relevant instrument of authorisation, and
 - (b) in the case of a test supervisor authorised by an operator—to public passenger services operated by the operator.

- (3) An operator may authorise as a test supervisor:
 - (a) a person by name, or
 - (b) the holder from time to time of an office (whether or not a public office) by reference to the office concerned.
- (4) A regulator may authorise as a test supervisor:
 - (a) a person by name, or
 - (b) the holder from time to time of an office (whether or not a public office) by reference to the office concerned, or
 - (c) a member of a specified class of persons.
- (5) An operator must furnish test supervisors authorised by the operator with certificates of their authorisation as test supervisors.
- (6) A regulator must furnish test supervisors authorised by the regulator with certificates of their authorisation as test supervisors.
- (7) A test supervisor must, if requested to do so, produce the certificate of authorisation to any person required by the supervisor to submit to a breath test or to do any other thing under this Regulation.
- (8) If the holder of an office is authorised as a test supervisor, evidence that the test supervisor holds the office concerned has the same effect as the production of a certificate of authorisation as a test supervisor.
- (9) If a person is authorised as a test supervisor because the person is a member of a specified class of persons, evidence that the test supervisor is a member of that class of persons has the same effect as the production of a certificate of authorisation as a test supervisor.
- (10) A regulator may, by notice in writing to an operator, revoke the authorisation of a person authorised as a test supervisor by the operator (whether or not the person was appointed by reference to the office held by the person).
- (11) A regulator may, by notice in writing, revoke the authorisation of a person authorised as a test supervisor by the regulator.
- (12) An operator may, by notice in writing, revoke the authorisation of a person authorised as a test supervisor by the operator.

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[9] Clauses 8 (1), 9 (1), 13 (1) and (2) and 15

Omit “An authorised officer” wherever occurring.

Insert instead “A test supervisor”.

[10] Clause 8 Random and targeted testing of transport safety employees

Omit “the officer” wherever occurring in clause 8 (1).

Insert instead “the supervisor”.

[11] Clause 8 (3)

Omit the subclause. Insert instead:

- (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 or drugs.

[12] Clause 8 (5)

Insert “or the result of any such testing or analysis performed on a sample of the employee’s urine” before “may”.

[13] Clauses 9 (1) (a), 10 (1), 11 (1) and (3)–(5) (b), 14 (2), 15 (b), 24 (3) (a) and (c), 25 (4) (a) and (b) and 26 (4) (a) and (b)

Omit “the officer” wherever occurring.

Insert instead “the supervisor or officer”.

[14] Clause 9 Testing of transport safety employees in specified situations

Insert “or 20A” after “clause 8” in clause 9 (2).

[15] Clause 9 (2), note

Insert after the subclause:

Note. Clause 20A 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.

[16] Clauses 10 (1) (a), 11 (1), (3) (a) and (5), 12 (1), 14 (1), 19 (b), 24 (1) (a) and (3), 25 (4) and 26 (4)

Omit “an authorised officer” wherever occurring.

Insert instead “a test supervisor”.

[17] Clause 11 Breath analysis of transport safety employees following breath testing etc

Omit clause 11 (2). Insert instead:

- (2) If 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 a warrant, and
 - (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.
- (2A) 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 the nearest police station or such other place as the supervisor may reasonably require, within such reasonable time as the supervisor may require, and there submit to a breath analysis.

[18] Clauses 11 (4) and (5), 12 (3), 14 (5) and 16 (1) (e)

Omit “the authorised officer” wherever occurring.

Insert instead “the test supervisor”.

[19] Clause 11 (4)

Insert “, and the operator who employed or contracted the employee,” after “to the employee”.

[20] Clause 13 Additional circumstances when blood or urine samples may be taken

Omit “the officer” wherever occurring in clause 13 (1) (a) and (2) (c).

Insert instead “the supervisor”.

[21] Clause 14 Taking of blood or urine samples

Omit “The officer” wherever occurring in clause 14 (2) and (3).

Insert instead “The supervisor or officer”.

[22] Clause 14 (6)

Omit the subclause. Insert instead:

- (6) If a police officer is entitled to require a transport safety employee to provide a sample of blood, the officer may:
 - (a) arrest the employee without a warrant, and

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(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.

(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 the nearest hospital, within such reasonable time as the supervisor may require, and there provide the sample.

[23] Clauses 15 (c), 24 (2), 25 (2) and 26 (1)

Omit “3 hours” wherever occurring. Insert instead “4 hours”.

[24] Clause 16 Action to be taken with respect to blood samples

Omit “The authorised officer” from clause 16 (2).

Insert instead “The test supervisor”.

[25] Clause 16 (2) (b)

Omit “the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service,”.

Insert instead “an approved laboratory”.

[26] Clause 17

Omit the clause. Insert instead:

17 Action to be taken with respect to urine samples

- (1) A medical practitioner, nurse, test supervisor, police officer or other 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 of the sample indicates that the urine contains a drug or drugs:
 - (a) in the case of an initial test conducted in accordance with subclause (4) (a)—the test supervisor or police officer who required the employee to provide the sample must arrange for the sample to be submitted to an analyst at an approved laboratory for confirmatory analysis in accordance with clause 18, or
 - (b) in the case of an initial test conducted in accordance with subclause (4) (b)—the analyst is to conduct a confirmatory analysis in accordance with clause 18.
- (6) If a confirmatory analysis is carried out on a sample, the person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory at which the sample is being kept for a portion of the sample to be sent, at the person's own expense, to a medical practitioner or laboratory nominated by the person. A portion of the sample is to be forwarded to the medical practitioner or laboratory in accordance with the application.
- (7) Samples are to be stored in accordance with section 2 of AS/NZS 4308:2008.

[27] Clause 18 Analysis of samples

Omit clause 18 (1).

[28] Clause 18 (2)

Omit "or urine" wherever occurring.

[29] Clause 18 (2)

Omit "or 17".

[30] Clause 18 (2)

Omit "alcohol or another drug or drugs". Insert instead "a drug or drugs".

[31] Clause 18 (3)–(5)

Omit subclauses (3) and (4). Insert instead:

- (3) An analyst to whom a sample of urine is submitted for analysis under clause 17 may carry out confirmatory analysis of the sample, or a portion of the sample, to determine whether the urine

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contains a drug or drugs. The confirmatory analysis must be carried out, and a report provided, 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) A confirmatory analysis under subclause (3) may be carried out only if initial testing in accordance with clause 17 (4) indicates that the urine contains a drug or drugs.
- (5) 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*.

[32] Clause 20A

Insert after clause 20:

20A 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:
- (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 clause 14,
within the time required by clause 15.
- (2) An operator who, without reasonable excuse, fails to comply with this clause is guilty of an offence.
Maximum penalty: 50 penalty units.
- (3) 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.
- (4) In this clause, ***notifiable incident*** means:
- (a) in relation to an accident or incident involving a bus, an accident or incident that:
 - (i) results in an injury to any person that is, in the reasonable opinion of the bus operator, likely to require treatment at a hospital, or

- (ii) results in the death of any person, or
 - (iii) prevents the bus from continuing its journey, or
 - (iv) is, in the reasonable opinion of the bus operator, otherwise likely to arouse serious public concern, and
- (b) in relation to an accident or incident involving a ferry, means an accident or incident that:
- (i) results in an injury to any person that is, in the reasonable opinion of the ferry operator, likely to require treatment at a hospital, or
 - (ii) results in the death of any person, or
 - (iii) results in the capsizing, swamping, flooding or sinking of a ferry, or
 - (vi) is, in the reasonable opinion of the operator of the ferry, otherwise likely to arouse serious public concern.

[33] Clause 26 Certificate evidence of presence of drugs

Insert “(or testing and analysis)” after “submitted for analysis” wherever occurring in clause 26 (4) (b) and (5) (a).

[34] Clause 26 (7)

Omit “clause 18 (1)”. Insert instead “this Regulation”.

[35] Clause 27

Omit the clause. Insert instead:

27 Certificate evidence of appointment of test supervisors

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.

[36] Clause 28 Effect of positive test

Omit “transport safety employee” from clause 28 (1).

Insert instead “bus safety employee, who is the driver of a bus,”.

[37] Clause 28 (1)

Omit “be granted an authority”. Insert instead “hold an authority granted”.

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[38] Clauses 29–31

Insert after clause 28:

29 Notification of testing for alcohol or other drugs—bus safety work

- (1) A bus operator must notify the Director-General, in the form approved by the Director-General for that purpose, of any of the following events within 48 hours of becoming aware of the event happening:
- (a) any analysis of blood confirming the presence of a drug or drugs in the blood of a bus safety employee,
 - (b) any confirmatory analysis confirming the presence of a drug or drugs in the urine of a bus safety employee,
 - (c) any breath analysis confirming the presence of alcohol in the blood of a bus safety employee,
 - (d) any bus 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,
 - (e) 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 bus safety employee's blood or urine before the employee submitted to a breath analysis or provided a sample of blood or urine.

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

- (2) Without limiting subclause (1), the approved form may require a bus operator to include a statement outlining the action taken (if any) or proposed to be taken in respect of the event concerned.
- (3) The Director-General may, by notice in writing, require a bus operator to provide the Director-General with statistical information relating to the conduct of drug testing at such times and in such form as are specified in the notice.
- (4) 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 Notification of testing for alcohol or other drugs—ferry safety work

- (1) A ferry operator must notify the Maritime Authority, in the form approved by the Maritime Authority for that purpose, of any of

the following events within 48 hours of becoming aware of the event happening:

- (a) any incident involving, or suspected of involving, the interference or tampering with or destruction of a sample of blood or urine,
- (b) any confirmatory analysis confirming the presence of a drug or drugs in the urine of a ferry safety employee,
- (c) any breath analysis confirming the presence of alcohol in the blood of a ferry safety employee,
- (d) any ferry 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,
- (e) 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 ferry safety employee's blood or urine before the employee submitted to a breath analysis or provided a sample of blood or urine.

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

- (2) Without limiting subclause (1), the approved form may require a ferry operator to include a statement outlining the action taken (if any) or proposed to be taken in respect of the event concerned.
- (3) The Maritime Authority may, by notice in writing, require a ferry operator to provide the Maritime Authority with records of the date and result of any drug testing carried out by the operator, at such times and in such form as are specified in the notice.

31 Savings and transitional

- (1) Any person who, immediately before the commencement of the 2010 amending Regulation, was authorised under clause 4 (as in force immediately before the commencement of that Regulation) to exercise the functions of an authorised officer under this Regulation, is taken (on that commencement) to have been authorised as a test supervisor under clause 4.
- (2) This Regulation, as in force immediately before the commencement of the 2010 amending Regulation, continues to apply in respect of any sample of urine or blood collected before that commencement.
- (3) In this clause, the **2010 amending Regulation** means the *Passenger Transport (Drug and Alcohol Testing) Amendment Regulation 2010*.