



New South Wales

Passenger Transport (Drug and Alcohol Testing) Amendment Regulation 2014

under the

Passenger Transport Act 1990

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

GLADYS BEREJIKLIAN, MP
Minister for Transport

Explanatory note

The objects of this Regulation are as follows:

- (a) to adopt and apply the term *authorised sample taker*, as defined in the *Road Transport Act 2013*,
- (b) to standardise references to an authority required from the Commissioner of Police under that Act to carry out a breath analysis,
- (c) to reframe the matters in relation to which certificate evidence may be given by analysts to accommodate performance of their duties by persons acting under their authority,
- (d) to remove a requirement for registered nurses to be accredited by a hospital to perform sampling procedures,
- (e) to insert savings and transitional provisions relating to certain evidence certificates.

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

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1 Name of Regulation

This Regulation is the *Passenger Transport (Drug and Alcohol Testing) Amendment Regulation 2014*.

2 Commencement

This Regulation commences on 1 February 2015 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Passenger Transport (Drug and Alcohol Testing) Regulation 2010

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

authorised sample taker has the same meaning as in Schedule 3 to the *Road Transport Act 2013*.

[2] Clauses 3 (2) (a), 7 (4) and 24 (1) (b), (3) (a) and (4)

Omit “operate breath analysing instruments” wherever occurring.

Insert instead “carry out a breath analysis”.

[3] Clause 3 (2) (b)

Omit the paragraph. Insert instead:

- (b) a thing is to be regarded as having been done by an authorised sample taker or analyst if it is done by a person acting at the direction or under the supervision of the authorised sample taker or analyst, and

[4] Clause 7 Breath analysis following breath testing

Omit “a medical practitioner” where secondly occurring in clause 7 (6).

Insert instead “an authorised sample taker”.

[5] Clauses 8 (2) and 11 (a)

Omit “who is accredited by a hospital as competent to perform the sampling procedures” wherever occurring.

[6] Clause 10 Taking of blood or urine samples

Omit “a medical practitioner who attends the employee” from clause 10 (3).

Insert instead “an authorised sample taker”.

[7] Clause 10 (4)

Omit the subclause.

[8] Clause 10 (5)

Omit “Any such medical practitioner or nurse”.

Insert instead “An authorised sample taker”.

[9] Clause 15

Omit the clause. Insert instead:

15 Authorised sample takers—protection from liability

No civil or criminal liability is incurred by an authorised sample taker (or by any person acting at the direction or under the supervision of the authorised sample taker) in respect of anything properly and necessarily done in the course of taking a sample of blood or urine from a person, if the authorised sample taker:

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

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

[10] Clause 21 Failure to take sample when required

Omit “Any medical practitioner or nurse” from clause 21 (1).

Insert instead “An authorised sample taker”.

[11] Clause 21 (2)

Omit the subclause. Insert instead:

- (2) It is a defence to a prosecution for an offence under subclause (1) if the authorised sample taker satisfies the court that:
 - (a) the authorised sample taker 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 authorised sample taker was, because of the behaviour of the transport safety employee, unable to take the sample, or
 - (c) there was other reasonable cause for the authorised sample taker not to take the sample.

[12] Clause 21 (4)

Omit “a medical practitioner, nurse”. Insert instead “an authorised sample taker”.

[13] Clause 25 Alcohol in blood determined by analysis of sample

Omit clause 25 (3). Insert instead:

- (3) In proceedings for an offence under clause 16, a certificate purporting to be signed by an authorised sample taker 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 certifier was an authorised sample taker who attended a specified person at a hospital,
 - (b) that the certifier 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 certifier dealt with the sample in accordance with clause 12,
 - (d) that the certifier 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.

[14] Clause 25 (5) (a)–(d)

Omit the paragraphs. Insert instead:

- (a) that a portion of a sample of a specified person’s blood was received, on a specified day, in a container submitted for analysis under this Regulation,
- (b) that the container, as received, was sealed, and marked or labelled, in a specified manner,
- (c) that, on receipt of the container, the seal was unbroken,

- (d) that an analysis of the portion was carried out to determine the concentration of alcohol in the sample,

[15] Clauses 25 (6) (c) and 26 (6) (c)

Omit “by the analyst” wherever occurring.

[16] Clause 26 Presence of drugs

Omit clause 26 (2). Insert instead:

- (2) In proceedings for an offence under clause 17, a certificate purporting to be signed by an authorised sample taker 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 certifier was an authorised sample taker who attended a specified person at a hospital,
 - (b) that the certifier 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 certifier dealt with the sample in accordance with clause 12 or 13.

[17] Clause 26 (5) (a)–(d)

Omit the paragraphs. Insert instead:

- (a) that a portion of a sample of a specified person’s blood or urine was received, on a specified day, in a container submitted for analysis under this Regulation,
- (b) that the container, as received, was sealed, and marked or labelled, in a specified manner,
- (c) that, on receipt of the container, the seal was unbroken,
- (d) that an analysis of the portion was carried out to determine whether any drug was present in the sample,

[18] Clause 31 Savings and transitional

Insert at the end of the clause:

- (2) The amendments made to clauses 25 (5) and (6) and 26 (5) and (6) by the amending Regulation apply to a certificate in relation to a portion of a sample regardless of whether the portion was received by or on behalf of an analyst before or on or after the relevant day.
- (3) A form of evidence certificate that was prepared in accordance with former clause 25 (5) or 26 (5) before the relevant day so that it could be used under former clause 25 or 26 when completed:
 - (a) is taken to be, and is to be construed as, a form of evidence certificate prepared in accordance with new clause 25 (5) or 26 (5), and
 - (b) may, during the transitional period, be completed in accordance with and used under new clause 25 or 26.
- (4) In this clause:
 - amending Regulation* means the *Passenger Transport (Drug and Alcohol Testing) Amendment Regulation 2014*.
 - former clause 25 (5) or 26 (5)* means clause 25 (5) or 26 (5) as in force immediately before the relevant day.

new clause 25 (5) or 26 (5) means clause 25 (5) or 26 (5) as amended by the amending Regulation.

relevant day means 1 February 2015 (being the day on which the amending Regulation commences).

transitional period means the period of 12 months commencing on the relevant day.