



New South Wales

Passenger Transport (General) Amendment (Drug and Alcohol Testing) Regulation 2021

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*.

ANDREW CONSTANCE, MP
Minister for Transport and Roads

Explanatory note

The object of this Regulation is to transfer provisions, relating to drug and alcohol testing of certain employees of bus and ferry services, from the *Passenger Transport (Drug and Alcohol Testing) Regulation 2010* to the *Passenger Transport (General) Regulation 2017*.

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1 Name of Regulation

This Regulation is the *Passenger Transport (General) Amendment (Drug and Alcohol Testing) Regulation 2021*.

2 Commencement

This Regulation commences on 1 September 2021 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Passenger Transport (General) Regulation 2017

[1] Clause 3 Definitions

Omit clause 3(1), definition of *operator*. Insert instead—

operator means—

- (a) for Part 8—see clause 107, or
- (b) otherwise—
 - (i) in relation to a bus service—the person who is accredited under the Act, Part 2, Division 1 to operate the service, and
 - (ii) in relation to a bus—the person who is accredited under the Act, Part 2, Division 1 to operate the bus service for which the bus is used, and
 - (iii) in relation to a ferry service—the person who carries on the service, and
 - (iv) in relation to a ferry—the person who carries on the ferry service for which the ferry is used.

[2] Part 8

Insert after Part 7—

Part 8 Drug and alcohol testing—the Act, Sch 5, cl 3

Division 1 Preliminary

107 Interpretation

- (1) In this Part—

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 NSW Forensic & Analytical Science Service, and
- (b) in relation to urine samples—a laboratory 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*.

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

breath analysing instrument has the same meaning as in the *Road Transport Act 2013*.

breath analysis has the same meaning as in the *Road Transport Act 2013*, Schedule 3.

breath test means a test for the purpose of indicating the concentration of alcohol in a person's blood, carried out on the person's breath using a device, other than a breath analysing instrument, of a type that complies with the requirements of AS 3547:2019, *Breath alcohol testing devices*.

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 Act 2013*.

Note— Drug is defined in the *Road Transport Act 2013* 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 a hospital under the *Road Transport Act 2013*, Schedule 3, Part 2, Division 4.

on-site drug screening device means a device that 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 blood or urine, includes, if the sample is divided into portions, a portion of the sample.

test supervisor means a person authorised under clause 134 to be a test supervisor.

- (2) For the purposes of this Part—
 - (a) a reference to a police officer authorised by the Commissioner of Police to carry out a breath analysis is a reference to a police officer so authorised under the *Road Transport Act 2013*, and
 - (b) a thing done by a person acting at the direction or under the supervision of an authorised sample taker or analyst is taken to have been done by the authorised sample taker 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 and urine.

Division 2 Testing for alcohol or other drugs

108 Random and targeted testing

- (1) A test supervisor may require a 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 about to carry out transport safety work, to do either or both of the following—
 - (a) undergo a breath test in accordance with the test supervisor's directions,
 - (b) provide a sample of the employee's urine for the purpose of testing for the presence of drugs.
- (2) A test supervisor may select a transport safety employee for testing on a random or targeted basis.
- (3) A transport safety employee may be—

- (a) breath tested whether or not there is a suspicion the employee has recently consumed alcohol, and
 - (b) required to provide a urine sample whether or not there is a suspicion the employee has recently taken a drug.
- (4) A transport safety employee is about to carry out transport safety work if the employee has left home or a temporary residence for work that is transport safety work but has not yet commenced the work.
- (5) If a transport safety employee was about to carry out transport safety work, the following results may be used for the purposes of disciplinary proceedings against the employee but are not admissible in proceedings for an offence under this Regulation—
 - (a) the result of a breath test carried out under this clause or the result of a subsequent breath or other analysis,
 - (b) the result of a test or analysis performed on a sample of the employee's urine that was provided under this clause.

109 Testing in specified situations

- (1) A test supervisor or 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 108 or 123.

110 Assessment of sobriety if breath testing device not available

- (1) A test supervisor or 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 an assessment under subclause (1) is not open to challenge in proceedings on the basis that the device was readily available.

111 Breath analysis following breath testing

- (1) A test supervisor or 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 an 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 police officer to undergo a breath test or 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, using necessary force, to a police station or another place the police officer reasonably requires, 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 test supervisor may direct the employee to attend and submit to a breath analysis—
 - (a) at the nearest police station or another place the test supervisor reasonably requires, and
 - (b) within a reasonable time required by the test supervisor.
- (4) A breath analysis must be carried out by—
 - (a) a police officer authorised by the Commissioner of Police to carry out a breath analysis, or
 - (b) 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 written statement signed by the test supervisor or police officer.
- (6) The written statement referred to in subclause (5) must specify—
 - (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 the breath analysis was completed.
- (7) 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 a sample of the employee's blood to be taken for analysis, in the presence of a test supervisor or police officer and at the employee's own expense, by—
 - (a) a medical practitioner nominated by the employee, or
 - (b) if the employee requests, an authorised sample taker nominated by the test supervisor or police officer.
- (8) Making a request under subclause (7) or taking 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.

112 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 was 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 employee at the hospital, the blood or urine sample must be taken by a registered nurse.

- (3) A medical practitioner or nurse must take a sample if informed by a test supervisor or police officer that the sample is required to be taken under this Regulation.
- (4) A requirement under subclause (1) may be made through a medical practitioner or nurse who attends a transport safety employee at the hospital, rather than directly to the employee.

113 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
 - (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 108, 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 proceedings on the basis that a breath analysing instrument was readily available.

114 Taking blood or urine samples

- (1) This clause applies if a test supervisor or 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 an authorised sample taker.
- (4) An authorised sample taker 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.
- (5) 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, using necessary force, to a hospital, and
 - (c) detain the employee at the hospital for the purposes of obtaining the sample.
- (6) If a test supervisor is entitled to require a transport safety employee to provide a sample of blood, the test supervisor may direct the employee to attend and provide the sample at the nearest hospital, within a reasonable time required by the test supervisor.

115 Restrictions on testing

A test supervisor or 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 employee, a registered nurse 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) for an employee other than an employee who has been involved in an accident or irregular incident while carrying out transport safety work—after the employee has ceased to be on duty on a particular day, or
- (e) at the employee's home or temporary residence.

116 Action to be taken in relation 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 111(7)—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.
- (2) The test supervisor or police officer to whom a sample of blood is handed under subclause (1) must—
- (a) immediately after 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 taking the sample, the person who provided the sample requests the laboratory to do so and pays any costs associated with forwarding the portion.

117 Action to be taken in relation 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 submitted for initial testing or confirmatory analysis must 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 a drug, an analyst at an approved laboratory must conduct a confirmatory analysis of the sample in accordance with clause 118.
- (6) The test supervisor or police officer who requires an employee to provide a sample is responsible for arranging 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).
- (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 taking the sample, the person who provided the sample requests the laboratory to do so and pays costs associated with forwarding the portion.
- (8) Samples must be stored in accordance with section 2 of AS/NZS 4308:2008.

118 Analysis of samples

- (1) An analyst to whom blood is submitted for analysis under this Division may carry out an analysis of the blood to determine the concentration of alcohol in the blood or whether the blood contains a drug.
- (2) An analyst to whom urine is submitted for analysis under this Division may carry out confirmatory analysis of the urine to determine whether the urine contains a drug only if initial testing in accordance with this Division 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) another procedure as directed by TfNSW.
- (4) Without limiting subclause (3)(b), TfNSW may, generally or in a particular case or class of cases, direct that a confirmatory analysis must be carried out

to determine whether a drug specified in the *Drug Misuse and Trafficking Act 1985*, Schedule 1 is present in a sample.

119 Authorised sample takers—protection from liability

No civil or criminal liability is incurred by an authorised sample taker, or by a person acting at the direction or under the supervision of an authorised sample taker, in relation to 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 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.

Division 3 Offences

120 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.

121 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 another 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 the drugs is described in the document, and
 - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the person was under the influence of—
 - (i) a drug described in the document commencing proceedings, or
 - (ii) a combination of drugs, one or more of which was or were described in the document.

122 Refusal to be tested

- (1) If required to do so under this Regulation, a transport safety employee must, in accordance with the 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 the 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.

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

123 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 Division 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 one or more of the following—

- (a) the death of a person,
- (b) an injury to a person that is, in the operator's reasonable opinion, 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.

124 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 an analysis in proceedings against the employee, do anything to introduce, or alter the concentration of, alcohol or another 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.

125 Failure to take sample when required

- (1) An authorised sample taker 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 Division 2 in relation to a sample taken.

Maximum penalty—10 penalty units.

- (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 taking 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.
- (3) A person must, when taking a sample of urine from a transport safety employee, comply with the requirements of Division 2 in relation to the sample.
Maximum penalty—10 penalty units.
- (4) A person must not hinder or obstruct an authorised sample taker or other person who is attempting to take a sample of blood or urine under this Regulation.
Maximum penalty—20 penalty units.

126 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) for 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.

127 Double jeopardy

- (1) A person is not liable to be convicted of more than one offence under this Division if the offences each arise out of the same circumstances.
- (2) A person is not liable to be convicted of an offence under this Division if the person has been convicted of an offence that arises out of the same circumstances under—
 - (a) the *Marine Safety Act 1998*, Schedule 1, or
 - (b) the *Road Transport Act 2013*, Part 5.1 or Schedule 3.

Division 4 Certificate evidence in proceedings

128 Alcohol in breath or blood determined by breath analysis

- (1) This clause applies to proceedings for an offence under clause 120.
- (2) 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 carry out a breath analysis.
- (3) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the person charged 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 person

proves that the concentration of alcohol in the person'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.

- (4) A certificate purporting to be signed by a test supervisor or police officer and certifying each of the following is prima facie evidence of the particulars certified in and by the certificate—
 - (a) the test supervisor is duly authorised as a test supervisor or the police officer is authorised by the Commissioner of Police to carry out a breath analysis,
 - (b) the person named in the certificate submitted to a breath analysis,
 - (c) the apparatus used by the test supervisor or police officer to make the breath analysis was a breath analysing instrument,
 - (d) the analysis was made on the day and completed at the time stated in the certificate,
 - (e) a concentration of alcohol, determined by the 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 the person on the day and at the time stated in the certificate,
 - (f) a written statement required by clause 111(5) was delivered in accordance with that subclause.
- (5) A certificate purporting to be signed by the Commissioner of Police and certifying that the police officer named in the certificate is authorised by the Commissioner of Police to carry out a breath analysis is prima facie evidence of the particulars certified in and by the certificate.
- (6) Evidence of the condition of a breath analysing instrument or the way it was operated must not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

129 Alcohol in blood determined by analysis of sample

- (1) This clause applies to proceedings for an offence under clause 120.
- (2) 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.
- (3) 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 the sample was taken within 4 hours after that time, unless the person proves that the concentration of alcohol in the person's blood at that time was less than 0.02 grams of alcohol in 100 millilitres of the blood.
- (4) A certificate purporting to be signed by an authorised sample taker and certifying one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate—
 - (a) the certifier was an authorised sample taker who attended a specified person at a hospital,
 - (b) 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) the certifier dealt with the sample in accordance with clause 116,
 - (d) the certifier used equipment of a specified description when taking and dealing with the sample,

- (e) the container was sealed, and marked or labelled, in a specified way.
- (5) A certificate purporting to be signed by a test supervisor or police officer and certifying one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate—
 - (a) 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) 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) the container was sealed, and marked or labelled, in a specified way.
- (6) A certificate purporting to be signed by an analyst and certifying one or more of the following matters is prima facie evidence of the matters set out in subclause (7)—
 - (a) 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) the container, as received, was sealed, and marked or labelled, in a specified way,
 - (c) on receipt of the container, the seal was unbroken,
 - (d) an analysis of the portion was carried out to determine the concentration of alcohol in the sample,
 - (e) the concentration of alcohol determined by the analysis and expressed in grams of alcohol in 100 millilitres of blood was present in the sample.
- (7) A certificate under subclause (6) 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 the specified person, and
 - (c) that the portion had not been tampered with before it was received.

130 Presence of drugs

- (1) This clause applies to proceedings for an offence under clause 121.
- (2) If a sample of the blood or urine of the person charged was taken within 4 hours after the time the person carried out transport safety work—
 - (a) evidence may be given of the presence of a drug, or a particular concentration of a drug, in the person's blood or urine, as determined by an analysis under this Regulation of a portion of the sample, and
 - (b) the drug, or the particular concentration of the drug, is taken to have been present at the time the person carried out the transport safety work.
- (3) Subclause (2)(b) does not apply if the person charged proves the absence of the drug, or the presence of the drug in a different concentration, at the time the person carried out the transport safety work.
- (4) A certificate purporting to be signed by an authorised sample taker and certifying one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate—
 - (a) the certifier was an authorised sample taker who attended a specified person at a hospital,

- (b) 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) the certifier dealt with the sample in accordance with clause 116 or 117.
- (5) A certificate purporting to be signed by a person and certifying one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate—
 - (a) 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) the person dealt with the sample in accordance with clause 117.
- (6) A certificate purporting to be signed by a test supervisor or police officer and certifying one or more of the following matters is prima facie evidence of the particulars certified in and by the certificate—
 - (a) 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,
 - (b) 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 a drug was present in the sample,
 - (c) the container was sealed, and marked or labelled, in a specified way.
- (7) A certificate purporting to be signed by an analyst and certifying one or more of the following matters is prima facie evidence of the matters set out in subclause (8)—
 - (a) 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) the container, as received, was sealed, and marked or labelled, in a specified way,
 - (c) on receipt of the container, the seal was unbroken,
 - (d) an analysis of the portion was carried out to determine whether a drug was present in the sample,
 - (e) a specified drug ascertained by the analysis was present in the portion and, if certified, in a specified concentration.
- (8) A certificate under subclause (7) 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 the specified person, and
 - (c) that the portion had not been tampered with before it was received.
- (9) This clause does not enable evidence to be given of or in relation to the presence of a drug other than alcohol, or a particular concentration of the drug, in the blood or urine of a person charged with an offence under clause 121, as determined by an analysis of a sample obtained clause 112, unless the court is satisfied that the analysis was not arranged in contravention of this Regulation.

131 Person is test supervisor

In proceedings for an offence under this Regulation, a certificate purporting to be signed by an operator or TfNSW 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.

Division 5 Miscellaneous

132 Effect of positive test—the Act, s 12

- (1) TfNSW, 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 the Act, Part 2, Division 2, must take into account the results of a 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) TfNSW must exercise its functions under this clause in accordance with relevant guidelines published under the Act, section 9C(1)(a).

133 Operator to notify TfNSW of certain matters—the Act, s 46B

- (1) An operator must notify TfNSW, in the form approved by TfNSW, of any of the following events within 48 hours of becoming aware of the event happening—
 - (a) a confirmatory analysis confirming the presence of a drug in the urine of a transport safety employee,
 - (b) a breath analysis confirming the presence of alcohol in the blood of a transport safety employee,
 - (c) a 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) an 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 relation to a bus operator—an analysis of blood confirming the presence of a drug in the blood of a bus safety employee,
 - (f) in relation to a ferry operator—an incident involving, or suspected of involving, the interference or tampering with or destruction of a sample of blood or urine.
- (2) Without limiting subclause (1), the approved form may require an operator to include a statement outlining any action taken or proposed to be taken in relation to the event.
- (3) TfNSW may, by written notice to a bus operator, require the operator to provide TfNSW with statistical information relating to the conduct of drug testing by the operator.
- (4) TfNSW may, by written notice to a ferry operator, require the operator to provide TfNSW with records of the dates and results of drug testing carried out by the operator.
- (5) The written notices referred to in subclauses (3) and (4) must specify—
 - (a) the times at which the information or records must be provided, and
 - (b) the form in which the information or records must be provided.

- (6) 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.

134 Authorisation of test supervisors

- (1) An operator or TfNSW may, by written instrument, authorise a 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 an office, or
 - (c) for an authorisation by TfNSW—a member of a specified class of persons.
- (3) An authorisation is limited—
- (a) by any conditions specified in the instrument of authorisation, and
 - (b) for an authorisation made by an operator—to public passenger services operated by the operator.
- (4) An operator or TfNSW must give a certificate of authorisation to a person it authorises by name as a test supervisor and may give a certificate of authorisation to another person it 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 the person 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 the person is a member of a particular class of persons—evidence that the person is a member of that class.
- (6) An operator or TfNSW may revoke an authorisation made by the operator or TfNSW by written notice to the authorised person.
- (7) TfNSW may, by written notice to an operator, revoke the authorisation of a test supervisor authorised by the operator.

[3] Clause 240, heading

Insert “and transitional” after “Savings”.

[4] Clause 240(2) and (3)

Insert at the end of the clause—

- (2) Any act, matter or thing that, immediately before the repeal of the *Passenger Transport (Drug and Alcohol Testing) Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.
- (3) A form of document that complies with, or refers to, a provision of the *Passenger Transport (Drug and Alcohol Testing) Regulation 2010*—
- (a) is taken to be, and is to be construed as, a form that complies with, or refers to, the corresponding provision of this Regulation, and
 - (b) may, until 1 September 2022, be completed in accordance with, and used under, this Regulation.