

# Passenger Transport (Drug and Alcohol Testing) Regulation 2004

[2004-90]



New South Wales

## Status Information

### Currency of version

Repealed version for 23 July 2010 to 31 August 2010 (accessed 24 November 2024 at 20:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2010.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 September 2010

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New South Wales

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# Passenger Transport (Drug and Alcohol Testing) Regulation 2004



New South Wales

## 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 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 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.

**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*.

**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 requirements of AS

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

**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** means:

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

**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 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.

**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.

**operator** means:

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

**prescribed concentration of alcohol** means a concentration of 0.02 grammes or more of alcohol in 210 litres of breath or 100 millilitres of blood.

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

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

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

- (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 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.

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

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

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.

### **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.
- (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 23 of the *Marine Safety Act 1998*,
  - (e) an offence under section 24 of the *Marine Safety Act 1998*,
  - (f) an offence under clause 12 (2) of Schedule 1 to the *Marine Safety Act 1998*,
  - (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*.

## Part 3 Testing for alcohol or other drugs

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

- (1) A test supervisor may require any transport safety employee who the supervisor has reasonable cause to believe is on duty for the purpose of carrying out transport safety work, or who the supervisor 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 supervisor, 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:
  - (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.
- (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) or the result of any such testing or analysis performed on a sample of the employee's urine 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) A test supervisor 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 supervisor or 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) Nothing in this clause limits clause 8 or 20A.

### **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.

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

(1) If:

(a) a test supervisor 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 supervisor or officer may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the supervisor or 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 a test supervisor 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 breath or blood, or

(b) a transport safety employee who is required by a test supervisor 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 supervisor or officer,

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

(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.

(3) A breath analysis must be carried out by:

(a) a test supervisor, 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 supervisor or officer considers desirable.

(4) 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 statement in writing signed by the supervisor or officer specifying:

(a) the concentration of alcohol determined by the analysis to be present in the employee's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 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 test supervisor or police officer making the requisition to arrange for the taking (in the presence of a test supervisor 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 supervisor or 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, 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 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 test supervisor 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) A test supervisor may require a transport safety employee to provide a sample of the employee's blood or urine if:
  - (a) the 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 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 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 supervisor 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.

- (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 a test supervisor 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 supervisor or officer may require the transport safety employee to provide the sample of urine in accordance with the directions of the supervisor or officer.
- (3) The supervisor or 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 test supervisor or police officer that the sample is required to be taken by the practitioner or nurse under this Regulation.
- (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
  - (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.

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

A test supervisor 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 supervisor or 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) 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 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 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 an approved laboratory 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, 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.

## **18 Analysis of samples**

(1) (Repealed)

(2) An analyst to whom a portion of a sample of blood is submitted for analysis under clause 16 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 to determine whether the blood contains a drug or drugs, as the case requires.

(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 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.*

**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
- (b) was informed by a test supervisor 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.

**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.

**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 capsize, 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.

## **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 breath, 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 breath, blood or urine before the employee submits to a breath analysis or provides a sample of blood or urine under this Regulation is guilty 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.

### **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.

## **Part 5 Certificate evidence in proceedings**

### **24 Certificate evidence of concentration of alcohol in breath or 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 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 operate breath analysing instruments.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or 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 4 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at that time was less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.
- (3) In proceedings for an offence under clause 5, a certificate purporting to be signed by a test supervisor or a police officer and certifying that:
  - (a) the supervisor or officer is duly authorised as a test supervisor 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 supervisor or 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 210 litres of breath or 100 millilitres of blood) was present in the breath or blood of that person on the day and at the time stated in the certificate, and
- (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 4 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,
  - (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 a test supervisor or a police officer and certifying any one or more of the following matters:
- (a) that the supervisor or officer received a portion of a sample of a specified person's blood taken in accordance with this Regulation,
  - (b) that the supervisor or 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).

- (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 4 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.
- (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 a test supervisor or a police officer and certifying any one or more of the following matters:
- (a) that the supervisor or officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Regulation,
  - (b) that the supervisor or officer arranged for the portion to be submitted for analysis (or testing and 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 (or testing and 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,
  - (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 this Regulation.

## **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.

## **Part 6 Miscellaneous**

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

(1) If a bus safety employee, who is the driver of a bus, tests positive to the presence of:

(a) more than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of 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 hold an authority granted 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.

### **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*.