Western Australia

Western Australian Marine Act 1982

Western Australian Marine (Alcohol and Drug Testing) Regulations 2024

Western Australia

Western Australian Marine (Alcohol and Drug Testing) Regulations 2024

Contents

Part 1 — Preliminary

1. Citation 1

2. Commencement 1

3. Term used: section 1

4. Prescribed sample taker 1

Part 2 — Testing for alcohol

5. Operation of Dräger Alcotest 9510 breath analysing equipment 1

6. Indication of result of breath analysis 1

Part 3 — Testing for drugs

7. Conduct of preliminary oral fluid test 1

8. Collection and testing of oral fluid 1

9. Assessments of drug impairment 1

Part 4 — Blood samples

Division 1 — Taking blood samples for analysis

10. Term used: sampling equipment 1

11. Application of Division 1

12. Sampling equipment 1

13. Preparation of sampling equipment 1

14. Method of sampling 1

15. Certification 1

16. Request for taking of blood sample 1

Division 2 — Analysis

17. Analysis of blood sample 1

Part 5 — Fees

18. Blood samples and analysis 1

19. Oral fluid analysis 1

Defined terms

Western Australian Marine Act 1982

Western Australian Marine (Alcohol and Drug Testing) Regulations 2024

Made by the Governor in Executive Council.

## Part 1 — Preliminary

##### 1. Citation

 These regulations are the *Western Australian Marine (Alcohol and Drug Testing) Regulations 2024*.

##### 2. Commencement

 These regulations come into operation on 2 May 2024.

##### 3. Term used: section

 In these regulations —

 section means section of the Act.

##### 4. Prescribed sample taker

 For the purposes of paragraph (c) of the definition of ***prescribed sample taker*** in section 75E(1), the following persons are prescribed —

 (a) pathology collector;

 (b) phlebotomist.

## Part 2 — Testing for alcohol

##### 5. Operation of Dräger Alcotest 9510 breath analysing equipment

 For the purpose of conducting a breath analysis using the apparatus known as the “Dräger Alcotest 9510”, the breath analysing equipment must be operated in accordance with the instructions set out in the *Road Traffic (Breath Analysis) Regulations 1975* Schedule 2.

##### 6. Indication of result of breath analysis

 For the purposes of section 75EM(3), the manner of indicating the result of an analysis by breath analysing equipment is the printing of a statement by the equipment.

## Part 3 — Testing for drugs

##### 7. Conduct of preliminary oral fluid test

 (1) For the purposes of section 75F(2), the procedure for conducting a preliminary oral fluid test is the procedure set out in the *Road Traffic (Drug Driving) Regulations 2007* regulation 5.

 (2) If the procedure referred to in subregulation (1) does not appear to fully describe the steps required for a preliminary oral fluid testing device, an inspector or police officer may have regard to any manufacturer’s instructions in the device’s packaging.

##### 8. Collection and testing of oral fluid

 (1) For the purposes of section 75FC(3)(a) and (b), the steps to be taken by an authorised drug tester when collecting a sample of oral fluid for drug testing and conducting the drug testing are the steps set out in the *Road Traffic (Drug Driving) Regulations 2007* Schedule 2.

 (2) If the procedure referred to in subregulation (1) does not appear to fully describe the steps required for a drug testing device, an inspector or police officer may have regard to any manufacturer’s instructions in the device’s packaging.

##### 9. Assessments of drug impairment

 For the purposes of section 75FH(4), the procedure is to base an assessment of a person’s drug impairment on observations of aspects of the person’s behaviour, demeanour and condition, which can include whether —

 (a) there is any apparent injury to the person; or

 (b) there are any unusual or indicative skin responses; or

 (c) there is a smell of alcohol; or

 (d) the person’s speech, action, movement or balance appears affected; or

 (e) the appearance of the person’s eyes indicates drug ingestion (for example, dilated, constricted or bloodshot); or

 (f) the person’s rate or manner of breathing appears affected by drugs; or

 (g) the person’s attitude or the appearance of the person’s clothing appears to indicate drug ingestion; or

 (h) the person’s general comprehension appears affected by drugs.

## Part 4 — Blood samples

### Division 1 — Taking blood samples for analysis

##### 10. Term used: sampling equipment

 In this Division —

 sampling equipment means equipment that —

 (a) is provided for the purpose of taking a sample of blood under the *Road Traffic Act 1974* section 69(1a) by a body referred to in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 4; and

 (b) comprises the items set out in regulation 5 of those regulations.

##### 11. Application of Division

 (1) This Division applies for the purposes of section 75IE(2)(a) if, instead of a sample of a person’s blood being taken and divided into 2 parts, 2 samples of the person’s blood are taken 1 immediately after the other in accordance with section 75IE(2)(b)(ii).

 (2) This Division does not apply to a sample of blood taken in a proper manner other than in accordance with these regulations as referred to in section 75IE(2)(a).

##### 12. Sampling equipment

 A blood sample must be taken by means of sampling equipment.

##### 13. Preparation of sampling equipment

 (1) In this regulation —

 approved body has the meaning given in section 124HQ(1);

 technologist has the meaning given in section 124HQ(1).

 (2) The sampling equipment must be prepared by a technologist of an approved body.

 (3) The technologist must —

 (a) complete and sign a certificate in the form approved by the chief executive officer; and

 (b) seal the equipment in a serially numbered package by signing the technologist’s name over the sealed portion or flap of the package.

##### 14. Method of sampling

 (1) A blood sample must be taken by the prescribed sample taker by venepuncture, with the vacutainer kit provided in the sampling equipment and no other.

 (2) The prescribed sample taker must —

 (a) examine the package containing the sampling equipment produced to the prescribed sample taker, and in the presence of the person producing it, ensure that —

 (i) the package is sealed and intact; and

 (ii) the indicated expiry date for the use of the equipment has not passed;

 and

 (b) not use any sampling equipment contained in a package that is not sealed and intact or in respect of which the indicated expiry date has passed; and

 (c) cleanse the proposed site of the venepuncture by means of a sterile, non‑alcoholic antiseptic cleansing skin prep wipe contained in the sampling equipment and by no other means; and

 (d) discharge each sample (or each part of the sample if the sample is divided into 2 parts) into a separate container provided in the sampling equipment; and

 (e) ensure that the cover of each container is securely tightened; and

 (f) shake each container thoroughly and in so doing invert it at least 20 times, to mix the contents.

##### 15. Certification

 If a blood sample is taken and dealt with in accordance with regulation 14 —

 (a) the prescribed sample taker must complete and sign 2 copies of the form approved by the chief executive officer for the purposes of this paragraph; and

 (b) an inspector or police officer who was present when the sample was taken must complete and sign 2 copies of the form approved by the chief executive officer for the purposes of this paragraph; and

 (c) on completion of the forms, each of the containers containing a portion of the blood sample must be sealed in a separate package by the prescribed sample taker or the inspector or police officer.

##### 16. Request for taking of blood sample

 For the purposes of sections 75EN(4), 75EO(3), 75FF(3) and 75FJ(3), an inspector or police officer causes a prescribed sample taker to take a sample of a person’s blood for analysis by giving the prescribed sample taker a request to take a sample of blood in the form approved by the chief executive officer for the purposes of this regulation.

### Division 2 — Analysis

##### 17. Analysis of blood sample

 For the purposes of section 75IE(6), a blood sample must be analysed for alcohol by —

 (a) ascertaining the change in concentration of a solution of a dichromate; or

 (b) gas chromatography.

## Part 5 — Fees

##### 18. Blood samples and analysis

 (1) The fees for the attendance of a prescribed sample taker for the purpose of taking a sample of blood under section 75IE are the fees set out in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 15(1) in relation to a sample of blood taken under the *Road Traffic Act 1974* section 69(1) or (1a).

 (2) The fees for the analysis of a blood sample by an analyst at the Chemistry Centre (WA) are the fees set out in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 15(3) and (4) in relation to a sample of blood taken under the *Road Traffic Act 1974* section 69(1) or (1a).

 (3) The fees payable under this regulation must be paid by the chief executive officer.

 (4) If a person is convicted of an offence under section 75B(1), 75BA(1), 75BB(1), 75C(1), 75CA(1), 75CD(1), 75D(1), 75DA(1),75DB(1), 75DC(1) or 75DD(1) and the chief executive officer has paid a fee under subregulation (1) or (2) for the purposes of Part 3B of the Act —

 (a) the court convicting the person must order the person to repay the chief executive officer the amount of the fee; and

 (b) that amount may be recovered by the chief executive officer as if it were a penalty imposed under the Act.

##### 19. Oral fluid analysis

 (1) The fee for the analysis of an oral fluid sample by a drugs analyst at the Chemistry Centre (WA) is the fee set out in the *Road Traffic (Drug Driving) Regulations 2007* regulation 11(1).

 (2) The fee payable under subregulation (1) must be paid by the chief executive officer.

 (3) If a person is convicted of an offence under section 75CD(1), 75DB(1), 75DC(1) or 75DD(1) and the chief executive officer has paid a fee under subregulation (1) for the purposes of Part 3B Division 3 of the Act —

 (a) the court convicting the person must order the person to repay the chief executive officer the amount of the fee; and

 (b) that amount may be recovered by the chief executive officer as if it were a penalty imposed under the Act.

K. COLLERAN, Clerk of the Executive Council

Defined terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*

**Defined term Provision(s)**

approved body 13(1)

sampling equipment 10

section 3

technologist 13(1)

© State of Western Australia 2024.

This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0). To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.

Attribute work as: © State of Western Australia 2024.

By Authority: GEOFF O. LAWN, Government Printer