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[1962

Crown Law Department,
Perth, 21st November, 1962.

THE undermentioned regulations made under the provisions of the Traffic Act, 1919-1961, and amended from time to time prior to the 31st August, 1962, are reprinted, as so amended, pursuant to the Reprinting of Regulations Act, 1954, by authority of the Minister for Justice.

R. C. GREEN,
Under Secretary for Law.

Traffic Act, 1919-1961.

BLOOD ALCOHOL TEST REGULATIONS.

(Published in the *Government Gazette* on the 12th September, 1958, and incorporating the amendments thereto published in the *Government Gazette* on the 26th May, 1959, the 16th October, 1959, the 29th December, 1961, and the 13th June, 1962, and reprinted pursuant to the Reprinting of Regulations Act, 1954.)

Reprinted pursuant to the Reprinting of Regulations Act, 1954, by authority of the Minister dated 21st November, 1962.

Regulations.

1. These regulations may be cited as the Blood Alcohol Test Regulations, 1958.

Definitions.

Amended by
G.G. 26/5/59,
p. 1407.

2. In these regulations unless the context otherwise requires—
 - “analyst” has the same meaning as the term “properly qualified analyst” as defined in the Traffic Act, 1919;
 - “local authority” has the same meaning as the interpretation of that term in the Traffic Act, 1919;
 - “medical practitioner” means a medical practitioner registered under the provisions of the Medical Act, 1894;
 - “member of the Police Force” includes a traffic inspector appointed under the Traffic Act, 1919;
 - “suspected person” means any person suspected by a member of the Police Force of being under the influence of intoxicating liquor to such an extent as to be guilty of an offence under any Act.

Application of Regulations.

Cf. Reprint
Traffic Act,
1919,
approved for
reprint,
23rd April,
1958, s. 32A
(6).

3. These regulations apply to any offence under the Traffic Act, 1919, or any other Act, in regard to which the question whether a person charged with that offence was or was not under the influence of intoxicating liquor at the time of the commission of the offence, is relevant.

Blood Samples.

Amended by
G.G. 26/5/59,
p. 1407;
G.G. 16/10/59,
p. 2595.
Substituted
by G.G.
29/12/61,
p. 3939.

4. Any blood sample taken in pursuance of these regulations shall be taken by means of equipment (in these regulations called “the sampling equipment”) provided for that purpose by the Public Health Department of Western Australia and by no other equipment.

Added by
G.G. 29/12/61,
p. 3939.

- 4A. The sampling equipment shall comprise—
 - (a) a dry syringe, sterilised by autoclaving, boiling or dry sterilising;
 - (b) two sterile bottles, each numbered with the serial number of the package mentioned in paragraph (c) of regulation 4B of these regulations and containing approximately 25 milligrams of potassium oxalate and approximately 10 milligrams of sodium fluoride and closed with a cork, stopper, plug or cap and rubber disc;
 - (c) one bottle or other receptacle containing a quantity of mercury bichloride solution, 1 : 1,000; and
 - (d) two swabs of cotton wool.

Added by
G.G. 29/12/61,
pp. 3939-40.

- 4B. The sampling equipment shall be prepared by a technologist of the Public Health Department who shall—
 - (a) indicate the latest date at which the equipment may be used, having regard to the continuance of its sterility;
 - (b) complete and sign a certificate in the form of Form A set out in the schedule to these regulations; and
 - (c) seal the equipment in a serially numbered package by signing his name over the sealed portion or flap of the package.

4C. A certificate issued under regulation 4B of these regulations, if admitted in evidence, shall be accepted as *prima facie* evidence of the matters stated with regard to the sampling equipment to which it relates; and evidence that a package containing sampling equipment was sealed in conformity with that regulation and intact shall, unless the indicated expiry date shall have passed, be *prima facie* evidence that the equipment contained in the package was, when the package was opened, in the same condition as that in which it was when prepared.

Added by
G.G. 29/12/61,
p. 3940.

4D. (1) Where a suspected person submits himself to, and allows, the taking of a blood sample, that sample shall be taken by a medical practitioner by veni-puncture, with the syringe provided in the sampling equipment and no other.

Added by
G.G. 29/12/61,
p. 3940.

(2) The medical practitioner shall—

(a) examine the package containing the sampling equipment produced to him by a member of the Police Force and in his presence ensure that—

(i) the package is sealed and intact; and

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

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

(c) cleanse the proposed site of the veni-puncture by means of the mercury bichloride solution and cotton wool contained in the sampling equipment and by no other means;

(d) withdraw as much as possible up to 15 millilitres of blood;

(e) discharge approximately one-half of the blood withdrawn into one of the two bottles supplied in the sampling equipment and the balance of the blood into the second of those bottles;

(f) securely close each bottle by means of the cork, stopper or plug supplied, or, where the bottle is sealed by a cap and rubber disc seal, by withdrawing the syringe needle from the rubber disc seal; and

(g) shake each bottle thoroughly and in so doing invert it at least thirty times, to mix the contents.

5. (1) Upon a blood sample being taken and dealt with in accordance with the provisions of regulation 4D of these regulations—

(a) the medical practitioner shall complete and sign Part I; and

(b) a member of the Police Force then present shall complete and sign Part II,

of Form B set out in the schedule to these regulations, in duplicate.

Amended by
G.G. 16/10/59,
p. 2596.

Substituted
by G.G.
29/12/61,
pp. 3940-41.

(2) Upon the completion in duplicate of the Form B in this regulation mentioned, each of the bottles containing a portion of the blood sample shall be sealed in a separate package (the cover of which comprises that form) by the medical practitioner and the member of the Police Force in this regulation mentioned, each signing his name over the sealed portion or flap of the package.

(3) Evidence that a package containing a portion of a blood sample was sealed in conformity with this regulation and intact shall be *prima facie* evidence that the contents were, when the package was opened, in the same condition, for the purposes of these regulations, as when the package was sealed.

Disposal of Blood Sample.

Substituted
by G.G.
29/12/61,
p. 3941.

6. A member of the Police Force who was present when a blood sample was obtained and dealt with in accordance with the provisions of regulations 4D and 5 of these regulations shall—

- (a) cause one of the packages containing a portion of the blood sample and comprising a completed Form B to be delivered as soon as practicable to an analyst at the Government Chemical Laboratory; and
- (b) hand the other package containing a portion of the blood sample and comprising a completed Form B—
 - (i) where the suspected person is not held in custody, to that person or to a person nominated by him; and
 - (ii) Where the suspected person is held in custody, to a person nominated by the suspected person; but if the suspected person does not nominate a person or the person nominated is not present the member of the Police Force shall store the package in a cool and safe place, and a member of the Police Force on duty when the suspected person is released from custody shall hand it to him.

Analytical Method.

Amended by
G.G. 29/12/61,
p. 3941.

7. The analytical method by which blood samples shall be analysed for alcohol by an analyst is—

- (a) the modified method of Kozelka and Hine as described in *The Analyst*, 1954, Volume 79, at pages 121 to 136; or
- (b) the method of analysis described in the *Medical Journal of Australia* dated the 3rd day of August, 1957, at page 166.

The Rate of Variation of the Concentration of Alcohol in the Blood and the Method of Assessing the Percentage of Alcohol in the Blood at the Time of the Alleged Offence.

8. (1) The analyst shall be guided in his assessment of the percentage of alcohol in the blood at the time of the alleged offence by the factors described in subregulation (2) of this regulation and he shall apply such of those factors as are known to him in making his finding of the percentage of alcohol present in the blood of a suspected person at the time of an alleged offence.

(2) The factors are—

- (a) the time that the suspected person consumed his last drink containing alcohol;
- (b) that the variation of concentration of alcohol in the blood is to increase at the rate of .016 per centum per hour for the period of two hours after the last drink containing alcohol was consumed by the suspected person, and after that period of two hours the variation of concentration of alcohol in the blood is to decrease at the rate of .016 per centum per hour; and
- (c) the time that elapsed between the time of the alleged offence and the time that the blood sample was taken by a medical practitioner.

Certificate of Analyst.

Amended by
G.G. 26/5/59,
p. 1407;
G.G. 16/10/59,
p. 2596.
Substituted
by G.G.
29/12/61,
p. 3941.

9. When the analyst at the Government Chemical Laboratories has made his analysis, assessment, and finding of, or in relation to, a blood sample, in accordance with these regulations, he shall give a certificate in the form of Form C set out in the Schedule to these regulations, and cause the form together with the Form B which was delivered to him in accordance with the provisions of paragraph (a) of regulation 6 of these regulations to be delivered to the Commissioner of Police or to the shire clerk or town clerk of the local authority concerned.

Fees to Doctors and Analysts.

10. (1) The fees prescribed for the attendance of a medical practitioner are—

Amended by G.G. 26/5/59, p. 1407; G.G. 16/10/59, p. 2596; G.G. 13/6/62, p. 1552.

on any public holiday, or any Sunday or at any time between 1 p.m. and midnight on any Saturday, or any time between 8 p.m. and 8 a.m. on any other day—£3 3s.;

at any other time—£2 2s.

(2) The fee for analysis by an analyst at the Government Chemical Laboratories is £2 2s.

(3) The fees payable under subregulation (1) of this regulation shall be paid by the Commissioner of Police or the local authority concerned to the medical practitioner.

(4) Where on analysis the percentage of alcohol in the blood at the time of the alleged offence exceeds .05 per centum but is less than .15 per centum and the person charged is convicted of the offence, the fees prescribed in this regulation shall be paid by the convicted person to the Commissioner of Police or the local authority concerned.

(5) Where on analysis the percentage of alcohol in the blood was, or exceeded, .15 per centum at the time of the alleged offence, the fees prescribed in this regulation shall be paid by the person charged to the Commissioner of Police or the local authority concerned.

(6) The Court convicting a person of an offence under the provisions of the Traffic Act to which these regulations apply shall order that person to pay the prescribed medical and analysis fees; and that order may be enforced as though the amount of the fees were a penalty imposed under the Traffic Act and the regulations made under the provisions of that Act.

Certificate of Qualification.

11. The Government Analyst may certify in Form D in the schedule to these regulations that the person named in the form has the qualifications necessary for the determination of the amount of alcohol contained in bodily substances; and that certificate shall be valid for a period of twelve months and no longer.

Amended by G.G. 16/10/59, p. 2596; G.G. 29/12/61, p. 3941.

Schedule.

Serial No.....

Western Australia.

TRAFFIC ACT, 1919-1961.

Regulation 4B: Blood Alcohol Test Regulations, 1958.

Form A.

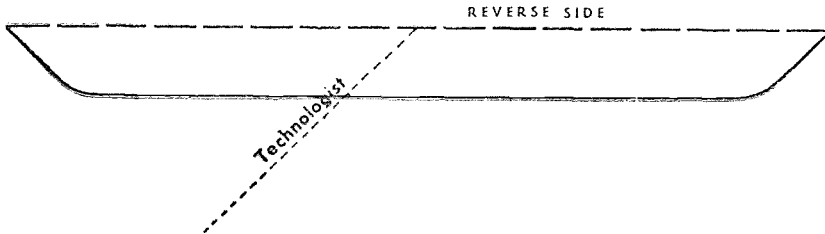
Form A. Substituted by G.G. 29/12/61, p. 3942.

I.....of Laboratory Services, Public Health Department, Perth, in the State of Western Australia, Technologist, do hereby certify that the sampling equipment contained in package Serial No.....comprises the items set forth in regulation 4A of the Blood Alcohol Test Regulations, 1958 (as amended) and that those items were prepared by me, are sterile and fit for the purpose of taking a blood sample.

The said equipment may not be used for blood sampling later than.....

Dated at Perth this..... day of..... 19.....

Signature.



Note: This package should be opened by cutting along this fold.

Western Australia.
TRAFFIC ACT, 1919-1961.

Regulation 5: Blood Alcohol Test Regulations, 1958.

Form B.
Substituted
by G. G.
29/12/61,
pp. 3942-43.
Block
letters.

Form B.
Part I.

By Medical Practitioner:

I of
a duly qualified medical practitioner hereby certify that:

1. At the hour of m. on the
day of 19..... I took a sample of the blood of
..... of portion of which
sample is now contained in the enclosed bottle numbered.....
2. The equipment used for the purpose of taking that blood
sample was contained in a package serially numbered.....
handed to me by and that package
was sealed and intact prior to being opened by me.
3. In taking the blood sample I complied with regulation 4D
of the Blood Alcohol Test Regulations, 1958 (as amended).

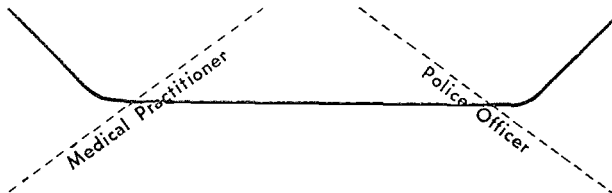
.....
Signature and Qualifications.

(Reverse Side.)
Part II.

By a member of Police Force:

Name of suspected person.....
Doctor
Time and date of taking blood sample.....
Time of arrest m.....
Time of alleged offence m.....
Alleged time of last drink containing alcohol consumed by sus-
pected person..... m.....

.....
Signature, Rank, etc.



Note: Open by cutting along this edge, leaving signatures intact.

Western Australia.

TRAFFIC ACT, 1919-1961.

Regulation 9: Blood Alcohol Test Regulations, 1958.

Form C.

Form C.
Substituted
by G.G.
29/12/61,
p. 3943.

I of Government Chemical
Laboratories, Perth, a properly qualified analyst under section 32A
of the Traffic Act, 1919-1961, hereby certify that:

1. On the..... day of..... 19.....
I received a sealed package, comprising Form B to the Blood Alcohol
Test Regulations, then intact from
containing a sample of blood in a bottle numbered.....

2. The certificate (Form B) appearing on the cover of the
said package was indorsed (*inter alia*) as follows:—

Name of suspected person.....
Doctor
Time and date of taking blood sample.....

3. I have analysed that sample and have found it to contain
..... per centum of alcohol.

4. From the information supplied, namely—
Time of last drink containing alcohol.....
Time of alleged offence.....
Time of arrest.....
Time blood sample was taken.....

I have estimated and my finding is that the alcohol content of
the blood of the said..... would
have been..... per centum at..... m on.....

.....
Analyst.

Western Australia.

Traffic Act, 1919-1961.

FORM D.

Form D.
Amended by
G.G. 16/10/59,
p. 2596.

I,....., the Government Analyst,
pursuant to the power conferred on me by subsection (5) of section
32A of the Traffic Act, 1919, hereby certify that.....
of....., has the qualifications neces-
sary for the determination of the amount of alcohol contained in
bodily substances.

.....
Government Analyst.