



Western Australia

Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016

Compare between:

[30 Jan 2017, 00-b0-00] and [13 Nov 2018, 00-c0-00]

Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016

Part 1 — Preliminary

1. Citation

These regulations are the *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Terms used

In these regulations —

analyst includes —

- (a) a person certified by the Chief Executive Officer of the Chemistry Centre (WA) as being competent to determine the concentration of alcohol in bodily substances; and
- (b) a person approved by the chief executive officer under regulation 8;

approved person means a person approved by the chief executive officer under regulation 6;

approved sample collector means a person approved to collect samples of breath, oral fluid and urine under regulation 7;

authorised person, in relation to breath testing and analysis, means a person authorised by the chief executive officer to operate breath analysing equipment;

breath analysing equipment means apparatus of a type approved by the chief executive officer for the purpose of ascertaining a person's blood alcohol content by analysis of a sample of the person's breath;

confirmed adverse test result for alcohol means —

- (a) for a prison officer or contract prison officer whose duty involves the use of a firearm, or driving a motor vehicle — analysis of a sample of breath carried out using breath analysing equipment showing presence of alcohol in that person's blood, following a presumptive positive test result for alcohol;
- (b) for any other prison officer or contract prison officer — analysis of a sample of breath carried out using breath analysing equipment showing the concentration of alcohol in that person's blood to be 0.02 g of alcohol per 100 ml of blood or more, following a presumptive positive test result for alcohol;

confirmed adverse test result for drugs means analysis of a sample of oral fluid, urine or blood carried out by a drugs analyst showing evidence of the presence, or of ingestion, of a drug, following a presumptive positive test result for drugs;

contract prison officer means —

- (a) a contract worker authorised to perform a function under section 15I of the Act; and
- (b) a contract worker with a permit to do high-level security work issued under section 15P of the Act;

critical incident means —

- (a) the death, or serious injury, of a person, when the death or injury is connected to, or arising from, the application of force by a prison officer or contract prison officer; or

- (b) the death, or serious injury, of a person when the death or injury is connected to, or arising from, the exercise of authority by a prison officer or contract prison officer; or
- (c) the death, or serious injury, of a person when the death or injury is connected to, or arising from, the driving of a motor vehicle by a prison officer or contract prison officer; or
- (d) the death, or serious injury, of a person when the person is in the custody of a prison officer or contract prison officer; or
- (e) the discharge of a firearm by a prison officer or contract prison officer, whether or not injury is caused,

when that prison officer or contract prison officer is acting in their capacity as a prison officer or contract prison officer;

drug includes a substance declared to be a targeted drug;

drugs analyst means —

- (a) a person certified by the Chief Executive Officer of the Chemistry Centre (WA) as being competent to ascertain whether, and to what extent, drugs are present in bodily substances; or
- (b) a person with accreditation from the National Association of Testing Authorities in a field that, in the opinion of the chief executive officer, makes that person competent to ascertain whether, and to what extent, drugs are present in bodily substances;

masking agent includes a substance declared to fall within this definition under regulation 13;

nurse means a person registered under the Health Practitioner Regulation National Law (Western Australia) whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse;

nurse practitioner means a person registered under the Health Practitioner Regulation National Law (Western Australia) whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse practitioner;

phlebotomist means the holder of a current certificate of competency in phlebotomy, issued by an Australian public hospital or teaching facility;

presumptive positive test result for alcohol means the result of a preliminary test of a sample of breath that shows that the concentration of alcohol in a person's blood is likely to be 0.02 g of alcohol per 100 ml of blood or more;

presumptive positive test result for drugs means a preliminary analysis of a sample of oral fluid, urine or blood that shows an indication of the presence, or of ingestion, of a drug;

selected prison officer means a prison officer or contract prison officer who is required to undergo an alcohol or drug test, or both, under these regulations;

targeted drug includes —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies; and
- (b) a Schedule 2 poison as defined in the *Medicines and Poisons Act 2014* section 3; and
- (c) a Schedule 3 poison as defined in the *Medicines and Poisons Act 2014* section 3; and
- (ca) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3; and
- (d) a drug or substance declared to fall within this definition under regulation 12.

[Regulation 3 amended in Gazette 17 Jan 2017 p. 407.]

4. Application of these regulations

- (1) Subject to subregulation (2), the processes of alcohol or drug testing set out in these regulations are to be carried out on a prison officer or contract prison officer.
- (2) The processes of alcohol or drug testing set out in these regulations cannot be carried out on a prison officer or contract prison officer unless that prison officer or contract prison officer is on duty or is recalled to duty for that purpose.
- (3) The processes of alcohol or drug testing set out in these regulations should be carried out in a manner that respects a prison officer's or contract prison officer's dignity and privacy to the extent possible without compromising the integrity of the testing process.

5. Publication of approved persons

- (1) The chief executive officer is to publish the name and relevant details of each person who has been specified by the chief executive officer to be —
 - (a) an approved person under regulation 6; or
 - (b) an approved sample collector under regulation 7; or
 - (c) an approved analyst under regulation 8.
- (2) Publication of the details in subregulation (1) is to be by way of a Departmental intranet website, and is to be for the information of prison officers, contract prison officers and other staff of the Department.
- (3) A failure to correctly publish the name or relevant details of a person under subregulation (1) does not affect the status of a person who has been approved, nor does it invalidate any sample collection, testing process or outcome involving that person.

6. Approved persons

- (1) The chief executive officer may specify that a particular person is to be an approved person for the purposes of all, or some, of these regulations if the chief executive officer is satisfied that it is necessary for that person to be appointed as an approved person.
- (2) The chief executive officer is an approved person as holder of that office.
- (3) A person specified as an approved person under subregulation (1) may be a person who is not a member of staff of the Department.

7. Approved sample collectors

- (1) The chief executive officer may specify that a person who has undergone training to collect samples of breath, oral fluid or urine in accordance with standards approved under regulation 14(1), is to be an approved sample collector for the purposes of conducting an alcohol or drug test under these regulations.
- (2) A person specified as an approved sample collector under subregulation (1) may be a person who is not a member of staff of the Department.

8. Approved analysts

- (1) The chief executive officer may specify that a person who is accredited under the National Association of Testing Authorities (NATA) requirements for Chemical Testing and Forensic Science is to be approved as an analyst that is competent to determine the concentration of alcohol in bodily substances under these regulations.
- (2) A person specified as an approved analyst under subregulation (1) may be a person who is not a member of staff of the Department.

9. When testing may be carried out: random

- (1) An approved person may require a selected prison officer or a number of selected prison officers working within, or visiting, a common work area to submit to an alcohol test or a drug test or both.
- (2) An approved person may require all prison officers or contract prison officers working within a common work area, and any visiting prison officer or contract prison officer at the work area at that time, to submit to an alcohol test or a drug test or both.

10. When testing may be carried out: targeted

- (1) Targeted testing for alcohol or drugs under these regulations may be carried out if there is credible information, intelligence or suspicion that a selected prison officer may be affected or impaired by alcohol or drugs, while on duty.
- (2) Targeted testing for drugs under these regulations may be carried out if there is credible information, intelligence or suspicion that a selected prison officer may have taken or ingested drugs at any time.
- (3) The chief executive officer or an approved person may require a particular selected prison officer or a particular group of selected prison officers working within a common work area to submit to an alcohol test or a drug test or both.

11. When testing may be carried out: mandated

- (1) The chief executive officer may direct in writing that certain circumstances give rise to compulsory alcohol and drug testing of particular prison officers or contract prison officers.
- (2) Circumstances under subregulation (1) may include, but are not limited to —
 - (a) when a prison officer or contract prison officer is involved in a critical incident; or

r. 12

- (b) where a prison officer or contract prison officer is a participant in a high risk business area within the Department (*for example, a drug detection, special operations or emergency response unit*); or
 - (c) when a prison officer or contract prison officer is in the process of completing a critical skills competency course involving weapons; or
 - (d) where an approved person believes that a test is appropriate for the prison officer's or contract prison officer's health and safety, or is prudent to protect the prison officer's or contract prison officer's credibility in any future court proceeding; or
 - (e) when a prison officer or contract prison officer has returned a confirmed adverse test result for alcohol or drugs under these regulations.
- (3) Mandated testing may be required —
- (a) at the time of the circumstance giving rise to its requirement; or
 - (b) as an on-going requirement resulting from the circumstance giving rise to its requirement.

12. Chief executive officer may declare drugs or substances to be targeted drugs

- (1) The chief executive officer may declare a drug or substance to be a targeted drug for the purposes of these regulations.
- (2) A declaration under subregulation (1) is not effective unless notice of that declaration is published on the publicly accessible Departmental website by the chief executive officer, and a declaration may be amended or revoked by the chief executive officer in a similar manner.

13. Chief executive officer may declare substances to be masking agents

- (1) The chief executive officer may declare a substance to be a masking agent for the purposes of these regulations.
- (2) A declaration under subregulation (1) is not effective unless notice of that declaration is published on the publicly accessible Departmental website by the chief executive officer, and a declaration may be amended or revoked by the chief executive officer in a similar manner.

14. Chief executive officer may approve collection procedures for alcohol and drug testing

- (1) The chief executive officer may approve —
 - (a) standards or parts of standards; and
 - (b) collection protocols,as the manner in which testing processes and procedures are to be carried out.
- (2) The chief executive officer may approve items of equipment together with other devices or apparatus for the purpose of testing for targeted drugs.
- (3) Notwithstanding the approval of standards, protocols and equipment under this regulation, a minor variation in the manner of collection or analysis of a sample that does not affect the outcome of the testing process may be disregarded when assessing whether the particular testing process was carried out in an approved manner.

Part 2 — Testing for alcohol

15. Requirement to submit sample of breath for preliminary analysis

- (1) When requested to provide a sample of breath by an approved person, a selected prison officer must provide a sample, to an authorised person for a preliminary test, in accordance with the directions of that approved person.
- (2) Where it appears to the approved person that the physical condition of the selected prison officer is such as to render them incapable of providing a sample of breath for a preliminary test, then the approved person may proceed to the provisions of regulation 17 as if a preliminary test had returned a presumptive positive test result for alcohol.

16. Requirement to confirm identity

- (1) A selected prison officer must confirm their identity at the time of providing a sample for alcohol testing by showing —
 - (a) an original driver's licence; or
 - (b) an original passport; or
 - (c) an original Departmental photo identification; or
 - (d) such other photo-based identification as may be approved by the chief executive officer for the purpose of this regulation.
- (2) It is not sufficient confirmation of identity under subregulation (1) if the selected prison officer is purported to be identified —
 - (a) by another prison officer or contract prison officer; or
 - (b) by use of a copied document; or
 - (c) by use of a document without a photo of the officer.

17. Requirement to submit further sample of breath

- (1) Where —
- (a) a selected prison officer has provided a sample of their breath for a preliminary test and the preliminary test returns a presumptive positive test result for alcohol; or
 - (b) the selected prison officer having been so required —
 - (i) refuses or fails to provide, or appears to be incapable of providing, a sample of their breath for a preliminary test; or
 - (ii) refuses or fails to provide, or appears to be incapable of providing, a sample of their breath in sufficient quantity to enable a preliminary test to be carried out,

the approved person may require that selected prison officer to provide a further sample of their breath for analysis by an authorised person, under the provisions of subregulation (2) or a sample of blood or urine under regulation 19.

- (2) A selected prison officer who is required to supply a sample of breath for analysis must comply with that requirement by providing the sample of breath into breath analysing equipment, for analysis by an authorised person, in accordance with the directions of the approved person.
- (3) A selected prison officer is not required under subregulation (1) to provide a sample of breath for analysis if, because of their physical condition, the selected prison officer is incapable of providing the specimen of breath or a specimen of breath in sufficient quantity for analysis.

18. Breath analysis form to be completed

Where a breath analysis is carried out by an authorised person and it returns a confirmed adverse test result for alcohol, the authorised person is to fill out a breath analysis form approved by the chief executive officer.

19. Requirement to submit sample of urine or blood under certain circumstances

- (1) Where an approved person might require a selected prison officer to provide a sample of breath for analysis by an authorised person but is precluded from so doing by regulation 17(3), the approved person may require the selected prison officer to provide a sample of blood or urine for analysis.
- (2) On taking a sample of blood or urine, the medical practitioner, nurse, nurse practitioner or phlebotomist is to complete the details required by Schedule 1 Form 2.
- (3) Where an analyst carries out an analysis of a sample of blood or urine following a presumptive positive test result for alcohol, the analyst is to provide a written result of that analysis to the chief executive officer, whether or not that analysis resulted in a confirmed adverse test result for alcohol.

20. Incapacity to provide sample

- (1) If a selected prison officer is unable to provide a sample due to injury or illness, an approved person may request a medical practitioner, nurse, nurse practitioner or phlebotomist to take a sample of blood or urine, or both, from that prison officer or contract prison officer.
- (2) A request under subregulation (1) must be a written request made by the approved person completing Schedule 1 Form 1 and handing that completed form to the relevant medical practitioner, nurse, nurse practitioner or phlebotomist.

Part 3 — Testing for drugs

21. Requirement to submit sample for drug testing

- (1) When requested to do so, a selected prison officer must provide a sample for drug testing to an approved sample collector (subject to subregulation (4)) in accordance with the directions of an approved person.
- (2) An approved person may request a sample of any one or more of the following —
 - (a) blood;
 - (b) urine;
 - (c) oral fluid.
- (3) An approved person is not required to state what drug the sample will be tested for.
- (4) If a sample of blood is required, that sample must be taken by a medical practitioner, a nurse, a nurse practitioner or a phlebotomist.
- (5) On taking a sample of blood or urine, the medical practitioner, nurse, nurse practitioner or phlebotomist is to complete the details required by Schedule 1 Form 2.
- (6) On taking a sample of urine or oral fluid, the approved sample collector is to complete the details required by Schedule 1 Form 2.

22. Requirement to confirm identity

- (1) A selected prison officer must confirm their identity at the time of providing a sample for drug testing by showing —
 - (a) an original driver's licence; or
 - (b) an original passport; or
 - (c) an original Departmental photo identification; or

- (d) such other photo-based identification as may be approved by the chief executive officer for the purpose of this regulation.
- (2) It is not sufficient confirmation of identity under subregulation (1) if the selected prison officer is purported to be identified —
 - (a) by another prison officer or contract prison officer; or
 - (b) by use of a copied document; or
 - (c) by use of a document without a photo of the officer.

23. Incapacity to provide sample

- (1) If a selected prison officer is unable to provide a sample due to injury or illness, an approved person may request a medical practitioner, nurse, nurse practitioner or phlebotomist to take a sample of blood or urine, or both, from that prison officer or contract prison officer.
- (2) A request under subregulation (1) must be a written request made by the approved person completing Schedule 1 Form 1 and handing that completed form to the relevant medical practitioner, nurse, nurse practitioner or phlebotomist.

24. Opportunity to explain a presumptive positive test result for drugs

- (1) Where a selected prison officer has provided a sample for drug testing and the test returns a presumptive positive test result for drugs, that selected prison officer is to be given an opportunity to explain the result prior to a further analysis.
- (2) If an explanation is not provided under subregulation (1), an approved person may draw such adverse inferences from the absence of explanation as the circumstances justify.
- (3) An explanation given under this regulation is not admissible in evidence against the selected prison officer in any criminal proceedings, but may be used as the basis for a disciplinary

offence under regulation 40(5), if the explanation is later found to be false or misleading in a material particular.

25. Requirement to submit further sample for drug testing

(1) Where —

- (a) a selected prison officer has provided a sample for drug testing and the test returns a presumptive positive test result for drugs; or
- (b) the selected prison officer having been so required refuses or fails to provide, or appears to be incapable of providing, the sample for a drug test,

the approved person may require that selected prison officer to provide a further sample for analysis by a drugs analyst.

(2) A selected prison officer who is required to supply a sample for drug analysis must comply with that requirement by providing the sample for analysis by a drug analyst, in accordance with the directions of the approved person.

26. Drug analyst to report result to chief executive officer

Where a drug analyst carries out an analysis of a sample following a presumptive positive test result for drugs, the analyst is to provide a written result of that analysis to the chief executive officer, whether or not that analysis resulted in a confirmed adverse test result for drugs.

Part 4 — Recall to, and remaining on, duty

Division 1 — Critical incident

27. Remain on duty: alcohol and drug testing

When a prison officer or contract prison officer is involved in a critical incident and their shift is about to finish, an approved person may require that prison officer or contract prison officer to remain on duty until that prison officer or contract prison officer has undergone alcohol testing and drug testing.

28. Recall to duty: drug testing

- (1) When a prison officer or contract prison officer is off-duty but that prison officer or contract prison officer has been involved in a critical incident during the previous shift and has not been the subject of a drug test, that prison officer or contract prison officer may be recalled to duty by an approved person for the purposes of drug testing.
- (2) When a prison officer or contract prison officer has been involved in a critical incident while off-duty and has not been the subject of a drug test, that prison officer or contract prison officer may be recalled to duty by an approved person for the purposes of drug testing.
- (3) A selected prison officer cannot be tested under this regulation at their place of residence.
- (4) This regulation applies in addition to regulation 29.

29. Recall to duty: alcohol testing

- (1) When a prison officer or contract prison officer is off-duty but that prison officer or contract prison officer has been involved in a critical incident during the previous shift and has not been the subject of an alcohol test, that prison officer or contract prison officer may be recalled to duty by an approved person for the purposes of alcohol testing.

- (2) If a prison officer or contract prison officer is involved in a critical incident while off-duty and has not been the subject of an alcohol test following that incident, that prison officer or contract prison officer may be recalled to duty by an approved person for the purposes of alcohol testing.

Division 2 — Other testing

30. Remain on duty: alcohol and drug testing

When a prison officer or contract prison officer is on duty, or is about to finish their shift, and that prison officer or contract prison officer —

- (a) is the subject of credible information, intelligence or suspicion indicating that the prison officer or contract prison officer is affected or impaired by alcohol or that drug use by the prison officer or contract prison officer has taken place while that prison officer or contract prison officer was on duty; or
- (b) has been selected to undergo random, mandated or targeted testing for drugs or alcohol, or both,

an approved person may require that prison officer or contract prison officer to remain on duty until that prison officer or contract prison officer has undergone alcohol or drug testing, or both.

31. Recall to duty: drug testing

- (1) When a prison officer or contract prison officer is off-duty but that prison officer or contract prison officer is the subject of credible information, intelligence or suspicion suggesting that drug use by the prison officer or contract prison officer has recently taken place or is taking place, that prison officer or contract prison officer may be recalled to duty by an approved person for the purposes of drug testing.

Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016

Part 4 Recall to, and remaining on, duty

Division 2 Other testing

r. 31

- (2) A selected prison officer cannot be tested under this regulation at their place of residence.

Part 5 — Self reporting

32. Involuntary or accidental alcohol consumption

- (1) When a prison officer or contract prison officer is on duty and is concerned that they have accidentally or involuntarily consumed alcohol, that prison officer or contract prison officer may report that possible consumption to a supervisor or the officer in charge and request a preliminary test.
- (2) If a self-requested preliminary test under this regulation returns a presumptive positive test result for alcohol, that prison officer or contract prison officer will be required to submit a further sample of their breath for analysis by an authorised person in accordance with regulation 17.

33. Involuntary or accidental drug ingestion

- (1) When a prison officer or contract prison officer is on duty and is concerned that they have accidentally or involuntarily ingested or taken a targeted drug, that prison officer or contract prison officer may report that possible ingestion to a supervisor or the officer in charge and request a drug test to determine if that drug (if known) or a drug (if unknown) has been ingested or taken.
- (2) If a self-requested drug test under this regulation returns a presumptive positive test result for drugs, an analysis of the sample will be conducted by a drug analyst to confirm that outcome.

Part 6 — Adverse test results

34. Adverse testing outcome: alcohol

- (1) A selected prison officer returns a positive result to an alcohol test if that prison officer's or contract prison officer's preliminary test returns a presumptive positive test result for alcohol and that prison officer or contract prison officer subsequently returns a confirmed adverse test result for alcohol.
- (2) A selected prison officer is taken to return a presumptive positive test result for alcohol if the selected prison officer gives 2 or more invalid samples for a preliminary test without a written medical explanation for the invalidity of the samples.
- (3) If a selected prison officer is taken to return a presumptive positive test result for alcohol under subregulation (2), an approved person may request that the prison officer or contract prison officer provide a further sample of breath or the approved person may request a medical practitioner, nurse, nurse practitioner or phlebotomist to take a sample of blood or urine, or both, from that prison officer or contract prison officer.
- (4) A request for blood or urine under subregulation (3) must be a written request made by the approved person completing Schedule 1 Form 1 and handing that completed form to the relevant medical practitioner, nurse, nurse practitioner or phlebotomist.
- (5) If a selected prison officer is required to provide a further sample of breath for analysis by breath analysing equipment under subregulation (3), a positive result to that analysis is a confirmed adverse test result for alcohol for the purposes of these regulations.
- (6) A confirmed adverse test result for alcohol is to be recorded by the approved person by completing a form in accordance with regulation 18.

35. Adverse testing outcome: drugs

- (1) A selected prison officer returns a positive result to a drug test if —
 - (a) the preliminary analysis of the prison officer's or contract prison officer's sample returns a presumptive positive test result for drugs and that prison officer or contract prison officer subsequently returns a confirmed adverse test result for drugs; or
 - (b) in the case of a test for testosterone, the preliminary analysis of the prison officer's or contract prison officer's sample returns a presumptive positive test result for drugs and that prison officer or contract prison officer subsequently returns a confirmed adverse test result for drugs indicating that the amount of testosterone present in the prison officer's or contract prison officer's sample is 4 or more times the amount of epitestosterone present in that sample.
- (2) A selected prison officer is taken to return a presumptive positive test result for drugs if the selected prison officer gives 2 or more invalid samples without a written medical explanation for the invalidity of the samples.

36. Independent testing

- (1) A selected prison officer who returns a confirmed adverse test result for alcohol (based on a sample other than breath) or a presumptive positive test result for drugs may request, and is to be given on request, a portion of the sample that gave rise to that result.
- (2) Independent testing is conducted at the expense of the prison officer or contract prison officer.

37. Consequences of an adverse testing outcome: alcohol

- (1) If testing of a selected prison officer returns a confirmed adverse test result for alcohol the chief executive officer may

take one or more of the following actions in relation to that prison officer or contract prison officer —

- (a) refer the prison officer or contract prison officer to the Department's employee welfare unit for review;
 - (b) impose managerial interventions in relation to that prison officer or contract prison officer;
 - (c) initiate removal action against a prison officer under the *Prisons Act 1981* Part X or disciplinary action against a prison officer under the *Public Sector Management Act 1994* Part 5 (where applicable);
 - (d) revoke the permit of a contract prison officer to do high level security work under section 15P of the Act.
- (2) Subregulation (1) does not apply to a positive result to an alcohol test conducted under regulation 29 following a recall to duty, unless it is determined that the conduct of the prison officer or contract prison officer was inappropriate in the circumstances.

38. Consequences of an adverse testing outcome: drugs

- (1) Subject to subregulation (2), if testing of a selected prison officer returns a confirmed adverse test result for drugs the chief executive officer may take one or more of the following actions in relation to that prison officer or contract prison officer —
- (a) refer the prison officer or contract prison officer to the Department's employee welfare unit for review;
 - (b) impose managerial interventions in relation to that prison officer or contract prison officer;
 - (c) initiate removal action against a prison officer under the *Prisons Act 1981* Part X or disciplinary action against a prison officer under the *Public Sector Management Act 1994* Part 5 (where applicable);
 - (d) revoke the permit of a contract prison officer to do high level security work under section 15P of the Act.

- (2) If testing of a prison officer returns a confirmed adverse test result for drugs and the drug found or ingested is —
- (a) a drug set out in the *Misuse of Drugs Act 1981* Schedule I or II; or
 - (b) a Schedule 8 poison or a Schedule 9 poison as those terms are defined in *Medicines and Poisons Act 2014* section 3; or
 - (c) a specified drug within the meaning of the *Misuse of Drugs Act 1981* section 3(1); or
 - (d) a masking agent,

the chief executive officer may accept the resignation of the prison officer, or may take removal action against that prison officer under the *Prisons Act 1981* Part X.

- (3) Subregulation (2) does not apply if the adverse test result for drugs is to —
- (a) a masking agent; or
 - (b) a Schedule 8 poison as defined in the *Medicines and Poisons Act 2014* section 3,

that has been prescribed to that prison officer by a medical practitioner.

[Regulation 38 amended in Gazette 17 Jan 2017 p. 408.]

Part 7 — Other offences

39. Refusal

- (1) A prison officer or contract prison officer must comply with a requirement under these regulations to undertake a test for alcohol consumption.
- (2) A prison officer or contract prison officer must comply with a requirement under these regulations to undertake a drug test.
- (3) A prison officer or contract prison officer must provide a sample of breath for analysis by breath analysing equipment when required to do so under these regulations.
- (4) A prison officer or contract prison officer must provide a sample of blood, urine or oral fluid when required to do so under these regulations.

40. Avoidance

- (1) If a prison officer or contract prison officer is subject to a requirement under these regulations to —
 - (a) undertake a test for alcohol consumption; or
 - (b) undertake a drug test; or
 - (c) provide a sample of breath, blood, urine or oral fluid,then, unless prevented by urgent medical circumstances, that prison officer or contract prison officer must comply with the requirement prior to ceasing duty.
- (2) If a prison officer or contract prison officer is subject to a requirement under these regulations to provide a sample of breath for analysis by breath analysing equipment, that prison officer or contract prison officer must not provide 2 or more invalid samples unless there is a written medical explanation for the invalidity of those samples.

- (3) If a prison officer or contract prison officer is subject to a requirement under these regulations to provide a sample of blood, urine or oral fluid, that prison officer or contract prison officer must not provide 2 or more invalid samples unless there is a written medical explanation for the invalidity of those samples.
- (4) A prison officer or contract prison officer must not unnecessarily delay a testing or sampling process that is required to be undertaken under these regulations following a critical incident.
- (5) A prison officer or contract prison officer must not give an explanation under regulation 24 that they know to be false or misleading in a material particular.

41. Tampering

- (1) A prison officer or contract prison officer must not tamper, or interfere with, a testing process carried out under these regulations.
- (2) A prison officer or contract prison officer must not, without a lawful reason, be in possession of a masking agent immediately before or during a testing process carried out under these regulations.
- (3) A prison officer or contract prison officer must not take a masking agent before a testing process carried out under these regulations.

42. Sanction for offences

- (1) A prison officer who does not comply with a provision of this Part commits a breach of their duty and that breach —
 - (a) may raise a doubt as to a prison officer's suitability to continue as a prison officer under Part X of the Act; or

- (b) may result in disciplinary action against that prison officer under the *Public Sector Management Act 1994* Part 5 (where applicable).
- (2) A contract prison officer with a permit to do high-level security work issued under section 15P of the Act who does not comply with a provision of this Part may have their permit revoked by the chief executive officer under section 15U of the Act.

Schedule 1 — Forms

[r. 19, 20, 21, 23 and 34]

Form 1

WESTERN AUSTRALIA

Prisons Act 1981

Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016

Request to take sample of oral fluid, urine or blood

To
[Name of medical practitioner, nurse, nurse practitioner, phlebotomist]

at
.....
.....
[Name of hospital/medical centre/place]

Under the *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016*, I request you, a

.....
[Insert description, e.g. medical practitioner, nurse, nurse practitioner, phlebotomist]

to take —

- (a) an oral fluid sample;
- (b) a urine sample;
- (c) a blood sample;

[delete as applicable]

from —

.....
.....
[Name of selected prison officer]

in accordance with the regulations and any standards or collection protocols approved under those regulations.

.....
[Place where request is made]

.....
[Date of request]

.....
[Signature]

Form 2

WESTERN AUSTRALIA

Prisons Act 1981

Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016

Collection of sample of oral fluid, urine or blood

Under the *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016*, I, a qualified

.....
[Insert description, e.g. medical practitioner, nurse, nurse practitioner, phlebotomist, approved sample collector]

took —

- (a) an oral fluid sample;
- (b) a urine sample;
- (c) a blood sample;

[delete as applicable]

from

.....
[Name and number of selected prison officer]

at

.....
[Place where sample was taken]

in accordance with the regulations and the standards and collection protocols approved under those regulations.

The sample was taken at
[Insert time, day, month and year]

The sample, or a portion of that sample, is contained and sealed in the sample container(s) numbered
[Number on sample container(s)]

The equipment used for the purpose of collecting the sample of oral fluid/urine/blood [delete as applicable] was contained in a packaged serially numbered handed to me by
[Number on equipment kit] [Name of person handing over the package]

and that package was sealed and intact prior to being opened by me.

In collecting the sample of oral fluid/urine/blood [delete as applicable] I complied with the directions contained within the sealed sample collection package provided.

.....
[Signature and qualification]

Witnessed by
[Approved person's signature]

Notes

¹ This is a compilation of the *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016*. ~~The and includes the amendments made by the other written laws referred to in the~~ following table ~~contains information about those regulations.~~^{1a}

Compilation table

Citation	Gazettal	Commencement
<i>Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016</i>	18 Mar 2016 p. 763-97	r. 1 and 2: 18 Mar 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Mar 2016 (see r. 2(b))
<i>Corrective Services Regulations Amendment (Poisons) Regulations 2016 Pt. 2</i>	17 Jan 2017 p. 407-9	30 Jan 2017 (see r. 2(b) and <i>Gazette</i> 17 Jan 2017 p. 403)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

<u>Citation</u>	<u>Gazettal</u>	<u>Commencement</u>
<u><i>Corrective Services Regulations Amendment Regulations 2018 Pt. 2</i></u> ²	<u>13 Nov 2018</u> <u>p. 4434</u>	<u>1 Dec 2018 (see r. 2(b))</u>

² On the date as at which this compilation was prepared, the *Corrective Services Regulations Amendment Regulations 2018 Pt. 2* had not come into operation. It reads as follows:

Part 2 — Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016 amended

3. Regulations amended

This Part amends the *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016*.

4. Regulation 3 amended

(1) In regulation 3 delete the definitions of:

nurse

nurse practitioner

(2) In regulation 3 insert in alphabetical order:

nurse means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession;

nurse practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession whose registration under that Law is endorsed as nurse practitioner;