



Western Australia

Road Traffic (Drug Driving) Regulations 2007

Compare between:

[07 Oct 2017, 01-b0-00] and [15 Dec 2018, 01-c0-02]

Road Traffic (Drug Driving) Regulations 2007

1. Citation

These regulations are the *Road Traffic (Drug Driving) Regulations 2007*¹.

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 that the *Road Traffic Amendment (Drugs) Act 2007* Part 2 comes into operation¹.

3. Prescribed illicit drugs (s. 65)

For the purposes of section 65 of the Act, each of the following drugs is declared to be a “prescribed illicit drug” —

- (a) tetrahydrocannabinol;
- (b) methylamphetamine;
- (c) 3, 4-methylenedioxy-n, alpha-dimethylphenylethylamine (MDMA).

[Regulation 3 amended ~~in~~ [in](#) *Gazette* 25 Jan 2008 p. 217.]

4. Conducting a driver assessment (s. 66A(7))

For the purposes of section 66A(7) of the Act, the procedure that a police officer is to follow when assessing drug

impairment as a part of a driver assessment is to be based on observations of aspects of the driver's behaviour, demeanour and condition, which can include whether —

- (a) there is any apparent injury to the driver;
- (b) there are any unusual or indicative skin responses;
- (c) there is a smell of alcohol;
- (d) the driver's —
 - (i) speech; or
 - (ii) action; or
 - (iii) movement; or
 - (iv) balance,appears affected;
- (e) the appearance of the driver's eyes indicates drug ingestion (*dilated, constricted, bloodshot, etc.*);
- (f) the driver's rate or manner of breathing appears affected by drugs;
- (g) the driver's attitude or the appearance of the driver's clothing appears to indicate drug ingestion;
- (h) the driver's general comprehension appears affected by drugs.

[Regulation 4 amended ~~in~~ Gazette 23 Dec 2014 p. 4930;
6 Mar 2015 p. 818.]

5. Conducting a preliminary oral fluid test (s. 66C(7))

The following steps are to be followed by a police officer when conducting a preliminary oral fluid test —

- (a) check the packaging of the testing device is not damaged and that any expiry date has not passed;
- (b) check the device for damage and discard it if any damage is apparent;
- (c) ensure the device is ready for collecting oral fluid;
- (d) ensure that the device is wiped on the person's tongue;

- (e) check that sufficient oral fluid has been collected;
- (f) check if the device indicates the presence of a prescribed illicit drug.

[Regulation 5 amended-~~in~~: Gazette 23 Dec 2014 p. 4930.]

6. Collecting and testing oral fluid (s. 66D(4))

The steps to be taken by an authorised drug tester when collecting and testing oral fluid under section 66D of the Act are set out in Schedule 2.

[Regulation 6 inserted-~~in~~: Gazette 11 Jul 2014 p. 2440; amended-~~in~~: Gazette 6 Mar 2015 p. 818.]

7. Prescribed particulars of sample delivery to drugs analyst

For the purposes of section 70B(1) of the Act, the prescribed particulars of a sample delivered to a drugs analyst are the following —

- (a) the serial number or barcode number of the sample;
- (b) the name of the person from whom the sample was taken;
- (c) the name and qualifications of the authorised drug tester;
- (d) the name and signature of the police officer who required the sample to be taken;
- (e) the date and time the sample was collected;
- (f) the names and signatures of the persons who delivered the sample to the drugs analyst.

[Regulation 7 inserted-~~in~~: Gazette 7 Feb 2017 p. 1174-5.]

8. Manufacturer's instructions (s. 72(1a))

- (1) A police officer may have regard to any manufacturer's instructions in an approved device's packaging if the prescribed steps in regulation 5 do not appear to fully describe the steps required for that particular testing device.

- (2) An authorised drug tester may have regard to any manufacturer's instructions in an approved device's packaging if the prescribed steps in Schedule 2 do not appear to fully describe the steps required for that particular collection, testing or analysis device.

[Regulation 8 amended ~~in~~ Gazette 11 Jul 2014 p. 2440; 23 Dec 2014 p. 4930; 6 Mar 2015 p. 818.]

9. Blood sampling from incapable person (s. 66B(1))

The Road Traffic (Blood Sampling and Analysis) Regulations 1975 Schedule Form D is prescribed for the purposes of section 66B(1) of the Act (where a sample of a person's blood is required to be taken for the purposes of the Act, and that person is incapable of submitting himself or herself and allowing a sample to be taken).

10. Other prescribed certificates and forms (s. 70)

- (1) Schedule 1 Form 1 is prescribed for the purposes of section 70(3b)(f) of the Act as the form to be used by a drugs analyst certifying either or both of the following —
- (a) that an identified sample of blood, urine or oral fluid taken from or provided by a named person was analysed for drugs;
 - (b) the analysis result obtained from the analysis.
- (2) Schedule 1 Form 2 is prescribed for the purposes of section 70(3b)(g) of the Act as the form to be used by an approved expert describing conduct, a condition or an appearance associated with a person who has consumed or used a specified drug or drugs.
- (3) Schedule 1 Form 3 is prescribed for the purposes of section 70(3b)(h) of the Act as the form to be used by an approved expert setting out the usual effect that conduct or a condition associated with a person who has consumed or used a

particular drug or particular drugs has on a person's capacity to have proper control of a motor vehicle.

- (4) Schedule 1 Form 4 is prescribed for the purposes of section 70(3b)(i) and (j) of the Act as the form to be used by a police officer —
- (a) describing the conduct, condition or appearance of a person at or after the time the person drove or attempted to drive a motor vehicle; and
 - (b) certifying that a driver assessment was conducted on a person and was conducted in accordance with the regulations.
- (5) Schedule 1 Form 5 is prescribed for the purposes of section 70(3b)(k) of the Act as the form to be used by an authorised drug tester to certify that, under section 66D of the Act, an identified sample of oral fluid was collected by the authorised drug tester in accordance with the regulations from a named person on a date and at a time specified in the certificate using identified sampling equipment which was received in a described condition from an identified person.
- (6) Schedule 1 Form 6 is prescribed for the purposes of section 70(3d) of the Act as the form to be signed by the Commissioner of Police to certify that a person therein named is, or was at the material time, an authorised drug tester.

[Regulation 10 amended ~~in~~ Gazette 23 Dec 2014 p. 4930; 6 Mar 2015 p. 818.]

11. Fees for analysis

(1) The fee for ~~an~~the analysis of an oral fluid sample by a drugs analyst at the Chemistry Centre (WA) is —

~~(a) where the analysis is for only one prescribed illicit drug — \$200; and~~

~~(b) where the analysis is for more than one prescribed illicit drug — \$315~~\$185.

(2) The fee payable under this regulation must be paid by the Commissioner of Police.

(3) If a person is convicted of an offence under section 64AB or 64AC of the Act and the Commissioner of Police has paid a fee under subregulation (2) for the purposes of section 66D of the Act, the court convicting the person must order the person to repay the Commissioner of Police the amount of the fee and that amount may be recovered by the Commissioner of Police as if it were a penalty imposed under the Act.

*[Regulation 11 inserted ~~in~~; Gazette 29 Dec 2015 p. 5182;
amended: Gazette 14 Dec 2018 p. 4807.]*

Schedule 1 — Forms

Form 1

(r. 10(1))

WESTERN AUSTRALIA
ROAD TRAFFIC ACT 1974

Road Traffic (Drug Driving) Regulations 2007 r. 10(1)
Road Traffic (Blood Sampling and Analysis) Regulations 1975 r. 10(2)
Road Traffic (Urine Sampling and Analysis) Regulations 1983 r. 11(2)

CERTIFICATE OF DRUGS ANALYST

Laboratory reference no.

Police reference no.

I,, being a drugs analyst within
the meaning of the Road Traffic Act 1974 Part V Division 2, certify that —

- (a) The Chemistry Centre (WA), Perth obtained*/received* for
analysis the following quantity*/mass*
of
marked
from*/by*
on;
and
(b) The thing referred to in paragraph (a) of this certificate was
analysed by [insert details of method of analysis]
.....
.....;
and
(c) The following is the result of the analysis:
.....
.....;
and

Form 2

(d) The following other matters relating to the analysis should be noted:

.....
.....

Certified on at

.....
Address of drugs analyst Signature of drugs analyst

* Please delete inapplicable alternative.

[Form 1 amended ~~in~~: Gazette 9 Oct 2009 p. 3998-9; 6 Mar 2015 p. 818.]

Form 2

(r. 10(2))

WESTERN AUSTRALIA
ROAD TRAFFIC ACT 1974

Road Traffic (Drug Driving) Regulations 2007

CERTIFICATE OF APPROVED EXPERT

Appearance and conduct following use of specified drugs

I,, being an approved expert for the purposes of the *Road Traffic Act 1974* section 70(7), certify that the following conduct, condition or appearance is associated with a person who has consumed or used the drug or drugs specified —

.....
.....
.....
.....
.....
.....

Certified on at

.....
Address of expert Signature of expert

Form 3

(r. 10(3))

WESTERN AUSTRALIA
ROAD TRAFFIC ACT 1974
Road Traffic (Drug Driving) Regulations 2007
CERTIFICATE OF APPROVED EXPERT
Usual effect of particular drugs on motor vehicle control

I,, being an approved expert for the purposes of the *Road Traffic Act 1974* section 70(7), certify that the usual effect that conduct or a condition associated with a person who has consumed or used a particular drug or particular drugs has on a person's capacity to have proper control of a motor vehicle is as follows —

.....
.....
.....
.....
.....
.....
.....

Certified on at

.....
Address of expert

.....
Signature of expert

Form 4

Form 4

(r. 10(4))

WESTERN AUSTRALIA
 ROAD TRAFFIC ACT 1974
Road Traffic (Drug Driving) Regulations 2007
Assessment of driver's conduct, condition and appearance

| | | | | | | | | | |
|--|-----|------|---------|-----|--------|-----------------------|---------------|--------------|----|
| Driver | | | | | | | | | |
| Family Name | | | | | | | | | |
| Given Names | | | | | DOB | | Sex | | |
| Address | | | | | | | Postcode | | |
| Licence | | | | | | | | | |
| Number | | | Expiry | | Class | | State | | |
| Vehicle | | | | | | | | | |
| Registration | | | Expiry | | State | | | | |
| Make | | | Type | | Year | | | | |
| Detection | | | | | | | | | |
| Time | | Date | | Day | | Crash (<i>tick</i>) | | Yes | No |
| Street Name | | | | | | | | | |
| Cross Street | | | | | Suburb | | | | |
| Observations of Vehicle in Motion | | | | | | | | | |
| <i>(if insufficient space attach additional sheet)</i> | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| Observations of Vehicle Stopping Sequence | | | | | | | | | |
| <i>(if insufficient space attach additional sheet)</i> | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| Preliminary Breath Test (<i>tick box</i>) | | | | | | | | | |
| Conducted | Yes | No | Alcohol | Yes | No | Level | Under .05% | Over .05% | |

| Observations of Driver (tick box(s) or note other – use separate sheet if required. Record interview of driver on separate sheet) | | | | | | |
|---|--|----|---------------------------------------|--|-----------------|----|
| Injury | Yes | No | If yes, was medical treatment sought? | | Yes | No |
| Smell of Alcohol | None | | Slight | | Strong | |
| | Other | | | | | |
| Speech | Clear | | Fast | | Slow | |
| | Slurred | | Confused | | Incoherent | |
| | Other | | | | | |
| Eyes | Watery | | Glazed | | Bloodshot | |
| | Eyelids drooping | | Pupils Enlarged | | Pupils pinpoint | |
| | Other | | | | | |
| Breathing | Normal | | Rapid | | Slow | |
| | Shallow | | Short | | Jerky | |
| | Other | | | | | |
| Skin | Flushed | | Pale | | Perspiration | |
| | Needle marks | | Abscesses | | Ulcers | |
| | Other | | | | | |
| Actions | Swearing | | Violent | | Restless | |
| | Hiccupping | | Belching | | Vomiting | |
| | Drooling | | Runny nose | | Scratching | |
| | Emotional | | Other | | | |
| Movement | Support required | | Sluggish | | Tremor | |
| | Jerky | | Clumsy | | Deliberate | |
| | Other | | | | | |
| Overactivity | Note details of any observed overactivity (use separate sheet if required) | | | | | |
| Balance | Good | | Swaying | | Unsteady | |
| | Staggering | | Sagging | | Falling | |
| | Other | | | | | |
| Clothing | Orderly | | Disarranged | | Soiled | |
| | Other | | | | | |

Road Traffic (Drug Driving) Regulations 2007
Schedule 1 Forms

Form 4

| | | | | | | |
|---|-------------|--|---------------|---------|--------------|--|
| Attitude | Cooperative | | Hostile | | Excited | |
| | Relaxed | | Indifferent | | Anxious | |
| | Talkative | | Dreamy | | Irritable | |
| | Cocky | | Subdued | | Antagonistic | |
| | Depressed | | Hallucinating | | | |
| | Other | | | | | |
| Comprehension | Good | | Poor | | None | |
| | Other | | | | | |
| <p>Q. Is there any mechanical defect with your vehicle? Yes/No <i>(Describe)</i></p> | | | | | | |
| <p>Q. Are you suffering from any illness such as Diabetes, Epilepsy? Yes/No <i>(State)</i></p> | | | | | | |
| <p>Q. Are you currently taking any medication or drugs? Yes/No <i>(Type, quantity, time and date taken)</i></p> | | | | | | |
| Apprehending Officer | | | | | | |
| I certify that this driver assessment was conducted on the driver and was conducted in accordance with the regulations | | | | | | |
| Signature | | | | Date | | |
| Name | | | | Rank | | |
| Number | | | | Station | | |

Form 5

(r. 10(5))

WESTERN AUSTRALIA
ROAD TRAFFIC ACT 1974

Road Traffic (Drug Driving) Regulations 2007

I,,
an authorised drug tester for the purposes of the *Road Traffic Act 1974*
section 65, certify that —

1.
(name)
provided a sample of oral fluid collected in accordance with the
regulations for analysis
on
(date)
at
(time)
2. The sample provided is marked
3. I was at the material time an authorised drug tester.
4. The sample of oral fluid was collected using an approved device
.....
(name of device used)
operated by me in accordance with the regulations.
5. The approved device indicated a result in the prescribed manner at the
conclusion of the analysis.
6. The analysis result obtained from the analysis referred to in this
certificate was that the following prescribed illicit drugs were
detected —
yes/no tetrahydrocannabinol;
yes/no methylamphetamine;
yes/no 3, 4-methylenedioxy-n, alpha-
dimethylphenylethylamine (MDMA).

.....
(Authorised drug tester)

[Form 5 amended ~~in~~ Gazette 25 Jan 2008 p. 217.]

Form 6

Form 6

(r. 10(6))

WESTERN AUSTRALIA
ROAD TRAFFIC ACT 1974
Road Traffic (Drug Driving) Regulations 2007

I,, Commissioner of Police,
certify that
of
* is an authorised drugs tester.
* was as at an authorised drugs tester.

.....
Commissioner of Police

**Delete whichever does not apply.*

Schedule 2 — Collecting and testing oral fluid

[r. 6]

[Heading inserted-~~in~~: Gazette 11 Jul 2014 p. 2440.]

Division 1 — Securetec Drugwipe II Twin Combo

[Heading inserted-~~in~~: Gazette 6 Oct 2017 p. 5185.]

1. Preparing to collect oral fluid

The following steps are to be taken when preparing to collect oral fluid for testing using a Securetec Drugwipe II Twin Combo —

- (a) check the packaging of the equipment is not damaged and that any expiry date has not passed;
- (b) open the packaged equipment;
- (c) check that each item of the device is present and that none of the items shows any apparent damage.

[Clause 1 inserted-~~in~~: Gazette 11 Jul 2014 p. 2440; amended-~~in~~: Gazette 6 Oct 2017 p. 5185.]

2. Collecting oral fluid

The following steps are to be taken when collecting oral fluid for testing using a Securetec Drugwipe II Twin Combo —

- (a) give the saliva collector to the suspect;
- (b) require the suspect to wipe both sides of the saliva collector on the suspect's tongue;
- (c) require the suspect to place the saliva collector under the suspect's tongue and to close the suspect's mouth;
- (d) remove the saliva collector from the suspect's mouth when the saliva collector's indicator window turns blue.

[Clause 2 inserted-~~in~~: Gazette 6 Oct 2017 p. 5185-6.]

3. Setting up for oral fluid test

The following steps are to be taken when setting up for testing oral fluid using a Securetec Drugwipe II Twin Combo —

- (a) check the viewing windows of the testing device to ensure no control lines are present;
- (b) remove the cover from the testing device.

[Clause 3 inserted ~~in~~; Gazette 6 Oct 2017 p. 5186.]

4. Conducting oral fluid test

The following steps are to be taken when testing oral fluid using a Securetec Drugwipe II Twin Combo —

- (a) dab the saliva collector on the pads of the testing device;
- (b) replace the cover on the testing device;
- (c) hold the testing device in a vertical position with the ampoule at the lower end;
- (d) press on the testing device at the appropriate place indicated on the device until the ampoule breaks;
- (e) continue to hold the testing device in a vertical position for a further 10 seconds;
- (f) place the testing device on a horizontal surface and leave it undisturbed for 8 minutes;
- (g) observe the results of the test.

[Clause 4 inserted ~~in~~; Gazette 6 Oct 2017 p. 5186.]

Division 2 — Dräger DrugTest 5000 Analyzer

[Heading inserted ~~in~~; Gazette 11 Jul 2014 p. 2441.]

5. Preparing to collect oral fluid

The following steps are to be taken when preparing to collect oral fluid for testing using a Dräger DrugTest 5000 Analyzer —

- (a) check that the packaging of any equipment is not damaged and that any expiry date has not passed;
- (b) open any packaged equipment;
- (c) check that each item of the equipment is present and that none of the items shows any apparent damage;
- (d) remove the safety cap and buffer cartridge from the saliva test kit collector but do not dispose of them;

- (e) remove, but do not discard, the lid from the storage tube holding the drug collection head;
- (f) push the drug collection head held by the storage tube onto the saliva test kit collector until the gap between the sampler and the blue socket of the collector has narrowed to between 3 mm and 5 mm;
- (g) remove the storage tube but do not discard it.

[Clause 5 inserted-in: Gazette 11 Jul 2014 p. 2441.]

6. Collecting oral fluid

The following steps are to be taken when collecting oral fluid for testing using a Dräger DrugTest 5000 Analyzer —

- (a) give the saliva test kit collector (with the attached drug collection head) to the suspect;
- (b) require the suspect to place (or replace) the collector inside the suspect's mouth and move it carefully from one side to the other for 10 to 15 seconds;
- (c) require the suspect to place (or replace) the collector under the suspect's tongue until the sample volume indicator shows blue;
- (d) require the suspect to ensure that the drug collection head remains on the saliva test kit collector at all times during the procedures referred to in paragraphs (b) and (c);
- (e) end the sample collection when the sample volume indicator shows blue.

[Clause 6 inserted-in: Gazette 11 Jul 2014 p. 2442; amended-in: Gazette 6 Mar 2015 p. 818.]

7. Setting up for oral fluid test

The following steps are to be taken when setting up for testing oral fluid using a Dräger DrugTest 5000 Analyzer —

- (a) remove the drug collection head from the saliva test kit collector and place the head in the vial insert in the storage tube;

- (b) open the vial containing isopropanol included in the equipment and pour the isopropanol into the vial insert containing the drug collection head;
- (c) replace the lid on the storage tube holding the vial insert.

[Clause 7 inserted-~~in~~: Gazette 11 Jul 2014 p. 2442.]

8. Conducting oral fluid test

The following steps are to be taken when testing oral fluid using a Dräger DrugTest 5000 Analyzer —

- (a) do the following within 10 minutes after obtaining the sample —
 - (i) open the door of the Analyzer, ensuring the screen displays “Ready for Measurement”;
 - (ii) insert the saliva test kit collector into the lower compartment and buffer cartridge into the upper Analyzer compartment;
 - (iii) close the Analyzer door and follow the instructions on the screen;
- (b) do the following as soon as practicable after following the steps prescribed in paragraph (a) —
 - (i) move the oral fluid sample from the drug collection head to the bottom of the storage tube either by shaking for approximately 30 seconds or by using a centrifuge;
 - (ii) use a pipette to transfer the oral fluid sample and isopropanol in the storage tube into 2 empty vials for the purposes of section 69B of the Act;
 - (iii) observe the results of the test.

[Clause 8 inserted-~~in~~: Gazette 11 Jul 2014 p. 2442-3; amended-~~in~~: Gazette 6 Mar 2015 p. 818-19.]

Notes

- ¹ This is a compilation of the *Road Traffic (Drug Driving) Regulations 2007* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|--|----------------------------|---|
| <i>Road Traffic (Drug Driving) Regulations 2007</i> | 11 Oct 2007 p. 5483-500 | r. 1 and 2: 11 Oct 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 12 Oct 2007 (see r. 2(b) and <i>Gazette</i> 11 Oct 2007 p. 5475) |
| <i>Road Traffic (Drug Driving) Amendment Regulations 2008</i> | 25 Jan 2008 p. 216-17 | r. 1 and 2: 25 Jan 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 26 Jan 2008 (see r. 2(b)) |
| <i>Road Traffic (Drug Driving) Amendment Regulations 2009</i> | 9 Oct 2009 p. 3998-9 | r. 1 and 2: 9 Oct 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Oct 2009 (see r. 2(b)) |
| <i>Road Traffic (Drug Driving) Amendment Regulations 2014</i> | 11 Jul 2014 p. 2439-43 | r. 1 and 2: 11 Jul 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 12 Jul 2014 (see r. 2(b)) |
| <i>Road Traffic (Repeals and Amendment) Regulations 2014 Pt. 5</i> | 23 Dec 2014 p. 4913-38 | 27 Apr 2015 (see r. 2(b) and <i>Gazette</i> 17 Apr 2015 p. 1371) |
| <i>Road Traffic (Drug Driving) Amendment Regulations 2015</i> | 6 Mar 2015 p. 817-19 | r. 1 and 2: 6 Mar 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Mar 2015 (see r. 2(b)) |
| <i>Road Traffic (Drug Driving) Amendment Regulations (No. 2) 2015</i> | 29 Dec 2015 p. 5182 | r. 1 and 2: 29 Dec 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Dec 2015 (see r. 2(b)) |
| <i>Road Traffic Regulations Amendment Regulations 2017 Pt. 3</i> | 7 Feb 2017 p. 1171-7 | 10 Mar 2017 (see r. 2(b) and <i>Gazette</i> 7 Feb 2017 p. 1158-9) |
| Reprint 1: The Road Traffic (Drug Driving) Regulations 2007 as at 10 Mar 2017 (includes amendments listed above) | | |

Road Traffic (Drug Driving) Regulations 2007

| Citation | Gazettal | Commencement |
|--|--|--|
| <i>Road Traffic (Drug Driving) Amendment Regulations 2017</i> | 6 Oct 2017 p. 5185-6 | r. 1 and 2: 6 Oct 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Oct 2017 (see r. 2(b)) |
| <u><i>Road Traffic (Drug Driving) Amendment Regulations 2018</i></u> | <u>14 Dec 2018</u> <u>p. 4807</u> | <u>r. 1 and 2: 14 Dec 2018</u> <u>(see r. 2(a));</u> <u>Regulations other than r. 1 and 2:</u> <u>15 Dec 2018 (see r. 2(b))</u> |