



Western Australia

Road Traffic Act 1974

Road Traffic (Drug Driving) Regulations 2007

Road Traffic (Drug Driving) Regulations 2007

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Road Traffic (Drug Driving) Regulations 2007

1. Citation

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

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 operation.

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 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. Deleted in Gazette 11 Jul 2014 p. 2440.]

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 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.
- (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.]

cl. 1

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

- (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.]*

cl. 1

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

cl. 1

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.)						
<i>Record interview of driver on separate sheet</i>						
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	
	Hiccapping		Belching		Vomiting	
	Drooling		Runny nose		Scratching	
	Emotional		Other			
Movement	Support required		Sluggish		Tremor	
	Jerky		Clumsy		Deliberate	
	Other					
Overactivity	Note details of any observed overactivity (<i>use separate sheet if required</i>)					
Balance	Good		Swaying		Unsteady	
	Staggering		Sagging		Falling	
	Other					
Clothing	Orderly		Disarranged		Soiled	
	Other					

Road Traffic (Drug Driving) Regulations 2007

Schedule 1 Forms

cl. 1

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 (Describe)</p>						
<p>Q. Are you suffering from any illness such as Diabetes, Epilepsy? Yes/No (State)</p>						
<p>Q. Are you currently taking any medication or drugs? Yes/No (Type, quantity, time and date taken)</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.]

cl. 1

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 — Cozart Drug Detection System

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

1. Preparing to collect oral fluid

The following steps are to be taken when preparing to collect oral fluid for testing using a Cozart Drug Detection System —

- (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.]

2. Collecting oral fluid

The following steps are to be taken when collecting oral fluid for testing using a Cozart Drug Detection System —

- (a) require the suspect —
 - (i) to swab around the suspect's gums, tongue and inside cheek; and
 - (ii) to retain the swab in the suspect's mouth until any indicator of sample adequacy shows that a sufficient sample has been collected;
- (b) remove the cap of the collection tube provided as a part of the testing device and place the collector swab in that tube, swab end first, then replace the cap;
- (c) mix the sampled oral fluid with the solution in the collector tube either by shaking for approximately 30 seconds or by using a vortex mixer.

[Clause 2 inserted in Gazette 11 Jul 2014 p. 2440-1; amended in Gazette 6 Mar 2015 p. 818.]

3. Setting up for oral fluid test

The following steps are to be taken when setting up for testing oral fluid using a Cozart Drug Detection System —

- (a) ensure the device is switched on;
- (b) check the date and time and conduct a system test;
- (c) carry out a quality control test.

[Clause 3 inserted in Gazette 11 Jul 2014 p. 2441.]

4. Conducting oral fluid test

The following steps are to be taken when testing oral fluid using a Cozart Drug Detection System —

- (a) remove the test cartridge from the package and place it on a flat horizontal surface;
- (b) remove the cap from the collector tube and, using a pipette, remove a sample of the fluid from the collection tube;
- (c) apply at least 6 drops of fluid into the sample well of the test cartridge and wait for the coloured fluid to appear on the test cartridge;
- (d) when prompted by the device, insert the test cartridge and wait for the progress indicator to show that the test cycle is complete;
- (e) observe the result of the test.

[Clause 4 inserted in Gazette 11 Jul 2014 p. 2441.]

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.

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 (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 (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 (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))