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ROAD TRAFFIC ACT 1974

ROAD TRAFFIC (DRUG DRIVING) REGULATIONS 2007

Western Australia

Road Traffic (Drug Driving) Regulations 2007

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Road Traffic Act 1974

Road Traffic (Drug Driving) Regulations 2007

Made by the Governor in Executive Council.

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-dimethylphenylamine (MDMA).

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

For the purposes of section 66A(7), the procedure that a member of the Police Force 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.

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

The following steps are to be followed by a member of the Police Force 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;

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- (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.

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

- (1) The following steps are to be followed by an authorised drug tester when preparing to collect oral fluid for testing under section 66D —
 - (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;
 - (d) require the suspect to submit a sample of oral fluid for testing.
- (2) The following steps are to be followed by an authorised drug tester when collecting oral fluid for testing under section 66D —
 - (a) the authorised drug tester is to 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) the authorised drug tester is to 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) the authorised drug tester is to mix the sampled oral fluid with the solution in the collector tube by moving

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the collector in a figure 8 motion on a flat horizontal surface for at least 30 seconds.

7. Conducting an oral fluid test (s. 66D(4))

- (1) The following steps are to be followed by an authorised drug tester when setting up for testing oral fluid collected under section 66D —
 - (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;
 - (d) confirm/select the drug cartridge type;
 - (e) select the applied setting;
 - (f) confirm the drug selection.
- (2) The following steps are to be followed by an authorised drug tester when testing oral fluid collected under section 66D —
 - (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.

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

- (1) A member of the Police Force may have regard to any manufacturers instructions in an approved device's packaging if

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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 manufacturers instructions in an approved device's packaging if the prescribed steps in regulations 6 and 7 do not appear to fully describe the steps required for that particular collection, testing or analysis device.

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

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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 member of the Police Force —
 - (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, 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.

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Forms **Schedule 1**

Schedule 1 — Forms

Form 1

(r. 10(1))

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Road Traffic (Blood Sampling and Analysis) Regulations 1975

Road Traffic (Urine Sampling and Analysis) Regulations 1983

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) I obtained*/received* for analysis the following quantity*/mass* of
marked
from*/by*
on;
and
- (b) I analysed the thing referred to in paragraph (a) of this certificate by [*insert details of method of analysis*] with the following result
.....
.....;
and
- (c) the following other matters relating to my analysis should be noted
.....
.....

Certified on at

.....
Address of drugs analyst

.....
Signature of drugs analyst

* Please delete inapplicable alternative.

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Schedule 1 Forms

Form 2

(r. 10(2))

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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

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Forms **Schedule 1**

Form 3

(r. 10(3))

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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

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Schedule 1 Forms

Form 4

(r. 10(4))

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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%

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Forms **Schedule 1**

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	
	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 (use separate sheet if required)					
Balance	Good		Swaying		Unsteady	
	Staggering		Sagging		Falling	
	Other					
Clothing	Orderly		Disarranged		Soiled	
	Other					

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Schedule 1 Forms

Attitude	Cooperative		Hostile		Excited	
	Relaxed		Indifferent		Anxious	
	Talkative		Dreamy		Irritable	
	Cocky		Subdued		Antagonistic	
	Depressed		Hallucinating			
	Other					
Comprehension	Good		Poor		None	
	Other					
Q. Is there any mechanical defect with your vehicle? Yes/No <i>(Describe)</i>						
Q. Are you suffering from any illness such as Diabetes, Epilepsy? Yes/No <i>(State)</i>						
Q. Are you currently taking any medication or drugs? Yes/No <i>(Type, quantity, time and date taken)</i>						
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		

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Schedule 1 Forms

Form 6

(r. 10(6))

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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.*

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.