



Western Australia

Western Australian Marine Act 1982

**Western Australian Marine (Alcohol and Drug
Testing) Regulations 2024**

Western Australian Marine (Alcohol and Drug Testing) Regulations 2024

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Western Australian Marine (Alcohol and Drug Testing) Regulations 2024

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Western Australian Marine (Alcohol and Drug Testing) Regulations 2024*.

2. Commencement

These regulations come into operation on 2 May 2024.

3. Term used: section

In these regulations —
section means section of the Act.

4. Prescribed sample taker

For the purposes of paragraph (c) of the definition of *prescribed sample taker* in section 75E(1), the following persons are prescribed —

- (a) pathology collector;
- (b) phlebotomist.

Part 2 — Testing for alcohol

5. Operation of Dräger Alcotest 9510 breath analysing equipment

For the purpose of conducting a breath analysis using the apparatus known as the “Dräger Alcotest 9510”, the breath analysing equipment must be operated in accordance with the instructions set out in the *Road Traffic (Breath Analysis) Regulations 1975* Schedule 2.

6. Indication of result of breath analysis

For the purposes of section 75EM(3), the manner of indicating the result of an analysis by breath analysing equipment is the printing of a statement by the equipment.

Part 3 — Testing for drugs

7. Conduct of preliminary oral fluid test

- (1) For the purposes of section 75F(2), the procedure for conducting a preliminary oral fluid test is the procedure set out in the *Road Traffic (Drug Driving) Regulations 2007* regulation 5.
- (2) If the procedure referred to in subregulation (1) does not appear to fully describe the steps required for a preliminary oral fluid testing device, an inspector or police officer may have regard to any manufacturer's instructions in the device's packaging.

8. Collection and testing of oral fluid

- (1) For the purposes of section 75FC(3)(a) and (b), the steps to be taken by an authorised drug tester when collecting a sample of oral fluid for drug testing and conducting the drug testing are the steps set out in the *Road Traffic (Drug Driving) Regulations 2007* Schedule 2.
- (2) If the procedure referred to in subregulation (1) does not appear to fully describe the steps required for a drug testing device, an inspector or police officer may have regard to any manufacturer's instructions in the device's packaging.

9. Assessments of drug impairment

For the purposes of section 75FH(4), the procedure is to base an assessment of a person's drug impairment on observations of aspects of the person's behaviour, demeanour and condition, which can include whether —

- (a) there is any apparent injury to the person; or
- (b) there are any unusual or indicative skin responses; or
- (c) there is a smell of alcohol; or
- (d) the person's speech, action, movement or balance appears affected; or

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- (e) the appearance of the person's eyes indicates drug ingestion (for example, dilated, constricted or bloodshot); or
- (f) the person's rate or manner of breathing appears affected by drugs; or
- (g) the person's attitude or the appearance of the person's clothing appears to indicate drug ingestion; or
- (h) the person's general comprehension appears affected by drugs.

Part 4 — Blood samples

Division 1 — Taking blood samples for analysis

10. Term used: sampling equipment

In this Division —

sampling equipment means equipment that —

- (a) is provided for the purpose of taking a sample of blood under the *Road Traffic Act 1974* section 69(1a) by a body referred to in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 4; and
- (b) comprises the items set out in regulation 5 of those regulations.

11. Application of Division

- (1) This Division applies for the purposes of section 75IE(2)(a) if, instead of a sample of a person's blood being taken and divided into 2 parts, 2 samples of the person's blood are taken 1 immediately after the other in accordance with section 75IE(2)(b)(ii).
- (2) This Division does not apply to a sample of blood taken in a proper manner other than in accordance with these regulations as referred to in section 75IE(2)(a).

12. Sampling equipment

A blood sample must be taken by means of sampling equipment.

13. Preparation of sampling equipment

- (1) In this regulation —
approved body has the meaning given in section 124HQ(1);

technologist has the meaning given in section 124HQ(1).

- (2) The sampling equipment must be prepared by a technologist of an approved body.
- (3) The technologist must —
 - (a) complete and sign a certificate in the form approved by the chief executive officer; and
 - (b) seal the equipment in a serially numbered package by signing the technologist's name over the sealed portion or flap of the package.

14. Method of sampling

- (1) A blood sample must be taken by the prescribed sample taker by venepuncture, with the vacutainer kit provided in the sampling equipment and no other.
- (2) The prescribed sample taker must —
 - (a) examine the package containing the sampling equipment produced to the prescribed sample taker, and in the presence of the person producing it, ensure that —
 - (i) the package is sealed and intact; and
 - (ii) the indicated expiry date for the use of the equipment has not passed;and
 - (b) not use any sampling equipment contained in a package that is not sealed and intact or in respect of which the indicated expiry date has passed; and
 - (c) cleanse the proposed site of the venepuncture by means of a sterile, non-alcoholic antiseptic cleansing skin prep wipe contained in the sampling equipment and by no other means; and

- (d) discharge each sample (or each part of the sample if the sample is divided into 2 parts) into a separate container provided in the sampling equipment; and
- (e) ensure that the cover of each container is securely tightened; and
- (f) shake each container thoroughly and in so doing invert it at least 20 times, to mix the contents.

15. Certification

If a blood sample is taken and dealt with in accordance with regulation 14 —

- (a) the prescribed sample taker must complete and sign 2 copies of the form approved by the chief executive officer for the purposes of this paragraph; and
- (b) an inspector or police officer who was present when the sample was taken must complete and sign 2 copies of the form approved by the chief executive officer for the purposes of this paragraph; and
- (c) on completion of the forms, each of the containers containing a portion of the blood sample must be sealed in a separate package by the prescribed sample taker or the inspector or police officer.

16. Request for taking of blood sample

For the purposes of sections 75EN(4), 75EO(3), 75FF(3) and 75FJ(3), an inspector or police officer causes a prescribed sample taker to take a sample of a person's blood for analysis by giving the prescribed sample taker a request to take a sample of blood in the form approved by the chief executive officer for the purposes of this regulation.

Division 2 — Analysis

17. Analysis of blood sample

For the purposes of section 75IE(6), a blood sample must be analysed for alcohol by —

- (a) ascertaining the change in concentration of a solution of a dichromate; or
- (b) gas chromatography.

Part 5 — Fees

18. Blood samples and analysis

- (1) The fees for the attendance of a prescribed sample taker for the purpose of taking a sample of blood under section 75IE are the fees set out in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 15(1) in relation to a sample of blood taken under the *Road Traffic Act 1974* section 69(1) or (1a).
- (2) The fees for the analysis of a blood sample by an analyst at the Chemistry Centre (WA) are the fees set out in the *Road Traffic (Blood Sampling and Analysis) Regulations 1975* regulation 15(3) and (4) in relation to a sample of blood taken under the *Road Traffic Act 1974* section 69(1) or (1a).
- (3) The fees payable under this regulation must be paid by the chief executive officer.
- (4) If a person is convicted of an offence under section 75B(1), 75BA(1), 75BB(1), 75C(1), 75CA(1), 75CD(1), 75D(1), 75DA(1), 75DB(1), 75DC(1) or 75DD(1) and the chief executive officer has paid a fee under subregulation (1) or (2) for the purposes of Part 3B of the Act —
 - (a) the court convicting the person must order the person to repay the chief executive officer the amount of the fee; and
 - (b) that amount may be recovered by the chief executive officer as if it were a penalty imposed under the Act.

19. Oral fluid analysis

- (1) The fee for the analysis of an oral fluid sample by a drugs analyst at the Chemistry Centre (WA) is the fee set out in the *Road Traffic (Drug Driving) Regulations 2007* regulation 11(1).
- (2) The fee payable under subregulation (1) must be paid by the chief executive officer.

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- (3) If a person is convicted of an offence under section 75CD(1), 75DB(1), 75DC(1) or 75DD(1) and the chief executive officer has paid a fee under subregulation (1) for the purposes of Part 3B Division 3 of the Act —
- (a) the court convicting the person must order the person to repay the chief executive officer the amount of the fee; and
 - (b) that amount may be recovered by the chief executive officer as if it were a penalty imposed under the Act.

K. COLLERAN, Clerk of the Executive Council

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
approved body.....	13(1)
sampling equipment.....	10
section.....	3
technologist.....	13(1)

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