

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Road Transport (Drug Driving) Regulation 2010

Subordinate Law SL2010-

The Australian Capital Territory Executive makes the following regulation under the *Road Transport (Drug Driving) Act 2010*.

Dated 2010.

Minister

Minister

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Road Transport (Drug Driving) Regulation 2010*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Dictionary

The Dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation.

Note 2 A definition in the dictionary applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

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Part 2 Important concepts

5 Drug screening device—Act, s 6, def *drug screening device*

Explanatory note

Your comments are sought on which drug screening devices that should be prescribed in this section.

6 Oral fluid analysis instrument—Act, s 7, def *oral fluid analysis instrument*

Explanatory note

Your comments are sought on which oral fluid analysis instruments that should be prescribed in this section.

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Part 3 Testing for presence of drugs— procedures

7 Record-keeping requirements for drug screening tests

Explanatory note

Your comments are sought on the record-keeping requirements that should be included in this section.

8 Procedure for taking oral fluid samples—Act, s 17 (1)

Explanatory note

This section may contain provisions dealing with the procedures for taking a sample of oral fluid for analysis using an oral fluid instrument and any subsequent laboratory analysis.

9 Procedure for storing, sealing and transferring oral fluid samples—Act, s 17 (4)

Explanatory note

This section may contain provisions dealing with the procedures for storing, sealing and transferring oral fluid samples to an approved laboratory in a way that ensures that the integrity of the sample is not compromised.

10 Oral fluid analysis—requirements for statement under Act, s 17 (5)

Explanatory note

Your comments are sought on what requirements should be included in this section.

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11 Procedure for taking blood samples—Act, s 20 (1) and s 21 (2)

- (1) A sample taker who takes a blood sample under the Act, section 20 (Taking of blood sample from detained person) or section 21 (Taking of blood sample from person involved in accident) must—
 - (a) place approximately equal quantities of the sample into 2 containers; and
 - (b) on a label attached to each container—
 - (i) sign the sample taker's name; and
 - (ii) write the name of the person from whom the sample was taken; and
 - (iii) write the date and time when the sample was taken; and
 - (c) ensure that each container is sealed; and
 - (d) put both sealed containers in a one-way box.
- (2) A police officer must arrange for an analyst to collect the sealed containers from the one-way box as soon as practicable.

12 Procedure for protecting and preserving blood samples—Act, s 22 (5)

For the Act, section 22 (5) (Analysis of blood sample for medicine or controlled drug), an analyst must preserve and protect a part (the *preserved sample*) of a blood sample in accordance with the following procedure:

- (a) place the preserved sample into a container;
- (b) on a label attached to the container—
 - (i) sign the analyst's name; and

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- (ii) write the name of the person from whom the preserved sample was taken; and
- (iii) write the date and time when the preserved sample was taken;
- (c) ensure that the container is sealed;
- (d) put the sealed container in a one-way box.

13 Blood analysis statement—Act, s 24 (f)

Explanatory note

Your comments are sought on what information should be prescribed for inclusion in a statement given to a person under the Act, s 24.

14 Evidentiary certificate—sample taker

- (1) A sample taker may certify the following about a sample taken under the Act, section 20 or section 21:
 - (a) the particulars of when, and the place where, the sample was taken by the sample taker;
 - (b) the procedure followed by the sample taker after the sample was taken, including that the sample taker—
 - (i) placed approximately equal quantities of the sample into 2 containers; and
 - (ii) marked or labelled each container in accordance with section 11 (1) (b); and
 - (iii) ensured that each container was sealed; and
 - (iv) put both sealed containers in a one-way box;

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- (c) if the sample was taken under the Act, section 20—the sample taker believed on reasonable grounds that the person from whom it was taken was incapable of giving or refusing permission to take the sample because of the person’s health at the time.
- (2) In a proceeding against a person for an offence against the Act, a certificate under subsection (1) is evidence of the matters stated in it and of the facts on which they are based.

15 Disposal of drug screening devices—Act, s 26

Explanatory note

Your comments are sought on what procedures for the disposal of drug screening devices should be prescribed in this section.

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Part 4 Miscellaneous

16 Drugs that are not controlled drugs—Act, dict, def *controlled drug*, par (b)

Explanatory note

The Bill, dictionary defines *controlled drug* as follows:

controlled drug—

- (a) means a controlled drug under the Criminal Code, section 600; but
- (b) does not include a drug prescribed by regulation.

Your comments are sought on which drugs (if any) should be prescribed for the definition of *controlled drug*, paragraph (b).

17 Sampling facility—Act, dict, def *sampling facility*, par (b)

Explanatory note

Your comments are sought on which facilities should be prescribed for the definition of *sampling facility*, paragraph (b) in the bill, dictionary.

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following term:

- proceeding.

Note 3 Terms used in this regulation have the same meaning that they have in the *Road Transport (Drug Driving) Act 2010* (see Legislation Act, s 148). For example, the following terms are defined in the *Road Transport (Drug Driving) Act 2010*, dict:

- analyst
- controlled drug
- drug screening device (see s 6)
- oral fluid analysis instrument (see s 7)
- sample taker
- sampling facility.

one-way box means a locked box, with a hole capable of receiving containers of blood samples, from which the containers cannot be removed unless the box is unlocked with a key kept by an approved analyst.

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Endnotes

1 Notification

Notified under the Legislation Act on 2010.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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