

NORTHERN TERRITORY OF AUSTRALIA

**DOMESTIC AND FAMILY VIOLENCE AMENDMENT (DRUG AND
ALCOHOL TESTING) REGULATIONS 2013**

Subordinate Legislation No. 45 of 2013

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 45 of 2013*

***Domestic and Family Violence Amendment (Drug and Alcohol Testing)
Regulations 2013***

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Domestic and Family Violence Act*.

Dated 18 December 2013

S. G. THOMAS
Administrator

By Her Honour's Command

J. W. ELFERINK
Attorney-General and Minister for Justice

* Notified in the *Northern Territory Government Gazette* on 19 December 2013.

1 Citation

These Regulations may be cited as the *Domestic and Family Violence Amendment (Drug and Alcohol Testing) Regulations 2013*.

2 Commencement

These Regulations commence on the commencement of the *Domestic and Family Violence Amendment Act 2013*.

3 Regulations amended

These Regulations amend the *Domestic and Family Violence Regulations*.

4 Part 1 heading inserted

Before regulation 1

insert

Part 1 Preliminary matters

5 Part 2 heading inserted

After regulation 1

insert

Part 2 General matters

6 Regulation 2 replaced

Regulation 2

repeal, insert

2 Definitions

In these Regulations:

analyst means either of the following:

- (a) a person authorised under regulation 60 of the *Traffic Regulations* to be an analyst for the *Traffic Act*;
- (b) a person appointed under section 3(8) of the *Misuse of Drugs Act*.

authorised person, for Part 3, see regulation 5(1).

breath analysis, for Part 3, see regulation 5(1).

breath analysis instrument, for Part 3, see regulation 5(1).

breath test, for Part 3, see regulation 5(1).

health practitioner, for Part 3, see regulation 5(1).

qualified person, for Part 3, see regulation 5(1).

saliva test, for Part 3, see regulation 5(1).

urine test, for Part 3, see regulation 5(1).

7 Regulation 3 amended

(1) Regulation 3(b) and (c)

omit, insert

(b) *Family Violence Protection Act 2008 (Vic)*;

(c) *Domestic and Family Violence Protection Act 2012 (Qld)*;

(2) Regulation 3(e) and (f)

omit, insert

(e) *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*;

(f) *Domestic Violence and Protection Orders Act 2008 (ACT)*;

8 Part 3 inserted

After regulation 3

insert

Part 3 Drug and alcohol testing

Division 1 General matters

4 Application of Part

This Part applies in relation to a defendant if a DVO applying to the defendant:

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- (a) prohibits the defendant from consuming alcohol or a drug (other than a drug as prescribed by a health practitioner); and
 - (b) includes an ancillary order requiring that the defendant submit to testing by an authorised person to monitor compliance with the prohibition.

5 Interpretation

- (1) In this Part:

analyst means a person authorised under regulation 60 of the *Traffic Regulations* to be an analyst for the *Traffic Act*.

authorised person means:

- (a) a police officer; and
- (b) any other person or class of persons authorised in writing for this Part by the Commissioner of Police.

breath analysis means an analysis of a sample of a defendant's breath by a breath analysis instrument to ascertain the concentration of alcohol in the defendant's breath.

breath analysis instrument means an apparatus that is a prescribed breath analysis instrument under regulation 56 of the *Traffic Regulations*.

breath test means a test of a sample of a defendant's breath to assess whether alcohol may be present in the defendant's breath.

health practitioner means a person registered under the *Health Practitioner Regulation National Law* to practice in a health profession (other than as a student).

qualified person means a person who has been trained to take samples of blood from persons by a Registered Training Organisation that is registered with the Australian Skills Quality Authority.

saliva test means a test of a sample of a defendant's saliva to ascertain whether a drug which is prohibited under a DVO applying to the defendant may be present in the defendant's body.

urine test means a test of a sample of a defendant's urine to ascertain whether a drug which is prohibited under a DVO applying to the defendant may be present in the defendant's body.

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- (2) For this Part, anything done by a person acting under the supervision or direction of a health practitioner or analyst is taken to have been done by the health practitioner, or analyst, as the case may be.

Division 2 Testing for alcohol in breath

6 Breath test

- (1) A defendant must comply with:
- (a) a reasonable direction by an authorised person to submit to a breath test to assess whether the defendant may have alcohol in his or her body; and
 - (b) the directions given by the authorised person about submitting to the breath test.
- (2) For a direction mentioned in subregulation (1)(a) to be reasonable, it is not necessary that the authorised person suspects that the defendant has alcohol in his or her body.

7 Breath analysis

- (1) This regulation applies if an authorised person:
- (a) requires a defendant to submit to a breath test and the defendant fails to provide a sufficient sample of breath for the completion of the test; or
 - (b) suspects on reasonable grounds, whether as a result of the test or otherwise, that the defendant may have alcohol in his or her body.
- (2) The defendant must comply with:
- (a) a reasonable direction given by an authorised person to submit to a breath analysis to determine the concentration of alcohol in the defendant's body; and
 - (b) the directions given by the authorised person, or another authorised person, about submitting to the breath analysis.
- (3) A police officer may detain, and if necessary arrest, a defendant for the following purposes:
- (a) conducting a breath analysis;
 - (b) taking the defendant to a place where a breath analysis is to be carried out.

8 Conducting breath analyses

An authorised person must not use a breath analysis instrument under this Part unless the person is authorised as mentioned in regulation 16(2) or 17(1)(b) to carry out breath analyses under these Regulations.

9 Breath analysis indicates alcohol in body

If an analysis of a defendant's breath by a breath analysis instrument indicates the defendant has alcohol in his or her breath, the authorised person who operated the instrument must give to the defendant without delay a written statement (or a statement printed by the instrument) stating:

- (a) the date the sample of breath was taken and analysed; and
- (b) the time of the breath analysis; and
- (c) the results of the analysis.

Division 3 Testing for prohibited drug

10 Saliva test

- (1) A defendant must comply with:
 - (a) a reasonable direction by an authorised person to submit to a saliva test to assess whether the defendant may have a drug that is prohibited under a DVO in his or her body; and
 - (b) the directions given by the authorised person about submitting to the saliva test.
- (2) For a direction mentioned in subregulation (1)(a) to be reasonable, it is not necessary that the authorised person suspects that the defendant has a drug that is prohibited under a DVO in his or her body.
- (3) A police officer may detain, and if necessary arrest, a defendant for the following purposes:
 - (a) conducting a saliva test;
 - (b) taking the defendant to a place where a saliva test is to be carried out.

11 Urine test

- (1) A defendant must comply with:
 - (a) a reasonable direction by an authorised person to submit to a urine test to assess whether the defendant may have a drug that is prohibited under a DVO in his or her body; and
 - (b) the directions given by the authorised person about submitting to the urine test.
- (2) For a direction mentioned in subregulation (1)(a) to be reasonable, it is not necessary that the authorised person suspects that the defendant has a drug that is prohibited under a DVO in his or her body.
- (3) The defendant:
 - (a) must provide a sufficient sample of urine to enable testing to be carried out; and
 - (b) must not tamper with the sample in any way.
- (4) A police officer may detain, and if necessary arrest, a defendant for the following purposes:
 - (a) conducting a urine test;
 - (b) taking the defendant to a place where a urine test is to be carried out.

Division 4 Blood sample

12 Requirement to provide sample of blood

- (1) An authorised person may require a defendant to provide a sample of the defendant's blood in any of the following circumstances:
 - (a) the defendant is required to submit to a breath test under regulation 9, or a breath analysis under regulation 10, and refuses to submit or fails to provide a sufficient sample for the test or analysis;
 - (b) as a result of a breath test under regulation 9, the authorised person suspects that the defendant may have alcohol in his or her body and it is not possible to conduct a breath analysis;

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- (c) as a result of a breath test under regulation 9, or a breath analysis under regulation 10, the authorised person suspects that the defendant may have a drug that is prohibited under a DVO in his or her body;
 - (d) the defendant is required to submit to a saliva test under regulation 13 and refuses to submit or fails to provide a sufficient sample for the test;
 - (e) as a result of a saliva test under regulation 13, the authorised person suspects that the defendant may have a drug that is prohibited under a DVO in his or her body;
 - (f) the defendant is required to submit to a urine test under regulation 14 and refuses to submit or fails to provide a sufficient sample for the test;
 - (g) the defendant has a medical condition that hinders the person's ability to provide a sample:
 - (i) of breath for a breath test or breath analysis; or
 - (ii) of saliva for a saliva test; or
 - (iii) of urine for a urine test.

Examples for subregulation (1)(b)

- 1 *There is no authorised person available to operate a breath analysis device.*
- 2 *A breath analysis is attempted but the device malfunctions.*

- (2) If any of the circumstances mentioned in subregulation (1) exist, a police officer may detain, and if necessary arrest, the defendant for the following purposes:
 - (a) taking a sample of the defendant's blood;
 - (b) taking the defendant to a place where a sample of the defendant's blood is to be taken.

13 Taking sample of blood

- (1) A sample of blood may be taken from a defendant only by:
 - (a) a health practitioner; or
 - (b) a qualified person.
- (2) A person mentioned in subregulation (1) may take a sample of blood whether or not the defendant consents to the sample being taken.

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- (3) A sample of blood taken under subregulation (1) for analysis is the property of the Territory.

Division 5 Other matters for this Part

14 Analysis of samples

Analysis of a sample of saliva, urine or blood taken under this Part must be carried out by an analyst.

15 Evidence by certificate

In any proceedings in a court, a certificate purporting to be signed by any of the following is evidence of the matters stated in the certificate and the facts on which they are based:

- (a) the Commissioner of Police – certifying any of the following about a person named in the certificate:
 - (i) the person is a police officer and authorised under regulation 59 of the *Traffic Regulations* to use a prescribed breath analysis instrument within the meaning of the *Traffic Act*;
 - (ii) the person is authorised under regulation 60 of the *Traffic Regulations* to be an analyst for the purposes of the *Traffic Act*;
 - (iii) the person is appointed under section 3(8) of the *Misuse of Drugs Act* to be an analyst for that Act;
- (b) the Commissioner of Police – certifying that a person named in the certificate is an authorised person who is authorised, under regulation 16(2) or 17(1)(b), to carry out breath tests, saliva tests, urine tests or breath analyses;
- (c) an authorised person – certifying the following:
 - (i) the apparatus used by the authorised person was a breath analysis instrument;
 - (ii) the breath analysis instrument was in proper order and properly operated;
 - (iii) the breath analysis instrument was used in a manner that complied with this Part;
 - (iv) a sample of the breath of a defendant named in the certificate was provided for analysis using a breath analysing instrument;

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- (v) a concentration of alcohol expressed in grams per 210 litres of exhaled breath was indicated by the breath analysis instrument as being present in the breath of the defendant on the day and at the time specified in the certificate;
 - (vi) a statement was given to the defendant under regulation 9;
 - (vii) a matter about a saliva test or a urine test administered by the authorised person;
- (d) an analyst, or a person employed by an analyst, about an analysis of a sample of saliva, urine or blood for this Part.

16 Police officers who may carry out breath tests, saliva tests, urine tests or breath analyses

- (1) Every police officer is authorised to carry out a breath test, saliva test or urine test under this Part.
- (2) A police officer who is authorised under regulation 59 of the *Traffic Regulations* to use a prescribed breath analysis instrument within the meaning of the *Traffic Act* is authorised to carry out breath analyses under this Part.

17 Persons other than police officers who may carry out breath tests, saliva tests, urine tests or breath analyses

- (1) The Commissioner of Police may, in writing, authorise persons who are not police officers:
 - (a) to carry out breath tests, saliva tests and urine tests under this Part; or
 - (b) to carry out breath analyses under this Part.
- (2) The Commissioner of Police may not authorise a person under subregulation (1)(a) unless the Commissioner considers the person:
 - (a) is trained to carry out breath tests, saliva tests and urine tests; and
 - (b) is capable of carrying out breath tests, saliva tests and urine tests correctly.

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- (3) The Commissioner of Police may not authorise a person under subregulation (1)(b) unless:
- (a) the person is also authorised under subregulation (1)(a); and
 - (b) the Commissioner considers the person:
 - (i) is trained in the use of a breath analysis instrument; and
 - (ii) is capable of using the instrument correctly.

18 Protection from liability of health practitioners and analysts

A health practitioner, qualified person or an analyst, or a person acting under the supervision of a health practitioner or analyst, is not criminally liable for an act done or omitted to be done by the health practitioner, qualified person, analyst or person in good faith for this Part.

9 Expiry of Regulations

These Regulations expire on the day after they commence.