Authorised Version No. 006

Marine (Drug, Alcohol and Pollution Control) Regulations 2012

S.R. No. 46/2012

Authorised Version incorporating amendments as at 31 January 2018

TABLE OF PROVISIONS

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Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

(a) to prescribe devices and procedures for obtaining evidence in relation to the presence of alcohol in breath and blood samples;

(b) to prescribe matters in relation to the suspension of marine licences;

(c) to prescribe other matters authorised under the **Marine (Drug, Alcohol and Pollution Control) Act 1988**.

2 Authorising provision

These Regulations are made under section 105 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**.

3 Commencement

These Regulations come into operation on 1 July 2012.

4 Revocations

The following regulations are **revoked**—

(a) the Marine Regulations 2009[1];

(b) the Marine Amendment Regulations 2010[2];

(c) the Marine Further Amendment Regulations 2011[3].

5 Definition

In these Regulations, ***the Act*** means the **Marine (Drug, Alcohol and Pollution Control) Act 1988**.

Part 2—Alcohol and drug testing

Pt 2 (Heading) amended by S.R. No. 138/2012 reg. 5.

6 Prescribed breath test devices

The devices prescribed for the purposes of section 29(1) of the Act are the breath testing devices known as—

(a) the lion alcolmeter SD-400 Touch; and

(b) the Lion Alcolmeter, also known as the lion alcolmeter S-D2; and

(c) the lion alcolmeter SD-400PA; and

(d) the Alcolizer LE.

7 Procedure for breath analysis

It is a requirement for the proper operation of a breath analysing instrument that a person authorised under section 31(3) of the Act to operate a breath analysing instrument—

(a) does not require a person to provide a breath sample for analysis until the authorised person is satisfied that the person has not consumed any alcohol for a period of at least 15 minutes before the analysis; and

(b) provides a fresh mouthpiece for use by each person required to provide a breath sample; and

(c) provides a mouthpiece which, until required for taking a breath sample, has been kept in a sealed container.

8 Breath analysis certificate

For the purposes of section 31(4) of the Act, the prescribed form for a certificate is the form in Schedule 1.

9 Method of obtaining blood sample

If a blood sample is taken for the purposes of the Act by a registered medical practitioner or an approved health professional or doctor (within the meaning of section 31A of the Act)—

(a) the sample must be obtained by venipuncture; and

(b) the site of the puncture must be cleansed with a swab taken from a container that—

Reg. 9(b)(i) amended by S.R. No. 137/2017 reg. 4(a).

(i) appears to be sealed against contamination; and

Reg. 9(b)(ii) substituted by S.R. No. 137/2017 reg. 4(b).

(ii) does not contain ethanol.

10 Procedure after taking blood sample

Reg. 10(1) amended by S.R. No. 137/2017 reg. 5(1).

(1) A registered medical practitioner or an approved health professional or doctor (within the meaning of section 31A of the Act) who takes a blood sample for the purposes of the Act must ensure that—

Reg. 10(1)(a) amended by S.R. No 137/2017 reg. 5(2).

(a) the sample of blood is placed in 2 dry containers, each containing approximately the same amount of blood; and

(b) each container is vacuum sealed or sealed with a septum seal; and

(c) each container in which the sample is placed bears a label stating—

(i) the specific anticoagulant and the specific preservative that the container holds; and

(ii) the name of the chemist, laboratory or pharmaceutical organisation that prepared the container; and

(d) each container has attached to it a label bearing the signature of the registered medical practitioner or approved health professional or doctor, the date and time the sample was taken and the name of the person from whom the sample was taken or, if the name of the person is not known, sufficient information to enable the sample to be identified with the person from whom it was taken.

Reg. 10(1A) inserted by S.R. No 137/2017 reg. 5(3).

(1A) If a blood sample is taken under section 31, 31AB or 31AE of the Act, the registered medical practitioner or approved health professional must give the sample containers to a police officer.

Reg. 10(2) substituted by S.R. No 137/2017 reg. 5(4).

(2) If a blood sample is taken under section 31A of the Act, the approved health professional or doctor must ensure that—

(a) both sample containers are placed and sealed in one plastic sample bag; and

(b) that plastic sample bag is placed in a locked receptacle provided for that purpose at the place at which the sample was taken.

Reg. 10A inserted by S.R. No. 138/2012 reg. 6.

10A Particulars of report of assessment of drug impairment

For the purposes of section 31AB(6) of the Act, the following particulars are prescribed—

(a) particulars of the identity of the person on whom the assessment was carried out, including, if known, the person's name, address, date of birth and gender; and

(b) the date and time at which the person underwent the assessment; and

(c) the place at which the person underwent the assessment; and

(d) the time (if any) reported to the member of the police force carrying out the assessment as the latest time the person was the operator, master or pilot or was the occupant of a vessel; and

(e) whether the person underwent a preliminary breath test in accordance with section 29 of the Act or furnished a sample of breath for analysis by a breath analysing instrument and, if so, the result of the test or analysis, if known; and

(f) the record of interview of the person carried out by the member of the police force carrying out the assessment; and

(g) particulars of any medical treatment sought by or for the person; and

(h) any statements made by the person concerning a drug or drugs; and

(i) any observations made by the member of the police force carrying out the assessment of the person in relation to—

(i) any apparent injury or illness of the person;

(ii) whether the person smelt of intoxicating liquor;

(iii) the person's speech;

(iv) the person's eyes;

(v) the person's breathing;

(vi) the person's skin;

(vii) the person's movement;

(viii) the person's balance;

(ix) the state of the person's clothing;

(x) the person's actions;

(xi) the person's demeanour;

(xii) any physical signs of drug use by the person;

(xiii) the person's ability to comprehend instructions;

(xiv) the person's ability to divide attention;

(xv) whether the person, during the assessment, exhibited signs that indicated that the person was impaired by a drug or drugs; and

(j) whether the assessment, in the opinion of the member of the police force carrying it out, indicates that the person may be impaired by a drug or drugs; and

(k) the name, rank, station and signature of the member of the police force carrying out the assessment.

10B Procedure for collecting urine sample

Reg. 10B inserted by S.R. No. 138/2012 reg. 6.

A registered medical practitioner or an approved health professional who collects a urine sample for the purposes of the Act must ensure that the sample is collected in a container which is clean and dry and which has not previously been used.

10C Procedures after collecting urine samples

Reg. 10C inserted by S.R. No. 138/2012 reg. 6.

A registered medical practitioner or an approved health professional who collects a urine sample must ensure that—

(a) the urine sample is placed in 2 dry containers, each containing approximately the same amount of urine; and

(b) each container is fitted with a tamper proof locking seal; and

(c) each container has attached to it a label bearing—

(i) the signature of the registered medical practitioner or approved health professional who collected the urine sample; and

(ii) the date and time the sample was collected; and

(iii) the name of the person from whom the sample was collected or, if the name of the person is not known, sufficient information to enable the sample to be identified with the person from whom it was collected.

Reg. 10D inserted by S.R. No. 138/2012 reg. 6.

10D Oral fluid testing devices

(1) The device prescribed for the purposes of section 31AD of the Act is the oral fluid testing device known as the SECURETEC DRUGWIPE TWIN or the SECURETEC DRUGWIPE II TWIN.

(2) The devices prescribed for the purposes of section 31AE of the Act are—

(a) the oral fluid testing device known as the SECURETEC DRUGWIPE II TWIN COMBO; and

(b) the oral fluid testing device known as the Cozart RapiScan.

10E Procedure for carrying out preliminary oral fluid test

Reg. 10E inserted by S.R. No. 138/2012 reg. 6.

For the purposes of section 31AD of the Act, the prescribed procedure for carrying out a preliminary oral fluid test is that the member of the police force who conducts the test—

(a) provides a fresh oral fluid collection unit for use by a person required to provide a preliminary oral fluid sample; and

(b) uses only an oral fluid collection unit that, until required for taking the oral fluid sample, has been kept in a sealed container; and

(c) tests the oral fluid sample by using the device, or the oral fluid testing unit that is part of the device, that was used to obtain the sample.

10F Procedure for taking oral fluid samples under section 31AE

Reg. 10F inserted by S.R. No. 138/2012 reg. 6.

For the purposes of section 31AE of the Act, a member of the police force, in taking an oral fluid sample, must—

(a) provide a fresh oral fluid collection unit for use by each person required to provide an oral fluid sample; and

(b) use only an oral fluid collection unit which, until required for taking the oral fluid sample, has been kept in a sealed container.

10G Procedure after taking oral fluid sample

Reg. 10G inserted by S.R. No. 138/2012 reg. 6.

A member of the police force who takes a sample of oral fluid under section 31AE of the Act must ensure that the sample or, if the sample is broken into parts, each part has attached to it a label bearing—

(a) the name and signature of the member of the police force who took the oral fluid sample; and

(b) the date and time the sample was taken; and

(c) the name of the person from whom the sample was taken or, if the name of the person is not known, sufficient information to enable the sample to be identified with the person from whom it was taken.

Reg. 11 substituted by S.R. No 137/2017 reg. 6.

11 Prescribed form of certificate under section 32(3)

For the purposes of section 32(3) of the Act, the prescribed form for a certificate is a certificate that contains the following—

(a) a statement by the registered medical practitioner or approved health professional that the taking of the blood sample complies with the requirements of these Regulations;

(b) the name of the person from whom the blood sample was taken;

(c) the time and date the blood sample was taken;

(d) the name and signature of the registered medical practitioner or approved health professional who took the blood sample.

Reg. 12 (Heading) amended by S.R. No. 22/2016 reg. 5.

12 Certificate by approved analyst

For the purposes of section 32(4) of the Act, the prescribed form for a certificate is the form in Schedule 3.

Reg. 12A inserted by S.R. No. 138/2012 reg. 7.

12A Evidentiary provisions for blood tests

(1) For the purposes of section 32(2) of the Act, a certificate purporting to be signed by a properly qualified analyst as to the presence in any sample of blood analysed by the analyst of a substance that is, or is capable of being, a drug for the

purposes of the Act is to contain the following information—

(a) the name and signature of the properly qualified analyst; and

(b) a statement by the analyst that—

Reg. 12A(1)(b) substituted by S.R. No. 22/2016 reg. 6.

(i) the analyst is a properly qualified analyst within the meaning of section 32(1) of the Act; and

(ii) if paragraph (c) of the definition of ***properly qualified analyst*** applies, the person has specialised knowledge based on the person's qualifications, training and experience as specified in the certificate; and

(c) a statement as to the method of analysis used; and

(d) a statement that a substance that is, or is capable of being, a drug for the purposes of the Act was present in the sample of blood analysed; and

(e) the name of the substance found to be present in the sample of blood analysed; and

(f) the date on which the analysis was conducted; and

(g) a description of the contents of the identification label referred to in regulation 10(1)(d) attached to the container in which the blood sample is placed.

(2) For the purposes of section 32(2) of the Act, a certificate purporting to be signed by an expert as to the usual effect of a specified substance or substances on behaviour when consumed or used is to contain the following information—

(a) the name and signature of the expert; and

(b) a statement by the expert—

(i) if it is the case, that he or she is an approved expert within the meaning of section 57A of the **Road Safety Act 1986**; and

(ii) that the person has specialised knowledge based on his or her training, study or experience as specified in the certificate; and

(c) a statement as to the person's opinion as to the usual effect of the substance or substances on behaviour when consumed or used, including its effect on—

(i) in the case of a person operating a vessel, the person's ability to operate the vessel properly; and

(ii) in the case of a master or pilot, the person's ability to direct the proper operation of the vessel.

Note

Section 177 of the **Evidence Act 2008** provides for certificates of expert evidence to be given and circumstances in which the expert may be required to give evidence.

Reg. 12B inserted by S.R. No. 138/2012 reg. 7.

12B Certificate under section 32A(3)

For the purposes of section 32A(3) of the Act, the following particulars are prescribed—

(a) a statement by the registered medical practitioner or approved health professional as to whether the requirements of the Act and these Regulations for the collection of urine samples have been complied with; and

(b) the name of the person from whom the urine sample was collected or, if the name of the person is not known, sufficient information

to enable the sample to be identified with the person from whom it was collected; and

(c) the time and date the urine sample was collected; and

(d) the name and signature of the registered medical practitioner or approved health professional who collected the urine sample.

12C Certificate under section 32A(4)

Reg. 12C inserted by S.R. No. 138/2012 reg. 7.

For the purposes of section 32A(4) of the Act, the following particulars are prescribed—

(a) a statement by the approved analyst that he or she is an approved analyst within the meaning of section 32A of the Act; and

Reg. 12C(a) amended by S.R. No. 22/2016 reg. 7.

(b) a statement as to the method of analysis used; and

(c) a statement that a substance that is, or is capable of being, a drug for the purposes of the Act was present in the urine sample analysed; and

(d) the name of the substance found to be present in the urine sample analysed; and

(e) the concentration of the substance found to be present in the urine sample analysed; and

(f) the name and signature of the approved analyst; and

Reg. 12C(f) amended by S.R. No. 22/2016 reg. 7.

(g) the date on which the analysis was conducted; and

(h) a description of the contents of the identification label referred to in regulation 10C(c) attached to the container in which the urine sample is placed.

Reg. 12C(h) amended by S.R. No. 99/2013 reg. 3.

Reg. 12D inserted by S.R. No. 138/2012 reg. 7.

12D Certificate under section 32A(5)

For the purposes of section 32A(5) of the Act, the following particulars are prescribed—

(a) a statement by the expert that he or she is an approved expert within the meaning of section 32A of the Act; and

(b) a statement as to the usual effect of a specified substance or substances on behaviour when consumed or used in that concentration (including the effect of the substance or substances on a person's ability either to operate a vessel underway or direct the proper operation of a vessel); and

(c) the name and signature of the approved expert.

Reg. 12E inserted by S.R. No. 138/2012 reg. 7.

12E Certificate under section 32B(3)

A certificate under section 32B(3) of the Act must contain the following particulars—

(a) a statement by the member of the police force who carried out the oral fluid test that he or she is authorised in writing by the Chief Commissioner of Police to take an oral fluid sample within the meaning of section 31AE of the Act; and

(b) a statement as to whether the requirements of these Regulations for the taking and testing of oral fluid samples have been complied with; and

(c) a statement as to whether the result of the oral fluid tested indicated the oral fluid sample provided by the person contained a prescribed illicit drug; and

(d) the name of the person from whom the oral fluid sample was taken; and

(e) the time and date the oral fluid sample was taken; and

(f) the name and signature of the member of the police force who took the oral fluid sample.

12F Certificate under section 32B(4)

Reg. 12F inserted by S.R. No. 138/2012 reg. 7.

A certificate under section 32B(4) of the Act must, in addition to a statement as to the presence of a prescribed illicit drug in that sample of oral fluid, contain the following particulars—

(a) a statement by the approved analyst that he or she is an approved analyst within the meaning of section 32B of the Act; and

Reg. 12F(a) amended by S.R. No. 22/2016 reg. 8.

(b) a statement as to the method of analysis used; and

(c) the name and signature of the approved analyst; and

Reg. 12F(c) amended by S.R. No. 22/2016 reg. 8.

(d) the date on which the analysis was conducted; and

(e) a description of the contents of the identification label referred to in regulation 10G that was attached to the part of the oral fluid received for analysis.

Reg. 12F(e) amended by S.R. No. 99/2013 reg. 4.

Part 3—Suspension of marine licences

Pt 3 (Heading) amended by S.R. No. 138/2012 reg. 8, substituted by S.R. No. 101/2013 reg. 4.

Reg. 13 (Heading) substituted by S.R. No. 101/2013 reg. 5.

Reg. 13 substituted by S.R. No. 138/2012 reg. 9.

13 Notice of immediate marine licence suspension

(1) A notice for the purposes of section 28C(1) of the Act must, in addition to the matters referred to in that section, contain the following particulars—

(a) the name and address of the accused; and

(b) a statement of the offence with which the accused is charged and, in the case of an offence under section 28(1)(b), (e) or (f) of the Act, the alleged concentration of alcohol in the blood or breath (as the case requires) of the accused; and

(c) the approximate time and location at which the offence with which the accused is charged is alleged to have been committed; and

(d) the name and signature of the person who charged the accused; and

(e) the date on which the notice was given to the accused.

(2) A notice of suspension for the purposes of section 28C(1A) of the Act must, in addition to the matters referred to in that section, contain the following particulars—

(a) the name and address of the accused; and

(b) a statement of the offence with which the accused is charged and, in the case of an offence under section 28(1)(bb), (g) and (h)

of the Act, the alleged concentration of drugs in the blood or oral fluid (as the case requires) of the accused; and

(c) the approximate time and location at which the offence with which the accused is charged is alleged to have been committed; and

(d) the name and signature of the person who charged the accused; and

(e) the date on which the notice was given to the accused.

14 Suspended marine licence document to be surrendered to Director

For the purposes of section 61BA(7) of the Act, a person to whom section 61BA(1) of the Act applies must surrender his or her marine licence document to the Director.

Schedules

Schedule 1

Regulation 8

CERTIFICATE OF RESULTS OF BREATH ANALYSIS

I, [*insert name*], of [*insert address*]—

(1) am the person who operated the breath analysing instrument whose serial number is given below; and

(2) am authorised to operate the breath analysing instrument by the Chief Commissioner of Police; and

(3) state that the following matters are true to the best of my knowledge—

(a) Serial number of breath analysing instrument used to conduct the breath analysis:

(b) Sample number:

(c) Location where the test was conducted:

(d) Name of person whose breath was analysed:

(e) Date of birth of person whose breath was analysed:

(f) Results of self test conducted by breath analysing instrument before person's breath was analysed:

(g) Results of self test conducted by breath analysing instrument after person's breath was analysed:

(h) Results of zero tests conducted by breath analysing instrument before person's breath was analysed:

(i) Results of zero tests of breath analysing instrument after person's breath was analysed:

(j) Date that person's breath was analysed:

(k) Time that person's breath was analysed:

(l) Concentration of alcohol in grams per 210 litres of exhaled air present in sample furnished by person whose breath was analysed:

Signature:

* * * * *

Sch. 2 revoked by S.R. No. 137/2017 reg. 7.

Schedule 3

Sch. 3 amended by S.R. No. 22/2016 reg. 9.

Regulation 12

CERTIFICATE BY APPROVED ANALYST

I, [*insert name*], certify that—

(a) I am an approved analyst within the meaning of section 32 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**; and

(b) the concentration of alcohol found in the blood sample described below was:

The method of analysis of the blood sample analysed was as follows:

[*insert a statement as to the method of analysis used*]

Description of the contents of the identification label referred to in regulation 10(1)(d) that is attached to the container in which the blood sample is placed:

[*insert a description of the identification label*]

Date on which the analysis was conducted:

Name of the approved analyst:

Signature of the approved analyst:

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Marine (Drug, Alcohol and Pollution Control) Regulations 2012 were made on 13 June 2012 by the Lieutenant-Governor as the Governor's deputy with the advice of the Executive Council under section 105 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, No. 52/1988 and came into operation on 1 July 2012: regulation 3.

The Marine (Drug, Alcohol and Pollution Control) Regulations 2012 will sunset 10 years after the day of making on 13 June 2022 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms.
See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the Marine (Drug, Alcohol and Pollution Control) Regulations 2012 by statutory rules, subordinate instruments and Acts.

Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2012, S.R. No. 138/2012
Date of Making: 27.11.12
Date of Commencement: 1.12.12: reg. 3

Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2013, S.R. No. 99/2013
Date of Making: 23.7.13
Date of Commencement: 23.7.13

Marine (Drug, Alcohol and Pollution Control) Amendment (Domestic Commercial Vessel National Law Application) Regulations 2013, S.R. No. 101/2013
Date of Making: 30.7.13
Date of Commencement: 30.7.13

Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2016, S.R. No. 22/2016
Date of Making: 12.4.16
Date of Commencement: 15.4.16: reg. 3

Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2017, S.R. No. 137/2017
Date of Making: 19.12.17
Date of Commencement: 31.1.18: reg. 3

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

[1] Reg. 4(a): S.R. No. 180/2009 as amended by S.R. Nos 27/2010 and 125/2011.

[2] Reg. 4(b): S.R. No. 27/2010.

[3] Reg. 4(c): S.R. No. 125/2011.