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# Part 99—Drug and alcohol management plans and testing

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**99.005 Purposes of Part**

- (1) This Part provides for:
- (a) the development, implementation and enforcement of drug and alcohol management plans covering persons who perform, or are available to perform, an applicable SSAA; and
  - (b) drug and alcohol tests for persons who perform, or are available to perform, an applicable SSAA, including the following:
    - (i) the approval of testers to conduct drug and alcohol tests;
    - (ii) the approval of devices for use in conducting drug and alcohol tests;
    - (iii) identity cards for approved testers;
    - (iv) the conduct of drug and alcohol testing;
    - (v) the variation, suspension and cancelling of civil aviation authorisations and authorisations of approved testers; and
  - (c) offences relating to drug and alcohol management plans and drug and alcohol testing.

Note 1: Under this Part, a SSAA employee may be drug or alcohol tested by his or her DAMP organisation or by CASA under Subpart 99.C.

Note 2: Under Subpart 99.C, CASA may also test persons who are performing or available to perform an applicable SSAA and who are not covered by a DAMP organisation.

- (2) Unless otherwise stated, this Part is made for the purposes of Part IV of the Act, particularly sections 34, 35 and 36.

## Subpart 99.A—General

### 99.010 Definitions for Part 99

(1) In this Part:

**accident** means an occurrence that arises out of a person performing or being available to perform an applicable SSAA if either or both of the following applies:

- (a) the occurrence results in the death of, or serious harm to, a person;
- (b) the occurrence results in serious damage to an aircraft or property.

**aerodrome testing area** means:

- (a) any surface in a certified aerodrome over which an aircraft is able to be moved while in contact with the surface of the aerodrome, including any parking areas; and
- (b) any part of the surface of a certified aerodrome:
  - (i) that is not covered by paragraph (a); and
  - (ii) that does not have a building on it; and
  - (iii) from which access to a surface mentioned in paragraph (a) may be had; and
- (c) a building located on a certified aerodrome that is used:
  - (i) for maintenance of an aircraft or an aeronautical product; or
  - (ii) for the manufacture of aircraft or aeronautical products; or
  - (iii) by an air traffic service provider to control air traffic; or
  - (iv) by the holder of an AOC for flying training; or
  - (v) by a Part 141 operator conducting flying training in an aircraft; and
- (d) any part of an aircraft, aerobridge or other moveable structure in a certified aerodrome.

**airport security guard** has the meaning given in section 9 of the *Aviation Transport Security Act 2004*.

**allocated number**, in relation to an approved tester, means the number allocated to the tester under subregulation 99.445(5).

**applicable SSAA** means a safety-sensitive aviation activity to which this Part applies under regulation 99.015.

**appropriately qualified alcohol and other drug professional** means a person who:

- (a) materially works as a provider of clinical drug and alcohol treatment services; and
- (b) holds a bachelor degree, or postgraduate degree, in at least 1 of the following fields:
  - (i) health sciences;

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- (ii) medical science;
- (iii) social sciences;
- (iv) behavioural sciences.

**approved breathalyser** means a breathalyser approved by CASA under paragraph 99.130(a) for alcohol testing.

**approved drug testing device** means a device approved by CASA under paragraph 99.130(b) for testing for testable drugs.

**approved laboratory** means a person authorised under subregulation 99.450(3) to conduct confirmatory drug tests for Subpart 99.C.

**approved person**, in relation to an approved laboratory, means a person who is authorised under the laboratory's National Association of Testing Authorities accreditation to declare the results of drug tests conducted by that laboratory.

**approved tester** means a person who is authorised to:

- (a) take body samples for drug or alcohol tests under subregulation 99.450(1); and
- (b) conduct initial drug tests or alcohol tests under subregulation 99.450(2).

**ASIC** has the meaning given in the *Aviation Transport Security Regulations 2005*.

**CASA medical review officer** means a medical practitioner who for drug and alcohol testing under Subpart 99.C, and for Subparts 99.E and 99.H has:

- (a) been appointed by CASA under subregulation 99.390(1) for the purposes of Subpart 99.C; and
- (b) training and competence in the field of interpreting drug and alcohol test results; and
- (c) knowledge of substance use disorders; and
- (d) knowledge of the contents of this Part.

**commencement date** means the date on which this Part commences.

**comprehensive assessment**, in relation to a person's drug or alcohol use, means an examination of the person's physiological and psychosocial indicators carried out:

- (a) by a psychiatrist; or
- (b) by a medical practitioner who is a Fellow of the Australasian Chapter of Addiction Medicine; or
- (c) jointly by:
  - (i) a person entitled to practice as a medical practitioner under a law of a State or Territory; and
  - (ii) an appropriately qualified drug and alcohol professional.

**confirmatory alcohol test** means an alcohol test given in respect of an initial alcohol test to determine the presence and level of alcohol in a body sample.



**Note:** See paragraph (b) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**confirmatory drug test** means a drug test given in respect of an initial drug test to determine the presence and level of a testable drug in a body sample.

**Note:** See paragraph (b) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**DAMP** or **drug and alcohol management plan** means a drug and alcohol management plan that complies, or purports to comply, with the requirements of regulation 99.045.

**DAMP contact officer**, in relation to a DAMP organisation, means a person appointed by the DAMP organisation to liaise with CASA in relation to the organisation's responsibilities under this Part.

**DAMP contractor** means a person, or the employee of a person, who is:

- (a) a party to an ongoing written or ongoing oral contract with a DAMP organisation; or
- (b) a DAMP subcontractor to an ongoing written or ongoing oral contract with a DAMP organisation.

**DAMP medical review officer** means a medical practitioner who for drug or alcohol testing under a DAMP has:

- (a) competence in the field of interpreting drug and alcohol test results; and
- (b) knowledge of substance use disorders; and
- (c) knowledge of the contents of this Part.

**DAMP organisation** means a person that is required to have a DAMP under subregulation 99.030(1).

**DAMP reporting period**, for a DAMP organisation, means the period of 6 months immediately before each:

- (a) 1 March; and
- (b) 1 September.

**DAMP subcontractor**, means a person who is a party to:

- (a) an ongoing written or oral contract with a DAMP contractor within the meaning of paragraph (a) of the definition of **DAMP contractor**; or
- (b) an ongoing written or oral contract with another DAMP subcontractor (under a previous application of this definition).

**DAMP supervisor**, in relation to a DAMP organisation, means a person who:

- (a) has had relevant training to form an opinion as to whether a person may be adversely affected by a testable drug or under the influence of alcohol; and
- (b) is authorised by the organisation to do so for the purposes of paragraph 99.050(2)(c).

**donor** means a person who is asked to give, or has given, a body sample to an approved tester.

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**drug and alcohol education program**, for a DAMP organisation, means a program that includes the following components:

- (a) for SSAA employees—awareness of:
  - (i) the organisation’s policy on drug and alcohol use; and
  - (ii) drug and alcohol testing in the workplace; and
  - (iii) support and assistance services for people who engage in problematic use of drugs and alcohol; and
  - (iv) information about the potential risks to aviation safety from problematic use of drugs and alcohol;
- (b) for DAMP supervisors—education and training to manage people who engage in problematic use of drugs or alcohol.

**drug or alcohol intervention program**, in relation to a person who has a drug or alcohol problem, means a program that includes any of the following measures for that problem:

- (a) assessment;
- (b) treatment, including any of the following:
  - (i) education;
  - (ii) counselling;
  - (iii) consultation with health care professionals;
  - (iv) pharmacotherapy;
  - (v) residential or non-residential treatment programs;
- (c) monitoring and follow-up action.

**employee**, in relation to a DAMP organisation, includes a DAMP contractor of the DAMP organisation.

**foreign operator** means:

- (a) the holder of a foreign aircraft AOC; or
- (b) the operator of an aircraft operating in Australia in accordance with a permission granted by CASA under section 26 of the Act; or
- (c) the operator of an aircraft operating under a permission granted under section 27A of the Act; or
- (d) the holder of a New Zealand AOC with ANZA privileges; or
- (e) the operator of an aircraft that is operating in Australia in accordance with section 14 of the *Air Navigation Act 1920*.

**initial alcohol test** means an alcohol test to determine the presence of alcohol in a body sample.

Note: See paragraph (a) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**initial drug test** means a drug test to determine the presence of a testable drug in a body sample.

Note: See paragraph (a) of the definition of drug or alcohol test in subsection 33(1) of the Act.

***nominated drug or alcohol intervention program***, in relation to a person who has undergone a comprehensive assessment, means a drug or alcohol intervention program considered suitable for the person by:

- (a) if the person is an employee of a DAMP organisation—a DAMP medical review officer; or
- (b) in any other case—a CASA medical review officer.

***passport*** means an Australian passport within the meaning of the *Australian Passports Act 2005*, or a passport issued by the Government of a country other than Australia.

***permitted level*** means:

- (a) for a testable drug—a level of the drug specified in subregulation (2A) for the purposes of this paragraph; and
- (b) for alcohol—a level of alcohol of less than 0.02 grams of alcohol in 210 litres of breath.

***positive result*** means the following:

- (a) for an initial drug test—a test result within the meaning of paragraph (a) of the definition of positive test result in subsection 33(1) of the Act;
- (b) for a confirmatory drug test—a test result within the meaning of paragraph (b) of the definition of positive test result in subsection 33(1) of the Act;
- (c) for an initial alcohol test—a test result within the meaning of paragraph (a) of the definition of positive test result in subsection 33(1) of the Act;
- (d) for a confirmatory alcohol test—a test result within the meaning of paragraph (b) of the definition of positive test result in subsection 33(1) of the Act.

***regular SSAA employee*** means a SSAA employee who is reasonably likely to perform an applicable SSAA at least 2 or more times every 90 days.

***relevant Standard*** means:

- (a) AS 3547, *Breath alcohol testing devices for personal use*; and
- (b) NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*; and
- (c) AS 4760, *Procedures for specimen collection and the detection and quantitation of drugs in oral fluid*; and
- (d) AS/NZS 4308, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*.

***sample identifier*** means a number allocated to a body sample using the method specified in a legislative instrument made by CASA under regulation 99.150.

***screening officer*** has the meaning given in the *Aviation Transport Security Act 2004*.

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**serious incident** means an occurrence that arises out of a person performing or being available to perform an applicable SSAA if either or both of the following applies:

- (a) the occurrence gives rise to a danger of death or serious harm to a person;
- (b) the occurrence gives rise to a danger of serious damage to an aircraft or property.

**SSAA** means a safety-sensitive aviation activity.

**SSAA employee**, in relation to a DAMP organisation, means an employee of the DAMP organisation who performs or is available to perform an applicable SSAA.

**substantial compliance**, in relation to a drug or alcohol test, has the meaning given in subregulation 99.020(2).

**suitable test conditions** has the meaning given by subregulation (3).

Note 1: A number of other expressions used in this Part have the meanings given in the Act. For example:

- aeronautical product
- AOC
- body sample
- civil aviation authorisation
- drug or alcohol test
- foreign aircraft AOC
- New Zealand AOC with ANZA privileges
- positive test result
- safety-sensitive aviation activities
- testable drug.

Note 2: **Testable drugs** are specified in a legislative instrument made by the Minister under subsection 33(2) of the Act.

### *References to Standards and reports*

(2) In this Part:

**AS** followed by a number is a reference to the Australian Standard so numbered or identified, as in force or existing from time to time, published by Standards Australia.

**AS/NZS** followed by a number is a reference to the Australian/New Zealand Standard so numbered or identified, as in force or existing from time to time, published jointly by Standards Australia and Standards New Zealand.

**NMI R** followed by a number is a reference to the document with that designation and number, as in force from time to time, published by the National Measurement Institute established under the *National Measurement Act 1960*.

### *Permitted level*

(2A) For paragraph (a) of the definition of **permitted level**, the permitted level for each testable drug is specified in the following table.

<b>Testable Drug</b>	<b>Concentration - ng/mL</b>
$\Delta$ 9-tetrahydrocannabinol	10
6-Acetyl morphine	10
Amphetamine	25
Benzoylcegonine	25
Cocaine	25
Codeine	25
Ecgonine methyl ester	25
Methylamphetamine	25
Methylenedioxyamphetamine	25
Methylenedioxymethylamphetamine	25
Morphine	25

*Suitable test conditions*

- (3) ***Suitable test conditions*** means conditions that exist after an accident or serious incident if:
- (a) testing can be conducted within:
    - (i) for drug testing—32 hours after the accident or incident occurred; and
    - (ii) for alcohol testing—8 hours after the accident or incident occurred; and
  - (b) it is practicable to conduct a test.

**99.015 SSAAs to which this Part applies**

- (1) This Part applies to the SSAAs specified in this regulation.
- (2) The specified SSAAs are:
- (a) any activity undertaken by a person, other than as a passenger, in an aerodrome testing area; and
  - (b) calculation of the position of freight, baggage, passengers and fuel on aircraft; and
  - (c) the manufacture or maintenance of any of the following:
    - (i) aircraft;
    - (ii) aeronautical products;
    - (iii) aviation radionavigation products;
    - (iv) aviation telecommunication products;
    - (v) reserve parachutes or emergency parachutes; and
  - (d) the certification of maintenance of a kind mentioned in paragraph (c); and
  - (da) the issuing of a certificate of release to service for an aircraft or aeronautical product in relation to maintenance carried out on the aircraft or aeronautical product; and

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- (e) the fuelling and maintenance of vehicles that will be used to fuel aircraft on aerodrome testing areas; and
  - (f) activities undertaken by an airport security guard or a screening officer in the course of the person's duties as a guard or officer; and
  - (g) activities undertaken by a member of the crew of an aircraft in the course of the person's duties as a crew member; and
  - (h) the loading and unloading of trolleys containing baggage for loading onto aircraft and the driving of such trolleys; and
  - (i) activities undertaken by a holder of an ATC licence in the course of the person's duties as a controller; and
  - (j) activities undertaken by the supervisor of a holder of an ATC licence in the course of the person's duties as such a supervisor; and
  - (k) providing flight information and search and rescue alert services:
    - (i) to a pilot or operator of an aircraft immediately before the flight of the aircraft; or
    - (ii) to a pilot or operator of an aircraft, during the flight of the aircraft; or
    - (iii) as an intermediary for communications between a pilot or operator of the aircraft, and an air traffic controller; and
  - (l) providing aviation fire fighting services; and
  - (m) undertaking parachute descents; and
  - (n) supervising parachute descents.
- (3) This Part applies to the safety-sensitive aviation activities specified in paragraphs (2)(b) to (n) even if those activities do not occur in an aerodrome testing area.

### 99.020 Substantial compliance with requirements of Part required

- (1) A reference in this Part, other than in Subpart 99.B, to a test result for a drug or alcohol test is a reference to a test result that resulted from strict or substantial compliance with the requirements of this Part, including the following:
- (a) requirements relating to the taking of a body sample for the test;
  - (b) requirements relating to the dealing with the body sample by the approved tester who took the sample;
  - (c) requirements relating to the storage of the body sample (if applicable);
  - (d) requirements relating to the conduct of the drug or alcohol test;
  - (e) requirements relating to the giving of notice in respect of a positive result;
  - (f) a requirement that a person must not interfere with the integrity of a body sample.
- (2) For subregulation (1), there is taken to be **substantial compliance** with the requirements of this Part in relation to a drug or alcohol test that results in a test result if there is no reasonable doubt as to the accuracy of the test result even though one or more of the requirements of this Part may not have been strictly complied with in relation to that drug or alcohol test.

Example: If an approved tester fails to initial a specimen tube containing a part of a body sample that is to be the subject of a confirmatory drug test, the test result is likely to be one that

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resulted from substantial compliance with the requirements of this Part as there will be no reasonable doubt as to the accuracy of the test result. However, if a person interferes with the integrity of a body sample, the test result for that sample is unlikely to be one that resulted from substantial compliance with the requirements of this Part as there will be a reasonable doubt as to the accuracy of the test result.

- (3) In this regulation, the ***requirements of this Part*** include the following:
- (a) the requirements of any legislative instruments made under this Part;
  - (b) a relevant Standard.

**Part 99** Drug and alcohol management plans and testing

**Subpart 99.B** Drug and alcohol management plans

**Division 99.B.1** Purposes of Subpart

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## **Subpart 99.B—Drug and alcohol management plans**

### **Division 99.B.1—Purposes of Subpart**

#### **99.025 Purposes of Subpart**

This Subpart provides for the following:

- (a) the persons required to have a DAMP;
- (b) the matters required to be included in a DAMP;
- (c) the implementation of a DAMP;
- (d) requirements associated with a DAMP;
- (e) offences relating to a DAMP.



## **Division 99.B.2—Persons required to have a DAMP**

### **99.030 Who must develop and maintain a DAMP**

- (1) An organisation must develop a DAMP that complies with regulation 99.045 if:
  - (a) the organisation:
    - (i) has an employee; or
    - (ii) has a contractor (including the employee of, or a subcontractor for, the contractor);who performs or is available to perform a SSAA; and
  - (b) the organisation is listed in subregulation (2).

Penalty: 50 penalty units.

- (2) For paragraph (1)(b), the organisations are as follows:
  - (a) an AOC holder;
  - (b) a person issued with a production certificate under regulation 21.134;
  - (c) the holder of an aerodrome certificate;
  - (d) a person approved as an ARFFS under Division 139.H.5;
  - (e) an ATS training provider within the meaning of Part 143;
  - (f) an ATS provider within the meaning of Part 172;
  - (g) the provider of any of the following services within the meaning of Part 171:
    - (i) a telecommunication service;
    - (ii) a radionavigation service;
  - (i) the holder of a certificate of approval within the meaning of subregulation 2(1) of CAR;
  - (j) a Part 145 organisation;
  - (k) a Part 141 operator conducting flying training in aircraft;
  - (l) a screening authority within the meaning of the *Aviation Transport Security Regulations 2005*.

- (3) The DAMP must be developed within the time required for implementation of a DAMP under subregulation 99.035(2).

Penalty: 50 penalty units.

- (4) A person who, under subregulation (1), is required to develop a DAMP must continue to have a DAMP that complies with regulation 99.045 for the period the person has SSAA employees performing an applicable SSAA or available to perform an applicable SSAA.

Penalty: 50 penalty units.

- (5) An offence against subregulation (1), (3) or (4) is an offence of strict liability.

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**99.035 DAMP must be implemented**

- (1) A person who is required to develop a DAMP must implement a DAMP by:
  - (a) giving effect to regulation 99.080; and
  - (b) making the DAMP available to the person's SSAA employees as required by this Subpart.

*Timeframe and implementation*

- (2) The DAMP must be implemented:
  - (a) if the person:
    - (i) is a DAMP organisation on the commencement date; or
    - (ii) becomes a DAMP organisation within the period of 6 months after the commencement date (the *transition period*);  
by the end of the transition period; or
  - (b) if the person becomes a DAMP organisation after the end of the transition period—immediately upon becoming a DAMP organisation.

**99.040 DAMP must be made available to SSAA employees**

- (1) Subject to subregulation (2), a DAMP organisation must ensure that its DAMP is made available to each of its SSAA employees before the employee begins to perform or becomes available to perform an applicable SSAA.

Penalty: 50 penalty units.

- (2) If a person is a SSAA employee of a DAMP organisation on the day the organisation implements its DAMP, the organisation must make the DAMP available to the employee by the end of the day the employee next performs or is available to perform an applicable SSAA for the DAMP organisation.

Penalty: 50 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

## **Division 99.B.3—Content and implementation of DAMP**

### **Subdivision 99.B.3.1—Content of DAMP**

#### **99.045 Content of DAMP**

A DAMP organisation's DAMP must:

- (a) apply to all SSAA employees of the organisation, and state each category of the organisation's SSAA employees covered by the DAMP; and
- (b) include the following:
  - (i) a drug and alcohol education program;
  - (ii) a drug and alcohol testing program, that meets the requirements specified in regulations 99.050, 99.055 and 99.060;
  - (iii) a drug and alcohol response program that meets the requirements specified in regulations 99.065, 99.070 and 99.075;and set out details of those programs; and
- (c) identify, and provide the contact details for, each person in the DAMP organisation who has any of the following roles:
  - (i) DAMP contact officer;
  - (ii) DAMP supervisor; and
- (d) be implemented as required by regulation 99.080 and set out the details of those requirements.

Note: A drug and alcohol education program includes the matters set out in the definition of drug and alcohol education program in subregulation 99.010(1).

### **Subdivision 99.B.3.2—Drug and alcohol testing program**

#### **99.050 Requirements for drug and alcohol testing**

- (1) For subparagraph 99.045(b)(ii), the DAMP must meet the following requirements:
  - (a) that any testing done under the organisation's DAMP will be conducted as follows:
    - (i) for breath alcohol testing—using a device that meets the Standard mentioned in paragraph (a) of the definition of relevant Standard, or a device that meets the Standard mentioned in paragraph (b) of that definition;
    - (ii) for oral fluid testing—in accordance with the Standard mentioned in paragraph (c) of the definition of relevant Standard;
    - (iii) for urine testing—in accordance with the Standard mentioned in paragraph (d) of the definition of relevant Standard;
  - (b) that drug and alcohol testing of SSAA employees under the DAMP will be conducted in the circumstances set out in subregulation (2).
- (2) For paragraph (1)(b), the circumstances in which drug and alcohol testing will be conducted on SSAA employees are as follows:

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- (a) when a person first joins the DAMP organisation, if the person will be working as a regular SSAA employee, or when an employee whose role in the organisation is to change to that of a regular SSAA employee on or after the commencement date, unless:
  - (i) the employee has been drug and alcohol tested; and
  - (ii) the tests were conducted less than 90 days before the employee is required to begin performing or being available to perform an applicable SSAA; and
  - (iii) each of the test results was not a positive result;
- (b) after an accident or serious incident involving a SSAA employee that occurs while he or she is performing, or available to perform, an applicable SSAA, if suitable test conditions exist;
- (c) if a DAMP supervisor has reasonable grounds to believe that a SSAA employee may be adversely affected by a testable drug or by alcohol while performing, or available to perform, an applicable SSAA;
- (d) if a SSAA employee is returning to work after a period during which the employee was not permitted, under paragraph 99.065(1)(c), (d) or (e), to perform or be available to perform an applicable SSAA because of testable drug use.

*Drug test results under DAMP*

- (3) A positive result for a confirmatory drug test conducted on a body sample under a drug and alcohol testing program mentioned in subparagraph 99.045(b)(ii), is taken not to be a positive result for the sample if a DAMP medical review officer has determined that the test result for the sample could be the result of legitimate therapeutic treatment or some other innocuous source.

**99.055 Requirements relating to DAMP medical review officer**

For subparagraph 99.045(b)(ii), the DAMP must include the requirement that the DAMP organisation must consult a DAMP medical review officer:

- (a) if a drug test conducted under the DAMP returns a confirmatory drug test result for a SSAA employee of the organisation that is a positive result—to determine if the presence and level of a testable drug detected by the test could be the result of legitimate therapeutic treatment or some other innocuous source; and
- (b) to review medical information concerning a person's failure to give a body sample for drug or alcohol testing because of a medical condition; and
- (c) to determine if the employee is fit to resume performing or being available to perform a SSAA.

**99.060 Requirements relating to use of testing devices**

For subparagraph 99.045(b)(ii), the DAMP must include the requirement that any devices used in drug or alcohol testing done under the DAMP must be used in a way that is not inconsistent with the instructions of the manufacturer of those devices.

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### **Subdivision 99.B.3.3—Drug and alcohol response program**

#### **99.065 Requirements relating to SSAA employees ceasing SSAAs**

- (1) For subparagraph 99.045(b)(iii), the DAMP must include the requirement that the DAMP organisation must not permit an employee to perform, or be available to perform, an applicable SSAA in any of the following circumstances:
  - (a) if the organisation is aware that a positive result for an initial drug test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory drug test that is not a positive result;
  - (b) if the organisation is aware that a positive result for an initial alcohol test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory alcohol test that is not a positive result;
  - (c) if the organisation is aware that:
    - (i) a positive result for a confirmatory drug test or a confirmatory alcohol test conducted under a drug and alcohol testing program mentioned in subparagraph 99.045(b)(ii) has been recorded for the employee; and
    - (ii) a DAMP medical review officer has not determined that the result recorded could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (d) if the organisation is aware that:
    - (i) a positive result for a confirmatory drug test or a confirmatory alcohol test conducted under Subpart 99.C has been recorded for the employee; and
    - (ii) a CASA medical review officer has not determined that the result recorded could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (e) if the organisation is aware that a SSAA employee after having been required to take a drug or alcohol test:
    - (i) refused to take the test; or
    - (ii) interfered with the integrity of the test.
- (2) For subparagraph 99.045(b)(iii), a DAMP must include the requirement that the DAMP organisation must not permit a SSAA employee to perform or be available to perform an applicable SSAA in the following circumstances:
  - (a) if a DAMP supervisor suspects the employee's faculties may be impaired due to the person being under the influence of a testable drug or of alcohol;
  - (b) if an accident or serious incident has occurred involving the employee while he or she is performing or available to perform an applicable SSAA and either of the following apply:
    - (i) for the period that suitable test conditions exist for conducting drug or alcohol tests on the employee—a test has not been conducted;
    - (ii) if tests have been conducted under suitable test conditions—the DAMP organisation has not been notified of the test results.

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**99.070 Requirements relating to returning to SSAAs**

- (1) For subparagraph 99.045(b)(iii), the DAMP must include the requirement that if:
  - (a) the DAMP organisation has not permitted a SSAA employee to perform, or be available to perform, an applicable SSAA; and
  - (b) the non-performance is a result of a circumstance mentioned in paragraph 99.065(1)(c), (d) or (e) (a *suspension event*),the organisation must only permit the employee to again begin performing or being available to perform an applicable SSAA if the circumstances set out in subregulation (2) apply.
- (2) For subregulation (1), the circumstances that must apply are as follows:
  - (a) the employee has undergone a comprehensive assessment for drug or alcohol use;
  - (b) if the comprehensive assessment recommended the employee commence a drug or alcohol intervention program—the employee has begun participating in a nominated drug or alcohol intervention program;
  - (c) the employee is considered fit to resume performing, or being available to perform, an applicable SSAA by:
    - (i) a DAMP medical review officer; and
    - (ii) the employee’s treating clinician, if any;
  - (d) if the suspension event related to a drug test—at the time the employee was considered fit under paragraph (c), the employee receives a confirmatory drug test and records, for the test, a result that:
    - (i) was not a positive result; and
    - (ii) a DAMP medical review officer is satisfied indicates the absence of testable drug use.

**99.075 Requirements relating to intervention programs**

- (1) Subject to subregulation (2), for subparagraph 99.045(b)(iii) the DAMP must include the requirement that a DAMP organisation must permit a SSAA employee of the organisation time to attend a nominated drug or alcohol intervention program, if:
  - (a) a DAMP medical review officer has advised the DAMP organisation that the employee should attend the program; and
  - (b) the employee is returning to work after a period during which the employee was not permitted, under regulation 99.340 or 99.345, to perform or be available to perform an applicable SSAA because of testable drug use or alcohol use.
- (2) A reference to a SSAA employee in the requirement under subregulation (1) is a reference to a SSAA employee that the DAMP organisation intends to allow to continue to perform or be available to perform a SSAA.

## **Subdivision 99.B.3.4—Implementing a DAMP**

### **99.080 Implementing a DAMP**

- (1) For paragraph 99.045(d), the DAMP organisation, in implementing its DAMP, must ensure the following:
  - (a) that the organisation's SSAA employees and DAMP supervisors attend the organisation's drug and alcohol education program:
    - (i) for persons who begin work for the organisation after the commencement date—before commencing duties as a SSAA employee or DAMP supervisor; or
    - (ii) for persons working for the organisation as SSAA employees or DAMP supervisors on or before the commencement date—within 6 months of the commencement date; or
    - (iii) for persons working for the organisation as SSAA employees or DAMP supervisors who, after the commencement date, have attended the program—within 30 months of the person's last attendance at the program;
  - (b) that each SSAA employee of the DAMP organisation is informed that he or she must not perform, or be available to perform, an applicable SSAA if aware that he or she is adversely affected by a testable drug or by alcohol, until the employee is no longer adversely affected;
  - (c) that each SSAA employee of the DAMP organisation is subject to drug and alcohol testing under the DAMP while performing, or available to perform, a SSAA of the DAMP organisation.
- (2) The DAMP organisation must also do the following:
  - (a) encourage each of the organisation's SSAA employees to disclose if he or she has consumed a level of alcohol, or is taking any drug, that may affect his or her ability to carry out an applicable SSAA;
  - (b) inform each SSAA employee of the organisation that drug and alcohol testing under this Subpart will require a person who is to be tested to provide a body sample;
  - (c) record the policy and procedures of the organisation's DAMP using a controlled document protocol.

## **Division 99.B.4—Review and audit of DAMP**

### **99.085 Review of DAMP by DAMP organisation**

- (1) A DAMP organisation must review its DAMP to ensure compliance with the requirements of this Subpart:
  - (a) every 5 years, beginning on the date on which the DAMP was developed; and
  - (b) at any other time CASA directs.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

### **99.090 Audit of DAMP organisation by CASA**

- (1) CASA may audit the operation of a DAMP organisation to ensure appropriate development, implementation and enforcement of a DAMP.
- (2) For the audit, CASA may require the DAMP organisation to provide to CASA:
  - (a) information and records, as specified by CASA, demonstrating that the organisation has:
    - (i) developed a DAMP; and
    - (ii) implemented the DAMP; and
  - (b) a copy of the DAMP that is being implemented; and
  - (c) any other information and records specified by CASA that are relevant to the audit.
- (3) The DAMP organisation must comply with the requirement.

Penalty: 50 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.

### **99.095 CASA may direct changes to DAMP**

- (1) CASA may at any time, for the purpose of ensuring compliance by a DAMP organisation with the requirements of regulation 99.045, direct the organisation to do any of the following:
  - (a) make a change specified by CASA to a provision in the organisation's DAMP;
  - (b) prepare a new DAMP that complies with the requirements of this Subpart;
  - (c) submit any proposed changes to the organisation's DAMP or submit a newly prepared DAMP, as the case may be, to CASA.
- (2) The DAMP organisation must comply with the direction.

Penalty: 50 penalty units.



(3) An offence against subregulation (2) is an offence of strict liability.

## Division 99.B.5—Provision of Information

### 99.100 DAMP organisation or DAMP contractor to provide information

*Information to be provided to CASA*

- (1) A DAMP organisation that has implemented a DAMP must provide the following information to CASA in respect of each DAMP reporting period, or part of a reporting period, during which the DAMP was implemented:
  - (a) the number of the organisation's employees who performed an applicable SSAA at least 2 or more times in the 90 days preceding the end of the reporting period;
  - (b) the number of the organisation's SSAA employees who attended a drug and alcohol education program during the period, including the number of employees who attended such a program:
    - (i) for the first time; and
    - (ii) for a second or subsequent time;
  - (c) the number and type of drug or alcohol tests undergone by SSAA employees under the DAMP during the period;
  - (d) the results of the tests, including the number of positive test results that a DAMP medical review officer has determined could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (e) the date and time that the tests under the DAMP were conducted;
  - (f) the role that each SSAA employee tested was undertaking at the time of being tested;
  - (g) the applicable SSAA that each SSAA employee tested was performing or available to perform at the time that he or she was tested;
  - (h) if testing was conducted following an accident or serious incident—information about the date, time and location of:
    - (i) the accident or serious incident; and
    - (ii) the testing conducted following the accident or serious incident;
  - (i) follow-up action taken by the organisation under the DAMP in respect of SSAA employees:
    - (i) who were drug or alcohol tested under this Subpart; and
    - (ii) whose test results were positive results;
  - (j) follow-up action taken by the organisation under the DAMP in respect of any SSAA employees:
    - (i) who were tested under Subpart 99.C; and
    - (ii) whose test results were positive results;
  - (k) follow-up action taken by the organisation under the DAMP in respect of any SSAA employees who refused to take a drug or alcohol test, or interfered with the integrity of a drug or alcohol test, under this Subpart or Subpart 99.C;
  - (l) the number of SSAA employees referred to a nominated drug or alcohol intervention program;

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- (m) any other information relating to the implementation of a DAMP, or a drug or alcohol test under this Part, that CASA requests of the organisation in writing.

Penalty: 50 penalty units.

- (2) The information must be given in writing within 21 days after the end of the reporting period to which it relates.
- (3) The information must not include any information, other than that listed in subregulation (1), in respect of a SSAA employee that might identify the employee.

Penalty: 50 penalty units.

- (4) A DAMP organisation that has implemented a DAMP must provide the name and contact details of the organisation's current DAMP contact officer to CASA.

Penalty: 50 penalty units.

*Information to approved testers*

- (5) If a DAMP organisation or a DAMP contractor is required to provide information by an approved tester in the circumstances specified in paragraph 99.125(2)(b), the organisation or contractor must comply with the requirement within 1 hour of being given notification by the tester of the requirement.

Penalty: 50 penalty units.

- (6) An offence against subregulation (1), (3), (4) or (5) is an offence of strict liability.

**99.105 DAMP record-keeping**

- (1) A DAMP organisation must keep the records used to provide information to CASA under regulation 99.100 for 5 years from the date the information was provided to CASA.

Penalty: 50 penalty units.

- (2) The records must be kept in a secure location.

Penalty: 50 penalty units.

- (3) Within 6 months after the end of the 5 year period, the organisation must destroy or delete:

- (i) the records; or  
(ii) the parts of the records that relate to the results of drug or alcohol testing.

- (4) An offence against subregulation (1) or (2) is an offence of strict liability.

## Subpart 99.C—Drug and alcohol testing by CASA

### Division 99.C.1—Preliminary

#### 99.110 Purposes of Subpart

- (1) This Subpart provides for drug and alcohol testing by CASA.
- (2) The Subpart sets out the following matters:
  - (a) who may be tested (Subdivision 99.C.1.1);
  - (b) certain powers of approved testers (Subdivision 99.C.1.2);
  - (c) approved drug testing devices and breathalysers (Subdivision 99.C.1.3);
  - (d) the conduct of initial drug tests and confirmatory drug tests (Division 99.C.2);
  - (e) the conduct of initial alcohol tests and confirmatory alcohol tests (Division 99.C.3).

#### Subdivision 99.C.1.1—Who may be drug or alcohol tested

##### 99.115 Who may be drug or alcohol tested

- (1) An approved tester may require a body sample for the purposes of a drug or alcohol test under this Subpart from a person who is performing or available to perform an applicable SSAA.
- (2) However, an approved tester must not, for drug or alcohol testing under this Subpart, require a body sample from a passenger.

##### 99.120 Body samples may only be taken if person consents

An approved tester is not authorised to use force to take a body sample from a person.

#### Subdivision 99.C.1.2—Powers of approved testers

##### 99.125 Powers of approved testers

- (1) In addition to any other powers set out in this Part, an approved tester has the powers specified in subregulation (2) in respect of taking a body sample from a donor for the following purposes:
  - (a) conducting an initial drug test;
  - (b) conducting an initial alcohol test or a confirmatory alcohol test (an *alcohol test*).
- (2) For subregulation (1), the powers are the following:
  - (a) the approved tester may require the donor to:

- (i) produce identification of the kind mentioned in subregulation (3) to the tester; and
- (ii) inform the tester of the donor's date of birth, address and telephone number;
- (b) the tester may require from the donor's employer the donor's name, date of birth, address and telephone number if:
  - (i) on being required to produce identification, the donor is unable to produce identification of a kind set out in subregulation (3) to the tester; and
  - (ii) the donor's employer is a DAMP organisation or a DAMP contractor;
- (c) the tester may require the donor to give a body sample for the drug or alcohol test;
- (d) the tester may require the donor to stop performing, or stop being available to perform, an applicable SSAA, for the time it takes to take a body sample for testing and to conduct an initial drug test or alcohol test on the sample;
- (e) the tester may require the donor to remain in the tester's presence for the time it takes to take a body sample and conduct an initial drug test or alcohol test on the sample.

Note: An approved tester may also ask for a body sample for a confirmatory drug test—see regulation 99.170.

- (3) For subregulation (2), the kinds of identification are:
  - (a) identification that:
    - (i) contains a photograph of the donor and sets out the donor's name, date of birth and address; and
    - (ii) was issued by a Commonwealth, State, Territory or local government body; or
  - (b) identification that is issued by a DAMP organisation that contains a photograph of the donor and the donor's name; or
  - (c) an ASIC; or
  - (d) a passport.

### **Subdivision 99.C.1.3—CASA to approve testing devices**

#### **99.130 Approved drug and alcohol testing devices**

For drug and alcohol testing under this Subpart, CASA may by legislative instrument approve the following:

- (a) breathalysers for use in alcohol testing;
- (b) drug testing devices for use in initial drug testing.

Note: All approved breathalysers may be used for an initial alcohol test. Only some approved breathalysers may be used for a confirmatory alcohol test—see regulation 99.250.

## **Division 99.C.2—Drug testing**

### **Subdivision 99.C.2.1—General**

#### **99.135 Which body samples may be drug tested**

An approved tester may only take a sample of a person's oral fluid for drug testing under this Subpart.

#### **99.140 How samples are taken and tested**

An approved tester must take and prepare a body sample for drug testing in accordance with the procedures set out in a legislative instrument made by CASA for the purposes of this regulation.

#### **99.145 Approved drug testing devices to be used for initial drug tests**

- (1) If an approved tester is conducting an initial drug test under this Subpart, the tester must use an approved drug testing device to do the test.
- (2) The approved tester must ensure that the device is stored, tested, maintained and operated in accordance with the legislative instrument made by CASA for the purposes of this subregulation.

#### **99.150 Method for determining sample identifiers**

CASA must by legislative instrument specify a method for determining sample identifiers that are to be allocated to body samples that approved testers take under this Subpart and send for confirmatory drug tests.

### **Subdivision 99.C.2.2—Initial drug tests**

#### **99.155 Taking samples**

- (1) For the purposes of obtaining a body sample for drug testing, an approved tester may require a donor to do any or all of the following:
  - (a) swallow or otherwise remove substances from his or her mouth;
  - (b) demonstrate to the tester that the donor's mouth is free from foreign substances;
  - (c) in the tester's presence, rehydrate by drinking up to 300 ml of water within 15 minutes of being required to do so by the tester.
- (2) If the approved tester has required the donor to drink water, the tester:
  - (a) must not take the body sample sooner than the period of 10 minutes after the donor finishes drinking; and
  - (b) must take the body sample as soon as practicable after the end of the period referred to in paragraph (a).

- (3) For the purposes of obtaining the body sample, the approved tester may require the donor to:
- (a) abstain from smoking, eating, drinking or chewing for 10 minutes prior to the taking of sample; and
  - (b) remain in the tester's presence for that period.

### **99.160 Initial drug test**

As soon as practicable after the approved tester has taken a body sample from a donor for a drug test, the tester must conduct an initial drug test on the sample.

### **99.165 If initial drug test result is not positive**

If the result of an initial drug test is not a positive result, the approved tester must, as soon as practicable after the result is returned:

- (a) discard the body sample, or deal with the body sample in such a way that the sample cannot be identified as being given by the donor of it; and
- (b) tell the donor the approved tester's name and allocated number, if requested by the donor.

### **99.170 If initial drug test result is positive**

*Further body sample may be taken*

- (1) If the result of an initial drug test is a positive result, the approved tester may take a further body sample from the donor for a confirmatory drug test.
- (2) The further body sample, if any, must be taken as soon as practicable after the initial body sample was taken.
- (3) The approved tester may send either the initial body sample or the further body sample for a confirmatory drug test.
- (4) The approved tester must:
  - (a) inform the donor which body sample will be used for the confirmatory drug test; and
  - (b) discard the body sample that is not being used.

*Notice to be given*

- (5) If the result of an initial drug test is a positive result, the approved tester must, as soon as practicable:
  - (a) give the donor a notice that includes the information specified in subregulation 99.175(1) in respect of the test; and
  - (b) give the approved laboratory to whom the body sample will be sent for a confirmatory drug test a notice that includes the information specified in subregulation 99.175(3); and
  - (c) give CASA a notice that includes the information given to:
    - (i) the donor under the notice given under paragraph (a); and

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(ii) the laboratory under paragraph (b).

- (6) The notice to the approved laboratory under paragraph (5)(b) must accompany the body sample to the laboratory.

**99.175 Notices of initial drug test**

*Notice to donor*

- (1) The notice given to the donor under paragraph 99.170(5)(a) must contain the following:
- (a) the donor's name, date of birth, gender, residential address and telephone number, and an indication of whether those details were provided by the donor or the donor's DAMP organisation (if any) or a DAMP contractor;
  - (b) the date and time that the donor was asked by the approved tester to stop performing or being available to perform SSAAs for the purposes of giving a body sample for a drug test;
  - (c) the applicable SSAA that the donor was performing or available to perform at the time the donor was tested;
  - (d) the date, time and location of the place that an initial drug test was conducted on the donor's body sample;
  - (e) the test result for the initial drug test;
  - (f) the initials of the tester and his or her allocated number;
  - (g) the details of any photographic identification provided by the donor;
  - (h) the make, model and serial number of the approved drug testing device used to conduct the initial drug test;
  - (i) the sample identifier allocated to the body sample taken for a confirmatory drug test by the approved tester (see paragraph 99.180(1)(a));
  - (j) a certification by the tester about whether the body sample has been taken and tested in accordance with the requirements of the Regulations and any applicable legislative instrument made by CASA under regulation 99.140;
  - (k) a certification by the tester about whether the device has been stored, tested, maintained and operated in accordance with the legislative instrument made by CASA under subregulation 99.145(2).

Note: Subregulation 99.180(7) may also require the notice to contain certain things.

*Notice to approved laboratory*

- (3) For paragraph 99.170(5)(b), the notice must contain the following:
- (a) the sample identifier allocated to the body sample by the approved tester;
  - (b) the date time that the body sample was given;
  - (c) the results of the initial drug test;
  - (d) the list of testable drugs that the tester wants the approved laboratory to test for in the confirmatory drug test;
  - (e) the name of the approved tester.



**99.180 Dealing with samples for confirmatory drug test**

- (1) If the result of an initial drug test is a positive result, as soon as practicable after the result is known, the approved tester must:
  - (a) allocate to the body sample a sample identifier; and
  - (b) divide the body sample into approximately equal lots to be known as Sample A and Sample B; and
  - (c) place Sample A and Sample B into separate specimen tubes; and
  - (d) place both tubes into a single container.
- (2) In allocating the sample identifier under paragraph (1)(a), the approved tester must use the method specified in a legislative instrument made by CASA under regulation 99.150.
- (3) The amount of body sample in Sample A and Sample B must be sufficient for a confirmatory drug test to be conducted.
- (4) Immediately before the body sample is placed in them, the tubes must:
  - (a) be in the packages provided by the manufacturer; and
  - (b) not have been used for any purpose; and
  - (c) be in such a condition that they do not affect the quality of the body sample taken.
- (5) As soon as practicable after placing Sample A and Sample B into separate specimen tubes, the approved tester must:
  - (a) securely seal each tube with tamper-evident seals; and
  - (b) label each tube with the following information:
    - (i) the tester's initials;
    - (ii) the sample identifier for the body sample;
    - (iii) information about whether the tube contains Sample A or Sample B.
- (6) The approved tester must ask the donor to:
  - (a) witness the tester's actions under this regulation in respect of the body sample; and
  - (b) initial the tamper-evident seals on the tubes; and
  - (c) sign the notice given to the donor under regulation 99.175.
- (7) If the donor refuses a request made by the approved tester under subregulation (6), the tester must, in the notice given under paragraph 99.170(5)(a), set out that fact.

**99.185 Transporting samples**

- (1) As soon as practicable after placing a body sample into specimen tubes, the approved tester must cause the tubes to be sent to an approved laboratory for confirmatory drug testing.

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- (2) The approved tester must send the specimen tubes in a way that results in the tubes arriving at the approved laboratory as soon as practicable after the tester places the body sample into the tubes.

Note: Under subregulation 99.170(6), a notice from the approved tester must accompany the samples to the approved laboratory.

- (3) The specimen tubes must be stored prior to transport and transported in such a way that the integrity of the body sample is preserved.

### Subdivision 99.C.2.3—Receipt and storage of samples by approved laboratories

#### 99.190 Receipt of samples

- (1) If an approved laboratory receives a body sample divided into Sample A and Sample B for a confirmatory drug test, the laboratory must, as soon as practicable after receiving the specimen tubes:
- (a) inspect each tube for damage; and
  - (b) check that the seals on the tubes are intact.
- (2) If a seal on a specimen tube is not intact, or a specimen tube is damaged in such a way that the integrity of the body sample may have been compromised, the laboratory must:
- (a) not test the part of the body sample contained in the tube; and
  - (b) discard the contents of the tube.
- (3) If the laboratory discards the contents of both of the specimen tubes, as soon as practicable after the day the laboratory received the tubes, the laboratory must send to CASA a dated, written notice that includes the following information:
- (a) the date and time of receipt of the body sample at the laboratory;
  - (b) the sample identifier for the body sample;
  - (c) a statement about why both tubes were discarded.
- (4) As soon as practicable after CASA receives the notice from the laboratory, CASA must give a written notice to the donor that includes the following:
- (a) the sample identifier for the body sample;
  - (b) a statement:
    - (i) that neither Sample A nor Sample B could be tested because the integrity of the body samples had been compromised; and
    - (ii) that both Sample A and Sample B were discarded by the laboratory.

#### 99.195 Storage of samples

*If neither Sample A nor Sample B is discarded*

- (1) Subregulations (2), (3) and (4) apply if:
- (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and

- (b) neither Sample A nor Sample B is discarded under subregulation 99.190(2) or (3).
- (2) Sample A and Sample B must be stored in a secured refrigeration unit until Sample A is tested.
- (3) If the test result for the confirmatory drug test on Sample A is a positive result, Sample B must be:
  - (a) stored in a secure freezer; and
  - (b) kept for 100 days from the date of the positive result and then discarded.
- (4) If the test result for Sample A is not a positive result, Sample B must be discarded.

*If one of the specimen tubes is discarded*

- (5) If:
  - (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and
  - (b) either Sample A or Sample B is discarded under subregulation 99.190(2);then the remaining specimen tube must be stored in a secured refrigeration unit until it is tested.

### **Subdivision 99.C.2.4—Conduct of drug tests by approved laboratories**

#### **99.200 Testing Sample A**

- (1) An approved laboratory must test Sample A of a body sample it receives for confirmatory drug testing if the laboratory is satisfied that Sample A retains its integrity.
- (2) If the integrity of Sample A of a body sample may have been compromised, or the Sample A is for some reason unavailable for confirmatory drug testing, the approved laboratory must deal with Sample B of the body sample as if it were Sample A.
- (3) These Regulations apply to the Sample B accordingly.
- (4) If Sample B of the body sample is to be dealt with as if it were Sample A, Sample B is to be known as Sample A from the time that Sample B, under this regulation, is required to be dealt with as Sample A.

#### **99.205 Samples to be tested in accordance with National Association of Testing Authorities' accreditation**

An approved laboratory must test body samples received under this Subpart in accordance with the laboratory's accreditation by the National Association of Testing Authorities.

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**99.210 Notices of Sample A results**

*Laboratory to CASA*

- (1) As soon as practicable after a confirmatory test is conducted on Sample A of a body sample by an approved laboratory, the laboratory must send to CASA a dated, written notice that includes the following:
  - (a) the date and time of receipt of the body sample at the laboratory;
  - (b) the sample identifier for the body sample;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the laboratory;
  - (d) the list of testable drugs that the approved tester of the initial drug test asked to be tested;
  - (e) the date and time that Sample A was tested;
  - (f) the method used for the testing;
  - (g) the target concentrations of the testing;
  - (h) the result of the test;
  - (i) a statement about whether the body sample has been tested in accordance with these Regulations, and any conditions attached to the laboratory's National Association of Testing Authorities accreditation;
  - (j) the name of the person who declared the results of the test.
- (2) The notice must be signed by the laboratory's approved person.

*CASA to donor—oral notice*

- (3) As soon as practicable after CASA receives the notice from the laboratory, CASA must give oral notice to the donor of the body sample of the confirmatory test result on Sample A.

*CASA to donor—written notice*

- (4) As soon as practicable after CASA gives the oral notice, CASA must give a written notice to the donor that includes the following:
  - (a) the sample identifier for Sample A and Sample B;
  - (b) the list of testable drugs that were tested for;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the approved laboratory that tested them;
  - (d) the date and time that Sample A was tested;
  - (e) the method used for the testing;
  - (f) the target concentrations of the testing;
  - (g) the result of the test;
  - (h) a statement about whether the body sample has been tested in accordance with these Regulations and any conditions attached to the laboratory's National Association of Testing Authorities accreditation;
  - (i) if the result of the test is a positive result:

- (i) information about the donor's rights to have Sample B tested; and
- (ii) information about how the donor gets Sample B tested and the costs associated with that testing.

### **99.215 Donor may request testing of Sample B**

- (1) If the test result for Sample A of a body sample is a positive result, the donor of the body sample may apply to CASA to either:
  - (a) have conducted on Sample B of the body sample a further confirmatory drug test by the approved laboratory (the ***original laboratory***) that tested Sample A; or
  - (b) have Sample B transferred to another approved laboratory (the ***second laboratory***) for a further confirmatory drug test.

Note: If the integrity of either Sample A or Sample B of a body sample has been compromised, the compromised specimen tube will have been discarded. There will not be a Sample B to be tested because, under regulation 99.200, Sample B will become known as Sample A.

- (2) The application must be made within 90 days of the date of the written notice of the test result for the confirmatory drug test on Sample A being given to the donor.
- (3) The donor is liable to pay the costs of testing Sample B and any transportation costs associated with transporting Sample B to the second laboratory (if any).

#### *Original laboratory to test Sample B*

- (4) If the original laboratory is advised by CASA to test Sample B, it must do so.

#### *Second laboratory to test Sample B*

- (5) If the original laboratory is notified by CASA to transport Sample B to a specified second laboratory for testing, the original laboratory must package and transport Sample B as provided for in regulation 99.185 as if the original laboratory were the approved tester for the body sample.
- (6) The original laboratory must send the specimen tube in a way that results in the tube arriving at the approved laboratory as soon as practicable.
- (7) The specimen tubes must be stored prior to transport and transported in such a way that the integrity of the body sample is preserved.
- (8) CASA must notify the second laboratory of the matters specified in subregulation 99.175(3) in respect of Sample B.
- (9) On receipt of Sample B, the second laboratory must:
  - (a) test the sample in accordance with the notice; and
  - (b) deal with the sample as if it were the original laboratory and these Regulations apply to that second laboratory accordingly.

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**99.220 Approved laboratory to keep Sample B**

- (1) This regulation applies if:
  - (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and
  - (b) the test result for the confirmatory drug test on Sample A is a positive result; and
  - (c) there is a Sample B remaining after Sample A is tested.
- (2) The approved laboratory must keep Sample B for the 100-day period specified in paragraph 99.195(3)(b), unless the donor:
  - (a) applies to CASA to have a confirmatory drug test conducted on Sample B; and
  - (b) applies within 90 days of the date of the written notice of the test result for the confirmatory drug test on Sample A being given to the donor.
- (3) If the donor does not apply to CASA within the 90-day period mentioned in subregulation (2), the approved laboratory must discard Sample B at the end of the 100-day period specified in paragraph 99.195(3)(b).

**99.225 Notices of Sample B results**

- (1) If a confirmatory drug test is conducted on Sample B of a body sample, the notices specified in subregulation 99.210(1) and (3) must be given in respect of that test.
- (2) The notices must be given in the form and within the timeframes required by regulation 99.210.
- (3) The written notice to the donor must contain the following:
  - (a) the sample identifier for Sample A and Sample B;
  - (b) a statement that Sample B was tested;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the approved laboratory that tested them;
  - (d) the list of testable drugs that were tested for;
  - (e) the date and time that Sample B was tested;
  - (f) the method used for the testing;
  - (g) the target concentrations of the testing;
  - (h) the result of the test;
  - (i) a statement about whether the sample has been tested in accordance with these Regulations and any conditions attached to the laboratory's National Association of Testing Authorities accreditation.

### **99.230 Test results**

- (1) If a confirmatory drug test is conducted on Sample A of a body sample and the result is not a positive result, then the test result for the body sample is taken not to be a positive result.
- (2) Subject to subregulations (4) and (5), if a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result, then the test result for the body sample is taken to be a positive result.
- (3) Subject to subregulation (5), if:
  - (a) a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result; and
  - (b) the donor applies to CASA to have a confirmatory drug test conducted on Sample B of a body sample before the expiry of the period mentioned in subregulation 99.215(2); and
  - (c) the result of the test on Sample B is a positive result;then the test result for the body sample is taken to be a positive result.
- (4) If:
  - (a) a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result; and
  - (b) the donor applies to CASA to have a confirmatory drug test conducted on Sample B of the sample before the expiry of the period mentioned in subregulation 99.215(2); and
  - (c) the result of the test on Sample B is not a positive result, or Sample B is not available to be tested;then, despite the positive result for Sample A, the test result for the body sample is taken not to be a positive result.

Note: Under regulation 99.200, Sample B may have been dealt with as if it were Sample A. In that case, there will not be a Sample B to test.
- (5) A positive result for a confirmatory drug test on either Sample A or Sample B of a body sample is taken not to be a positive result for the sample if a CASA medical review officer has determined that the test result for the sample could be the result of legitimate therapeutic treatment or some other innocuous source.

### **Subdivision 99.C.2.5—Record-keeping**

#### **99.235 Approved laboratory to keep records**

- (1) An approved laboratory must keep a copy of a notice sent under regulation 99.210 for 7 years from the date the notice was sent.

Penalty: 50 penalty units.
- (2) The laboratory must keep the copy in a secure location.

Penalty: 50 penalty units.

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- (3) During the 7-year period, the laboratory must provide a copy of the notice to CASA if required to.

Penalty: 50 penalty units.

- (4) An offence against subregulation (1), (2) or (3) is an offence of strict liability.
- (5) Subject to any requirement in any other Commonwealth, State or Territory law, the copy must be destroyed at the end of the 7-year period.



## **Division 99.C.3—Alcohol testing**

### **99.240 Which body samples may be alcohol tested**

An approved tester conducting an alcohol test under this Subpart may only take a sample of a person's breath for testing.

### **99.245 How samples are taken and tested**

An approved tester must take body samples for alcohol testing in accordance with the procedures set out in a legislative instrument made by CASA for the purposes of this regulation.

### **99.250 Approved breathalysers to be used in alcohol tests**

- (1) If an approved tester is conducting an initial alcohol test under this Subpart, the tester must only use an approved breathalyser to conduct the test.
- (2) If the approved tester is conducting a confirmatory alcohol test under this Subpart, the tester must only use a breathalyser that:
  - (a) is an approved breathalyser; and
  - (b) meets the requirements of NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*.
- (3) The approved tester must ensure that the breathalyser is stored, tested, maintained and operated in accordance with a legislative instrument made for the purposes of this subregulation.

### **99.255 Alcohol tests**

- (1) To conduct an initial alcohol test, an approved tester must take a breath sample.
- (3) If the result of the initial alcohol test is a positive result, the approved tester must take a further breath sample from the donor for a confirmatory alcohol test.
- (4) The further sample must be taken as soon as practicable, but not sooner than 15 minutes, after the initial alcohol test sample was taken.
- (5) After the result of the confirmatory alcohol test is available, the approved tester must give the donor a notice that includes the information specified in subregulation 99.265(1).

### **99.260 Test results**

- (1) If an initial alcohol test is conducted on a body sample and the result is not a positive result, then the test result for the body sample is taken not to be a positive result.
- (2) If:

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- (a) an initial alcohol test is conducted on a body sample and the result is a positive result; and
  - (b) a confirmatory alcohol test in respect of the initial alcohol test is conducted on a body sample; and
  - (c) the result of the confirmatory alcohol test is a positive result;
- then the test result for the body sample is taken to be a positive result.
- (3) If:
- (a) an initial alcohol test is conducted on a body sample and the result is a positive result; and
  - (b) a confirmatory alcohol test is conducted on the body sample and the result of the test is not a positive result;
- then, despite the positive result for the initial alcohol test, the result for the body sample is taken not to be a positive result.

**99.265 Notice of alcohol test**

- (1) The notice given to the donor under subregulation 99.255(5) must contain the following:
- (a) the donor's name, date of birth, gender, residential address and telephone number, and an indication of whether those details were provided by the donor or the donor's DAMP organisation (if any);
  - (b) the date and time that the donor was asked by the approved tester to stop performing or being available to perform SSAAs for the purposes of giving a body sample for an alcohol test;
  - (c) the date, time and location of the place that the donor's body sample was taken and tested;
  - (d) the test result;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the donor was tested;
  - (f) the make, model and serial number of the approved breathalyser used to conduct the testing of the body sample;
  - (g) the details of any photographic identification provided by the donor;
  - (h) a certification by the approved tester about whether the body sample has been taken and tested in accordance with the requirements of the Regulations and any applicable legislative instrument made under regulation 99.245;
  - (i) a certification by the tester about whether the breathalyser has been stored, tested, maintained and operated in accordance with the legislative instrument made under subregulation 99.250(3);
  - (j) the initials of the tester and his or her allocated number.
- (2) The approved tester must ask the donor to sign the notice at the time the approved tester gives the notice to the donor.

## **Subpart 99.D—Evidentiary certificates and prescribed proceedings**

### **Division 99.D.1—Purposes of Subpart**

#### **99.275 Purposes of Subpart**

This Subpart provides for the following:

- (a) evidentiary certificates (Division 99.D.2);
- (b) prescribed proceedings for paragraph 36(4)(d) of the Act (Division 99.D.3).

## Division 99.D.2—Evidentiary certificates

### 99.280 Certificates by approved tester

#### *Matters relating to samples for initial drug tests*

- (1) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning an initial drug test must:
  - (a) be signed by an approved tester; and
  - (b) be in respect of a body sample taken by the tester for an initial drug test; and
  - (c) be in respect of a body sample that the tester conducted an initial drug test on; and
  - (d) state one or more of the matters set out in subregulation (3).
- (2) Subject to regulation 99.305, if subregulation (1) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.

Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.

- (3) For paragraph (1)(d), the matters are as follows:
  - (a) the approved tester's allocated number;
  - (b) that the tester who signed the certificate was an approved tester at the time the body sample was taken;
  - (c) when the body sample was taken;
  - (d) from whom the body sample was taken;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the body sample was taken;
  - (f) the make, model and serial number of the approved drug testing device used to conduct the test on the body sample;
  - (g) a description of the method of sampling;
  - (h) whether the test conducted on the body sample was an initial drug test;
  - (i) the result of the test conducted;
  - (j) the sample identifier, if any, for the body sample.

#### *Matters relating to alcohol tests*

- (4) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning an alcohol test under Subpart 99.C must:
  - (a) be signed by an approved tester; and
  - (b) be in respect of a body sample taken by the tester for an alcohol test; and
  - (c) state one or more of the matters set out in subregulation (6).

- (5) Subject to regulation 99.305, if subregulation (4) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.

Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.

- (6) For paragraph (4)(c), the matters are as follows:
- (a) the approved tester's allocated number;
  - (b) that the tester who signed the certificate was an approved tester at the time the body sample was taken;
  - (c) when the body sample was taken;
  - (d) from whom the body sample was taken;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the body sample was taken;
  - (f) the make, model and serial number of the approved breathalyser used to take the body sample and conduct the test;
  - (g) a description of the method of sampling;
  - (h) the alcohol test conducted on the body sample;
  - (i) the result of the test conducted.

### **99.285 Certificates by approved laboratory**

- (1) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning a confirmatory drug test must:
- (a) be signed by an approved laboratory; and
  - (b) be in respect of a body sample on which a confirmatory drug test was conducted by the laboratory; and
  - (c) state one or more of the matters set out in subregulation (3).

- (2) Subject to regulation 99.305, if subregulation (1) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.

Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.

- (3) For paragraph (1)(c), the matters are as follows:
- (a) the sample identifier for the body sample;
  - (b) that the person who signed the certificate was an approved laboratory or the laboratory's approved person at the time the certificate was signed;
  - (c) when the body sample was received;
  - (d) what, if any, labels or other means of identifying the body sample accompanied the body sample when it was received;
  - (e) what container or containers the body sample was contained in when it was received;
  - (f) the state of the seals on the container or containers when the body sample was received;
  - (g) the state of the container or containers when the body sample was received;
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- (h) when the body sample was tested;
- (i) a description of the way in which the body sample was stored by the laboratory;
- (j) a description of the method of testing;
- (k) the testable drugs tested for;
- (l) the result of the test conducted.

### **99.290 Document taken to be a certificate unless contrary intention established**

For the purposes of this Subpart, a document purporting to be a certificate referred to in regulation 99.280 or 99.285 is, unless the contrary intention is established, taken to be such a certificate and to have been duly given.

### **99.295 Certificate not to be admitted unless copy given**

A certificate must not be admitted in evidence under regulation 99.280 or 99.285 in any proceedings under the Act, these Regulations or the *Criminal Code* unless:

- (a) the person charged with the offence; or
- (b) a barrister or solicitor who has appears for the person in those proceedings; has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

### **99.300 Person signing the certificate may be called to give evidence**

- (1) Subject to subregulation (2), if, under regulation 99.280 or 99.285, a certificate is admitted in evidence in proceedings, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (2) Subregulation (1) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
  - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the person who signed the certificate to be so called; or
  - (b) the Court, by order, grants the person's application to require the calling of the witness.

### **99.305 Rebuttal evidence**

- (1) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under regulation 99.280 or 99.285 must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished because of this Subpart.
- (2) The evidential burden in rebutting a matter stated in a certificate given under regulation 99.280 or 99.285 is on the balance of probabilities.

**99.310 CASA may ask for full certificate**

- (1) CASA may, by notice in writing, ask:
  - (a) an approved tester to provide a certificate, under subregulation 99.280(1) or (4); or
  - (b) an approved laboratory to provide a certificate, under regulation 99.285; that contains all of the matters listed in the particular provision.
- (2) The approved tester or approved laboratory must comply with the notice within 7 days of receiving it.

Penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

## **Division 99.D.3—Prescribed proceedings**

### **99.315 Prescribed proceedings**

For paragraph 36(4)(d) of the Act, proceedings under the *Criminal Code* are prescribed.



## **Subpart 99.E—Offences for Subpart 99.C**

### **Division 99.E.1—Purposes of Subpart**

#### **99.320 Purposes of Subpart**

This Subpart provides for the following:

- (a) offences relating to Subpart 99.C (Division 99.E.2);
- (b) CASA medical review officers (Division 99.E.3).

## Division 99.E.2—Offences

### Subdivision 99.E.2.1—Offences relating to giving a body sample

#### 99.325 Failing to carry identification whilst undertaking applicable SSAA

- (1) If:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) as part of the process of taking a body sample for a drug or alcohol test under Subpart 99.C, an approved tester requires the person to produce identification of a kind set out in subregulation (2);
- the person must either:
- (c) immediately produce to the tester the identification; or
  - (d) produce to the tester the identification within 1 hour after being required to do so.

Penalty: 10 penalty units.

- (2) For subregulation (1), the kinds of identification are as follows:
- (a) identification that:
    - (i) contains a photograph of the person and sets out the person's name, date of birth and address; and
    - (ii) was issued by a Commonwealth, State, Territory or local government body;
  - (b) identification that is issued by a DAMP organisation that contains a photograph of the person and the person's name;
  - (c) an ASIC;
  - (d) a passport.
- (3) An offence against subregulation (1) is an offence of strict liability.

#### 99.330 Refusing or failing to give a body sample

- (1) A person must not refuse or fail to give a body sample to an approved tester for a drug or alcohol test under Subpart 99.C if:
- (a) the person is performing or available to perform an applicable SSAA; and
  - (b) at the time the person is performing or available to perform the applicable SSAA, the person is required to give a body sample for a drug or alcohol test by the approved tester; and
  - (c) the approved tester, in requiring and taking or seeking to take the body sample, complies with the requirements of this Part or any legislative instrument made under this Part.

Penalty: 50 penalty units.

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- (2) It is a defence to subregulation (1) if a person failed to give a body sample because the person had a medical condition that rendered the person unable to give the body sample.
- (3) An offence against subregulation (1) is an offence of strict liability.

**99.335 Continuing to perform applicable SSAA after refusing a drug or alcohol test or failing to give a body sample**

- (1) This regulation applies if:
  - (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person is required by an approved tester to provide a body sample for a drug or alcohol test under Subpart 99.C; and
  - (c) the person:
    - (i) refuses to provide a body sample to be tested; or
    - (ii) fails to provide a body sample to be tested.
- (2) The person must not again perform or be available to perform an applicable SSAA until the person is drug or alcohol tested under this Part.

Penalty: 50 penalty units.

Note 1: If the person receives a confirmatory drug test and the result is a positive result, the person may be liable to an offence if the person contravenes regulation 99.380.

Note 2: It is an offence for the person to contravene regulation 99.345 or 99.380 in respect of the drug test.

- (3) An offence against subregulation (2) is an offence of strict liability.

**99.340 Failing to stop performing an applicable SSAA**

- (1) If an approved tester requires a person to stop performing or being available to perform an applicable SSAA for the time it takes for the tester to take a body sample from the person and conduct a drug or alcohol test under Subpart 99.C on the body sample, the person must comply with the requirement.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

**99.345 Failing to remain in approved tester's presence**

- (1) If an approved tester requires a person to remain in the tester's presence for the time it takes for the tester to take a body sample from the person and conduct a drug or alcohol test under Subpart 99.C on the body sample, the person must comply with the requirement.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

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**99.350 Person must not interfere with integrity of body sample**

- (1) If a person is giving, or has given, a body sample for a drug or alcohol test under this Part, a person must not interfere with the integrity of that sample.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

**Subdivision 99.E.2.2—Offences occurring after positive test result**

**99.355 Continuing to perform applicable SSAA between having initial drug test and confirmatory drug test**

- (1) This regulation applies if:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial drug test; and
  - (c) the result of the initial drug test is a positive result; and
  - (d) the person's body sample in respect of the initial drug test is being subjected to confirmatory drug testing by an approved laboratory.
- (2) The person must not again perform or become available to perform an applicable SSAA until the person has received a confirmatory drug test in respect of the initial drug test.

Penalty: 50 penalty units

Note: Regulation 99.360 provides an offence for performing or being available to perform an applicable SSAA after a confirmatory drug test has been given and before the results of that confirmatory drug test are returned.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is not an offence against subregulation (2) for a person to perform or become available to perform an applicable SSAA if the person's body sample cannot be subjected to confirmatory drug testing by an approved laboratory.

**99.360 Continuing to perform applicable SSAA after having confirmatory drug test and before result returned**

- (1) This regulation applies if:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial drug test; and
  - (c) the result of the initial drug test is a positive result; and
  - (d) the person receives a confirmatory drug test in respect of the initial drug test; and
  - (e) the test result for the confirmatory drug test has not been returned to the person.

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- (2) The person must not again perform or be available to perform an applicable SSAA until the result of the confirmatory drug test has been returned to the person.

Penalty: 50 penalty units.

Note: If the returned test result is a positive result, then the person may be liable to an offence if the person contravenes regulation 99.380.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is not an offence against subregulation (2) for a person to perform or become available to perform an applicable SSAA if a test result for the confirmatory drug test cannot be returned to the person because it was not possible to conduct the confirmatory drug test.

**99.365 Continuing to perform applicable SSAA before confirmatory alcohol test result returned**

- (1) This regulation applies if:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial alcohol test; and
  - (c) the initial alcohol test result is a positive result.
- (2) The person must not again perform or be available to perform an applicable SSAA until the person has:
- (a) received a confirmatory alcohol test in respect of the initial alcohol test; and
  - (b) the test result for the confirmatory alcohol test has been returned to the person.

Penalty: 50 penalty units

Note: If the returned test result is a positive result, then the person may be liable to an offence if the person contravenes regulation 99.385.

- (3) An offence against subregulation (2) is an offence of strict liability.

**99.370 Performing applicable SSAA showing positive result for testable drug**

- (1) A person must not perform or be available to perform an applicable SSAA if:
- (a) while the person is performing or available to perform an applicable SSAA, the person gives a body sample for an initial drug test under Subpart 99.C; and
  - (b) a confirmatory drug test in respect of the initial drug test is conducted on Sample A of the person's body sample; and
  - (c) the result of the confirmatory drug test on Sample A is a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.230 deals with how you determine the results of confirmatory drug tests.

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- (2) It is a defence to subregulation (1) if Sample B of the person's body sample is tested within the period specified in subregulation 99.215(2) and returns a result that is not positive.
- (3) Subregulation (1) applies to create an offence in respect only of the applicable SSAA that the person was performing or available to perform at the time that the body sample for the initial drug test was taken.
- (4) An offence against subregulation (1) is an offence of strict liability.

**99.375 Performing applicable SSAA while showing positive result for a confirmatory alcohol test**

- (1) A person must not perform or be available to perform an applicable SSAA if:
  - (a) while the person is performing or available to perform an applicable SSAA, the person gives a body sample for an initial alcohol test under Subpart 99.C; and
  - (b) the person gives a body sample for a confirmatory alcohol test in respect of the initial alcohol test; and
  - (c) the result of the confirmatory alcohol test is a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.260 deals with how you determine the results of alcohol tests.

- (2) Subregulation (1) applies to create an offence in respect only of the applicable SSAA that the person was performing or available to perform at the time that the body sample for the initial alcohol test was taken.
- (3) An offence against subregulation (1) is an offence of strict liability.

**Subdivision 99.E.2.3—Offences relating to returning to SSAAs after positive test result**

**99.380 Continuing to perform applicable SSAA after having confirmatory drug test**

- (1) This regulation applies if:
  - (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial drug test; and
  - (c) the initial drug test result is a positive result; and
  - (d) the person receives a confirmatory drug test in respect of the initial drug test; and
  - (e) the test result for the confirmatory drug test is a positive result.
- (2) The person must not again perform or be available to perform an applicable SSAA until all of the following have occurred:
  - (a) the person has undergone a comprehensive assessment;

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- (b) if the comprehensive assessment recommended the person commence a drug or alcohol intervention program—the person has begun participating in a nominated drug or alcohol intervention program;
- (c) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by:
  - (i) if the person is an employee of a DAMP and the DAMP was notified of the test result for the confirmatory drug test by CASA—a DAMP medical review officer; or
  - (ii) in any other case—a CASA medical review officer;
- (d) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by the person’s treating clinician, if any;
- (e) at the time the person was considered fit under paragraphs (c) and (d), the person receives a confirmatory drug test and records, for the test, a result that was not a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.230 deals with test results for body samples that are drug tested.

- (3) An offence against subregulation (2) is an offence of strict liability.

**99.385 Continuing to perform applicable SSAA after confirmatory alcohol test**

- (1) This regulation applies if:
  - (a) a person was performing or available to perform an applicable SSAA; and
  - (b) the person has had an initial alcohol test; and
  - (c) the test result for the initial alcohol test was a positive result; and
  - (d) the person has had a confirmatory alcohol test in respect of the initial alcohol test; and
  - (e) the test result for the confirmatory alcohol test was again a positive result.
- (2) The person must not again perform or become available to perform an applicable SSAA until all of the following have occurred:
  - (a) the person has undergone a comprehensive assessment;
  - (b) if the comprehensive assessment recommended the person commence a drug or alcohol intervention program—the person has begun participating in a nominated drug or alcohol intervention program;
  - (c) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by:
    - (i) if the person is an employee of a DAMP and the DAMP was notified of the test result for the confirmatory alcohol test by CASA—a DAMP medical review officer; or
    - (ii) in any other case—a CASA medical review officer;
  - (d) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by the person’s treating clinician, if any.

Penalty: 50 penalty units.

Note: Regulation 99.260 deals with test results for body samples that are alcohol tested.

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**Subpart 99.E** Offences for Subpart 99.C

**Division 99.E.2** Offences

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- (3) An offence against subregulation (2) is an offence of strict liability.



## **Division 99.E.3—CASA medical review officers**

### **99.390 CASA medical review officers**

- (1) CASA may, in writing, appoint a person entitled to practice as a medical practitioner under a law of a State or Territory to be a CASA medical review officer for the purposes of Subpart 99.C.
- (2) A CASA medical review officer must review:
  - (a) a positive result for a drug or alcohol test; and
  - (b) medical information concerning a person's failure to give a body sample for drug or alcohol testing because of a medical condition;before the result or failure is referred for action for an offence under this Subpart, or for other action under the Act or these Regulations.
- (3) CASA must take into account the results of a review carried out by a CASA medical review officer under subregulation (2) before it makes a decision to refer a positive result for action for an offence under this Subpart or for other action under the Act or these Regulations.

**Part 99** Drug and alcohol management plans and testing

**Subpart 99.F** Provision of information

**Division 99.F.1** Purposes of Subpart

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## **Subpart 99.F—Provision of information**

### **Division 99.F.1—Purposes of Subpart**

#### **99.395 Purposes of Subpart**

This Subpart provides for the exchange of information about drug and alcohol tests between CASA and DAMP organisations, and CASA and foreign operators.

## **Division 99.F.2—Information**

### **99.400 Drug or alcohol test information given or required by CASA**

- (1) If:
- (a) a drug or alcohol test is conducted on a person under Subpart 99.C; and
  - (b) the person is a SSAA employee of a DAMP organisation or an employee of a foreign operator; and
  - (c) the result of the test is a positive result;

CASA may notify the organisation or foreign operator of the matters set out in a notice given to the person under Subpart 99.C.

*If CASA notifies a DAMP organisation*

- (2) If CASA notifies a DAMP organisation under subregulation (1) of the results of the test, CASA may require the organisation, by notice in writing, to provide CASA with the information set out in subregulation (3) in respect of the employee.
- (2A) If, under subregulation (2), CASA requires a DAMP organisation to provide CASA with information, the DAMP organisation must, in writing, provide CASA with that information.

Penalty: 50 penalty units.

- (3) CASA may require:
- (a) information about what, if any, action was taken by the DAMP organisation under its DAMP in respect of the employee and the test result; and
  - (b) information about when, after the result of the test became known, the employee again performed or became available to perform a SSAA; and
  - (c) if the employee ceases to be a SSAA employee of the organisation—information about whether the employee so ceased:
    - (i) before the employee had completed attending a nominated drug or alcohol intervention program; or
    - (ii) before the employee had been approved by the organisation to again perform or be available to perform a SSAA.

*If CASA notifies foreign operator*

- (4) If CASA notifies the foreign operator under subregulation (1) of the results of the test, CASA may require the operator, by notice in writing, to provide CASA with the information relating to the test result specified in the notice.
- (5) If, under subregulation (4), CASA requires a foreign operator to provide CASA with information, the operator must, in writing, provide CASA with that information.

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Penalty: 50 penalty units.

- (6) An offence against subregulation (2A) or (5) is an offence of strict liability.

**99.405 Information that must be given to CASA following drug or alcohol test**

- (1) This regulation applies if:
- (a) CASA notifies a DAMP organisation of a person's test results in accordance with subregulation 99.400(1); and
  - (b) the person is a SSAA employee of the DAMP; and
  - (c) the person ceases to be a SSAA employee of the DAMP organisation for any reason; and
  - (d) the cessation occurs after the test and before the employee:
    - (i) resumes performing or being available to perform an applicable SSAA with the organisation; or
    - (ii) satisfactorily completes a nominated drug or alcohol intervention program.
- (2) The DAMP organisation must, in writing, provide CASA with the information set out in subregulation (3) in respect of the employee.

Penalty: 50 penalty units.

- (3) The information is the following:
- (a) the employee's name and address;
  - (b) the employee's ARN, if any;
  - (c) the date the employee ceased to work for the DAMP organisation.
- (4) An offence against subregulation (2) is an offence of strict liability.

## **Subpart 99.G—CASA's powers in relation to civil aviation authorisations**

### **Division 99.G.1—Purposes of Subpart**

#### **99.410 Purposes of Subpart**

This Subpart provides for CASA to vary, suspend or cancel a person's civil aviation authorisation in certain circumstances.

Note: CAR 269 allows CASA to vary, suspend or cancel a licence, certificate or authority, but under that regulation CASA must give the holder of the licence, certificate or authority notice and allow the holder an opportunity to show cause why the licence, certificate or authority should not be varied, suspended or cancelled.

#### **99.415 When CASA may vary, suspend or cancel a civil aviation authorisation**

- (1) CASA may, in writing, vary, suspend or cancel a person's civil aviation authorisation in the interests of aviation safety in the following circumstances:
  - (a) if:
    - (i) the person gives a body sample for drug or alcohol testing under Subpart 99.C; and
    - (ii) a confirmatory alcohol test or confirmatory drug test is conducted on the sample; and
    - (iii) the test result is a positive result;
  - (b) if a person refuses to give a body sample for drug or alcohol testing under Subpart 99.C.
- (2) If CASA determines that a person has contravened the requirements of a regulation in Division 99.E.2 (other than subregulation 99.325(1)), CASA may, in writing, vary, suspend or cancel the person's civil aviation authorisation in the interests of aviation safety.
- (3) If:
  - (a) CASA determines that a person has contravened the requirements of a regulation in Subpart 99.B or 99.F; and
  - (b) the person holds a civil aviation authorisation;CASA may, in writing, vary, suspend or cancel the person's civil aviation authorisation in the interests of aviation safety.
- (4) Before making a decision to vary, suspend or cancel a person's civil aviation authorisation under subregulation (3), CASA must:
  - (a) give the person a notice setting out the reasons why CASA is considering making the decision; and
  - (b) allow the person to show cause, within such reasonable time as CASA specifies in the notice, why CASA should not make the decision.

Note: See section 31 of the Act for review of a decision under this regulation.

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**99.420 When variation, suspension or cancellation takes effect**

A variation, suspension or cancellation of a civil aviation authorisation under regulation 99.415 takes effect from the date and time (if any) specified in the variation, suspension or cancellation.

**99.425 Notice**

- (1) If CASA varies, suspends or cancels a person's civil aviation authorisation under regulation 99.415, CASA must, as soon as practicable after the variation, suspension or cancellation, give the person a notice of the variation, suspension or cancellation that contains the following information:
  - (a) whether the person's authorisation is varied, suspended or cancelled;
  - (b) the authorisation that is so varied, suspended or cancelled;
  - (c) the reason for the variation, suspension or cancellation;
  - (d) the time (if any) and date that the variation, suspension or cancellation takes effect.
- (2) If the notice given under subregulation (1) is not a written notice, CASA must, within 48 hours after giving the notice under that subregulation, give the person a written notice of the matters specified in that subregulation.

**99.430 Effect of effluxion of time in relation to the suspension of civil aviation authorisation**

- (1) If a civil aviation authorisation is suspended under this Subpart, the authorisation has no force or effect for the duration of the suspension, but the period of currency of the authorisation continues to run.
- (2) If the period for which the authorisation is suspended is a period expiring after the expiration of the current period of the authorisation, the holder of the authorisation is not eligible for renewal of the authorisation until the period of suspension has expired.

**99.435 Effect of suspension of civil aviation authorisation**

If CASA suspends a civil aviation authorisation under this Subpart, its holder is taken not to be the holder of the authorisation during the period of the suspension.

## **Subpart 99.H—Approved testers and authorisations to conduct drug and alcohol tests**

### **Division 99.H.1—Purposes of Subpart**

#### **99.440 Purposes of Subpart**

This Subpart provides for the following:

- (a) approvals and authorisations of persons to take body samples and conduct drug and alcohol tests (Division 99.H.2);
- (b) obligations on approved testers, and protection of approved testers from liability in certain cases (Division 99.H.3);
- (c) powers of approved testers (Division 99.H.4);
- (d) identity cards for approved testers (Division 99.H.5);
- (e) notices for approved testers (Division 99.H.6).

## Division 99.H.2—Approvals and authorisations

### 99.445 CASA may approve persons to take body samples and conduct tests

- (1) A person may apply to CASA, in writing, for approval to take body samples for the purposes of Part IV of the Act.
  - (1A) Subject to regulation 11.055, CASA must grant the approval.
  - (2) A person may apply to CASA, in writing, for approval to conduct alcohol tests and initial drug tests for the purposes of Part IV of the Act.
    - (2A) Subject to regulation 11.055, CASA must grant the approval.
    - (2B) A person may apply to CASA, in writing, for approval to conduct confirmatory drug tests for the purposes of Part IV of the Act.
  - (3) Subject to regulation 11.055, CASA must grant the approval if the National Association of Testing Authorities accredits the person:
    - (a) to AS 4760, *Procedures for specimen collection and the detection and quantitation of drugs in oral fluid*; or
    - (b) another Standard that is declared by CASA in a legislative instrument made for the purposes of this paragraph.
- Note 1: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.
- Note 2: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:
  - (a) a decision refusing to issue, or cancelling, suspending or varying, an approval; or
  - (b) a decision imposing a condition on an approval.
- (5) If CASA approves a person under subregulation (1) or (2), CASA must allocate to the person a unique identifying number (an **allocated number**) for the purposes of this Subpart.
- (6) The allocation must be in accordance with a method approved by CASA for the purposes of this subregulation.
- (7) The allocated number may include a numeral, letter or other character.

### 99.450 Persons authorised to take body samples and conduct tests

- (1) For subsection 36(2) of the Act, a person is authorised to take body samples for drug or alcohol tests under Subpart 99.C if the person is approved by CASA to do so under subregulation 99.445(1).
- (2) For subsection 36(3) of the Act, a person is authorised to conduct alcohol tests or initial drug tests under Subpart 99.C if the person is approved by CASA to do that under subregulation 99.445(2).



- (3) For subsection 36(3) of the Act, a person is authorised to conduct confirmatory drug tests under Subpart 99.C if the person is approved by CASA to do that under subregulation 99.445(3).

## **Division 99.H.3—Obligations on approved testers and protection from liability**

### **99.455 Obligations on approved testers**

- (1) An approved tester who wants to take a body sample from a donor must comply with the requirements of this Part in requiring, taking and dealing with the body sample.
- (2) Before taking a body sample from a donor, an approved tester must give the donor notice, in relation to any information about the donor that is collected by the tester, that meets the requirements of Information Privacy Principle 2 of the *Privacy Act 1988*.
- (3) The tester must ensure that he or she does not delay the donor for longer than is necessary to take the body sample and to conduct the test.

### **99.460 Approved testers not liable in certain cases**

An approved tester is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Part.

## **Division 99.H.4—Powers of approved testers**

### **99.465 Approved testers' powers to access premises**

- (1) Subject to any aviation security requirements, an approved tester must, at all reasonable times, have access to any place to which access is necessary for the purposes of carrying out any of the approved tester's powers and functions under this Part.
- (2) A person must not prevent, or hinder, access by an approved tester to any place to which access is necessary for the purposes of carrying out any of the approved tester's powers or functions under this Part.

Penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) An approved tester must produce his or her identity card for inspection if asked to do so by the occupier or person in charge, or apparently in charge, of the place to which the tester seeks access.
- (5) If an approved tester:
  - (a) is acting as an approved tester; and
  - (b) seeks or is allowed access to a place specified in subregulation (1); and
  - (c) fails to produce his or her identity card for inspection when asked to do so;the tester is not authorised to access the place under that subregulation and, if access has been given to the tester, the tester must leave the place.

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## **Division 99.H.5—Identity cards**

### **99.470 Identity cards**

- (1) CASA must issue an approved tester with an identity card for the purposes of this Part.
- (2) The identity card is valid for the period that the person has been approved under regulation 99.445, or until that approval is suspended or revoked.
- (3) The card must:
  - (a) contain a recent photograph of the person; and
  - (b) specify whether the person is authorised to take body samples for drug or alcohol tests, or both; and
  - (c) specify that the person is authorised to conduct alcohol tests or initial drug tests, or both; and
  - (d) state the person's allocated number; and
  - (e) state the period for which the person is authorised to be an approved tester.

### **99.475 Return of identity card**

- (1) If:
  - (a) a person has been issued with an identity card; and
  - (b) either:
    - (i) the person ceases to be an approved tester; or
    - (ii) the person's approval under regulation 99.445 is suspended;the person must return the card to CASA within 7 days of the person ceasing to be an approved tester, or of the person's approval being suspended, as the case may be.

Penalty: 10 penalty unit.

- (2) An offence against subregulation (1) is an offence of strict liability.

### **99.480 Display and production of identity cards**

- (1) If an approved tester is performing functions or exercising powers under this Part, the tester must:
  - (a) wear his or her identity card so that it can be readily seen; and
  - (b) upon request, show his or her identity card to a person from whom the approved tester intends to take a body sample for a drug or alcohol test.
- (2) A donor who has been required by an approved tester to give a body sample for a drug or alcohol test may refuse to give the body sample if:
  - (a) the donor requests the tester to show the donor the tester's identity card; and
  - (b) the tester does not show the donor the card.

### **99.485 Suspension or revocation of authorisation**

- (1) This regulation applies if an approved tester:
  - (a) breaches a condition of the tester's approval given under regulation 99.445;  
or
  - (b) does not comply with the requirements of this Part in performing functions or exercising powers under this Part.
- (2) CASA may do any or all of the following in respect of the breach:
  - (a) impose a further condition of approval;
  - (b) suspend the approved tester's authorisation under regulation 99.450;
  - (c) revoke the tester's authorisation under regulation 99.450.
- (3) If:
  - (a) CASA takes an action mentioned in paragraph (2)(a) or (b) because of a breach of a condition (the **first breach**); and
  - (b) CASA later becomes satisfied that the approved tester is not complying with a condition of the approval under regulation 99.445;CASA may revoke the tester's authorisation even if the period for fulfilling any condition, or the period of any suspension for the first breach, has not ended.

### **99.490 Notices**

- (1) If CASA imposes on an approved tester a further condition of approval under paragraph 99.485(2)(a), CASA must give the tester notice in writing of the imposition of the condition, the terms of the condition and the date from which the condition takes effect.
- (2) If CASA suspends the approved tester's authorisation under paragraph 99.485(2)(b), CASA must give the tester notice in writing of the suspension, the date that the suspension takes effect and the period of the suspension.
- (3) If CASA revokes the approved tester's authorisation under paragraph 99.485(2)(c), CASA must give the tester notice in writing of the revocation and the date from which the revocation takes effect.
- (4) The date under this regulation must not be a date before the day the notice is given.
- (5) A notice under this regulation must also include a statement setting out the reason that the condition was imposed or that the authorisation was suspended or revoked, as the case may be.

**Part 99** Drug and alcohol management plans and testing

**Subpart 99.H** Approved testers and authorisations to conduct drug and alcohol tests

**Division 99.H.6** Notices to approved testers

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## **Division 99.H.6—Notices to approved testers**

### **99.495 Notice to approved testers**

If a provision of these Regulations requires CASA to give a notice to an approved tester, the requirement is met if CASA gives that notice to the person who, as CASA's delegate, approved the tester as an approved tester.