

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Australian Border Force Act 2015

Australian Border Force (Alcohol and Drug Tests) Rules 2025

Legislative authority

The *Australian Border Force Act 2015* (the Act) provides the legislative framework for the Australian Border Force, the frontline operational border control and enforcement entity within the Department of Home Affairs (the Department).

Section 58 of the Act provides, in part, that the Minister may make rules, not inconsistent with the Act, prescribing all matters which are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Background

Part 5 of the Act provides the legislative basis for alcohol and drug testing in the Department. In particular, sections 34, 35 and 36 of the Act provide that an authorised person may require an Immigration and Border Protection worker (being persons defined under the Act that are exercising powers and performing functions under Acts administered by the Department) to undergo an alcohol screening test, an alcohol breath test, or a prohibited drug test. The purpose of imposing alcohol and drug testing is to ensure a safe working environment and to increase the corruption resistance of the Department.

Section 39 of the Act provides that the rules, for the purposes of Part 5, may make provision for certain matters, including the authorisation of persons, the devices to be used in conducting tests, procedures for handling samples taken and the confidentiality of the test results.

The *Australian Border Force (Alcohol and Drug Tests) Rule 2015* (2015 Rule), made for the purposes of Part 5 of the Act, prescribes matters required for implementing alcohol and drug testing in the Department and applies to Immigration and Border Protection worker.

Purpose and effect

The 2015 Rule sunsets on 1 October 2025, and as such, is automatically repealed by operation of Part 4 of the *Legislation Act 2003* (Legislation Act).

The purpose and effect of the *Australian Border Force (Alcohol and Drug Tests) Rules 2025* (2025 Rules) is to prescribe matters required for maintaining alcohol and drug testing in the Department and will apply to Immigration and Border Protection workers.

The 2025 Rules substantially replicate the provisions in the 2015 Rule with modification to make more clear the devices that are approved for the purposes of testing, the training to officers of Customs (which is a category of Immigration and Border Protection worker) and the procedures that must be complied with for the purpose of alcohol and drug testing.

Consultation

The 2025 Rules substantially replicate existing alcohol and drug testing requirements for the Department, as provided for in the 2015 Rule. The key difference between 2025 Rules and the 2015 Rule is the inclusion of approved devices in section 8, and requisite training courses in sections 14 and 21 of the 2025 Rules. These changes do not change the scope of the requirements but rather make clear on the face of the 2025 Rules such requirements that was in place and set out in other instruments made under the 2015 Rule. Other changes include updating the standards that testing is to be conducted in accordance with to accord with and changes of expressions (being from “saliva” to “oral fluid”, and where appropriate from “urine samples” to “body samples”). These changes are for currency of procedures and of expressions, and for consistency of expression with the Act.

The changes that are implemented as part of the 2025 Rules are therefore machinery in nature and do not themselves change the scope of testing and the Immigration and Border Protection workers to which the testing framework applies. The Department undertakes regular (at minimum, quarterly) formal engagement sessions with contracted service providers, who are the authorised testers. During these sessions the Department routinely evaluates operating procedures and standards to ensure currency and application of these requirements. Furthermore, during each program year, the Department is also involved in regular contact with industry experts within the toxicology field who provide ongoing, contemporary procedural change advice, where necessary. Related discussions are recorded and subject to review as necessary. In light of this, and because the changes are machinery, no additional consultation was undertaken.

Details and operations

Details of the 2025 Rules are set out in **Attachment A**.

The 2025 Rules are a disallowable legislative instrument for the purposes of the Legislation Act.

The 2025 Rules commence on 1 October 2025.

Other matters

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at **Attachment B**.

Details of the *Australian Border Force (Alcohol and Drug Tests) Rules 2025*

Part 1—Preliminary

Division 1—Preliminary

Section 1 Name

This section provides that the name of the instrument is the *Australian Border Force (Alcohol and Drug Tests) Rules 2025* (2025 Rules).

Section 2 Commencement

This section has the effect that the 2025 Rules commence on 1 October 2025.

Section 3 Authority

Section 3 provides that the authority to make the 2025 Rules is the *Australian Border Force Act 2015* (the Act).

Division 2—Simplified outline of this instrument

Section 4 Simplified outline of this instrument

This section replicates, with modification, section 4 of the 2015 Rule and sets out a simplified outline of the 2025 Rules to assist the reader.

The outline provides brief statements about the purpose and of the 2025 Rules, including that the instrument deals with the conduct and analysis of alcohol or drug tests of Immigration and Border Protection workers, for the purposes of the Act.

The outline further assists the reader by briefly stating that Part 5 of the Act provides that Immigration and Border Protection workers may be required to undergo alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests (alcohol or drug tests), and that section 38 of the Act provides that alcohol or drug tests are to be conducted in accordance with rules made under the Act (see also sections 39 and 58 of the Act).

In addition, the outline briefly states that:

- the 2025 Rules provide for the authorisation of persons to conduct alcohol or drug tests and to analyse the results of those tests;
- the 2025 Rules provide for the approval of devices to conduct tests and list the training courses required of officers of Customs in relation to alcohol tests and the taking of body samples. The outline for this part is modified to reflect that the training courses required are now set out in the 2025 Rules. This modification does not change the scope and operation of related provisions;
- in the 2025 Rules, procedures are set out for the conduct of alcohol or drug tests, the handling of body samples and the keeping of records of body samples and other information;

- the 2025 Rules also deal with the transmission of body samples for analysis, the treatment of those samples by analysts, and that urine samples and oral fluid samples are required to be collected and analysed in accordance with the relevant Australian and New Zealand standards. The outline for this part is modified to refer to oral fluid instead of saliva. This modification is made for consistency and does not change the scope and operation of related provisions; and
- the 2025 Rules are made under the Act and replaces the *Australian Border Force (Alcohol and Drug Tests) Rule 2015* (2015 Rule). This part of the outline is modified to reflect the instrument been replaced. This modification does not change the scope or operation of related provisions.

Division 3—Definitions

Section 5 Definitions

This section replicates, with modification, section 5 of the 2015 Rule to maintain the effect of the latter referred provision. The modifications made to this section do not change the scope or operation of the section.

The note following the heading of section 5 explains that several expressions used in the instrument are defined in the Act, including the following terms:

- alcohol blood test (paragraph (a) refers);
- alcohol breath test (paragraph (b) refers);
- alcohol screening test (paragraph (c) refers);
- authorised person (paragraph (d) refers);
- body sample (paragraph (e) refers);
- Immigration and Border Protection worker (paragraph (f) refers);
- officer of Customs (paragraph (g) refers);
- prohibited drug test (paragraph (h) refers).

This note has been modified to clarify that the terms “Immigration and Border Protection worker” and “officer of Customs” are also defined in the Act.

The purpose of section 5 is to define multiple expressions referred to throughout the 2025 Rules. These definitions are as follows

The term ***accredited analyst*** refers to section 7, which describes the accredited analysts covered by the 2025 Rules.

The term ***Act*** means the *Australian Border Force Act 2015*.

The term ***alcohol or drug test*** means any of the following:

- an alcohol screening test;
- an alcohol breath test;
- an alcohol blood test;
- a prohibited drug test.

The term ***approved device*** means a device approved under section 8.

The term **authorised laboratory** refers to section 7, which describes the authorised laboratory covered by the 2025 Rules.

The term **authorised tester** refers to section 6, which describes the authorised testers covered by the 2025 Rules.

The term **Department** means the Department of Home Affairs. This term is inserted to make clear on the face of the instrument the Department to which references made to that term concerns.

The term **medical practitioner** has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

The term **registered nurse** has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

Part 2—Authorisation of alcohol or drug testing and analysis

Section 6 Authorised testers—alcohol or drug tests

This section replicates, with modification, section 6 of the 2015 Rule to maintain the intended scope and effect of the latter referred provision.

Paragraph 39(a) of the Act has the effect that, for the purposes of sections 34, 35 and 36 of the Act, the rules may make provisions for and in relation to the authorisation of persons:

- to conduct alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests for the purpose of those sections; and
- to operate equipment for that purpose.

Section 6 of the 2025 Rules is made for the purposes of paragraph 39(a) of the Act and provides for the authorisation of individuals known as an authorised tester, to:

- conduct an alcohol screening test;
- conduct an alcohol breath test;
- collect a sample of blood for purposes relating to the conduct of an alcohol blood test;
- collect a sample of blood for purposes relating to the conduct of a prohibited drug test;
- collect a body sample other than blood or human breath, for purposes relating to the conduct of a prohibited drug test;

under sections 34, 35 and 36 of the Act.

Section 6 does not deal with the authorisation of persons to analyse body samples for alcohol blood tests and prohibited drug tests, as this is dealt with in section 7.

Subsection 6(1)

Subsection 6(1) makes clear that section 6 is made for the purposes of paragraph 39(a) of the Act, which allows for rules to make provisions in relation to the authorisation of persons to conduct alcohol and prohibited drug tests.

Subsection 6(2)

Subsection 6(2) contains a table which provides that an authorised tester, for a purpose mentioned in column 1 of the table, means an individual specified in column 2 of the table for that purpose.

Table item 1

This item sets out the authorised tester for the purpose of conducting an alcohol screening test, and includes:

- (a) an individual authorised for that purpose under subsection (3) who is an officer of Customs who has successfully completed a training course in conducting alcohol screening tests mentioned in section 14 (subparagraph (a)(i) refers), or a police officer of a State or Territory (subparagraph (a)(ii) refers); and
- (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

This table item substantially replicates table item 1 of subsection 6(2) of the 2015 Rules. However, unlike the table item being replicated, which refers to requirements being separately approved, the modified table item refers to the training requirements set out in section 14 of the 2025 Rules. This modification does not change the scope or operation of the table item.

Table item 2

This item sets out the authorised tester for the purpose of conducting an alcohol breath test, and includes:

- (a) an individual authorised for that purpose under subsection (3) who is an officer of Customs who has successfully completed a training course in conducting alcohol breath tests mentioned in section 14 (subparagraph (a)(i) refers), or a police officer of a State or Territory (subparagraph (a)(ii) refers); and
- (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

This table item substantially replicates table item 2 of subsection 6(2) of the 2015 Rules. However, unlike the table item being replicated, which refers to requirements being separately approved and like the modification for table item 1 of subsection 6(2) of the 2025 Rules, the modified table item refers to the training requirements set out in section 14 of the 2025 Rules. This modification does not change the scope or operation of the table item.

Table items 3 and 4

Table item 3 sets out the authorised tester for the purpose of collecting a sample of blood for purposes relating to the conduct of an alcohol blood test, and includes:

- (a) an individual authorised for that purpose under subsection (3) who is a medical practitioner (subparagraph (a)(i) refers), a registered nurse (subparagraph (a)(ii) refers), or an enrolled nurse (subparagraph (a)(iii) refers); and
- (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

Table item 4 sets out the authorised tester for the purpose of collecting a sample of blood for purposes relating to the conduct of a prohibited drug test, and includes:

- (a) an individual authorised for that purpose under subsection (3) who is a medical practitioner (subparagraph (a)(i) refers), a registered nurse (subparagraph (a)(ii) refers), or an enrolled nurse (subparagraph (a)(iii) refers); and
- (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

Table items 3 and 4 replicates in full table items 3 and 4, respectively, of subsection 6(2) of the 2015 Rule.

Table item 5

This table item sets out the authorised tester for the purpose of collecting a body sample, other than blood or human breath, for purposes relating to the conduct of a prohibited drug test, and includes:

- (a) an individual authorised for that purpose under subsection (3) who is a medical practitioner (subparagraph (a)(i) refers), a registered nurse (subparagraph (a)(ii) refers), an enrolled nurse (subparagraph (a)(iii) refers), an officer of Customs who has successfully completed a training course in supervising the provision of body samples mentioned in section 21 (subparagraph (a)(iv) refers), or a police officer of a State or Territory (subparagraph (a)(v) refers); and
- (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

This table item substantially replicates table item 5 of subsection 6(2) of the 2015 Rules. However, unlike the table item being replicated, which refers to requirements being separately approved and like the modification for table item 1 of subsection 6(2) of the 2025 Rules, the modified table item refers to the training requirements set out in section 14 of the 2025 Rules.

The table item also corrects an erroneous reference in subparagraph (a)(iv) of table item 5 of subsection 6(2) of the 2015 Rule, which referred to an officer of Customs who has successfully completed a training course in supervising the provision of “urine samples”. The correct reference should be to “body samples” as the course to be completed is the unit of competency classified as “HLTPAT005 – Collect specimens for drugs of abuse testing” under the Australian Qualifications Framework.

Neither of the modifications change the scope and operation of the provision being replicated because to the extent the table item being replicated refers to urine samples, that reference does not change the purpose for which the authorised testers are authorised to do. That is, the testers are authorised for the collecting a body sample, other than blood or human breath, for purposes relating to the conduct of a prohibited drug test.

Subsection 6(3)

This subsection replicates in full subsection 6(3) of the 2015 Rule.

This subsection is the authority for the Secretary to exercise the Secretary's discretion to authorise:

- an individual mentioned in paragraph (a) of column 2 of an item in the table in subsection (2); or
- a company mentioned in paragraph (b) of column 2 of an item in the table in subsection (2);

for a purpose specified in column 1 of an item in the table in subsection (2).

In accordance with the individuals specified in column 2 of the table items in subsection 6(2) for a purpose specified in column 1 of an item in the table in subsection (2), and with subsection 6(3), the Secretary can only authorise an officer of Customs who has successfully completed the applicable training course set out in the 2025 Rules, a police officer of a State or Territory, or a company to conduct alcohol screening tests or alcohol breath tests. Only medical practitioners, registered nurses, enrolled nurses and companies may be authorised to collect a blood sample.

An officer of Customs who has successfully completed the applicable training course set out in the 2025 Rules, a police officer of a State or Territory, a medical practitioner, a registered nurse, an enrolled nurse, or a company may be authorised to collect a sample other than blood or human breath for the purpose of a prohibited drug test. A company is included as the Department may outsource the conducting of tests or collection of samples to an external service provider.

In the case of an individual employed or engaged by a company, subsection 6(3) provides that the Secretary is required to authorise the company, not the individuals employed or engaged by the company. These provisions provide clarification that, although the Secretary authorises the company, the individuals employed or engaged by the company actually conduct the test or collect the sample.

Subsection 6(4)

This subsection has the effect that, if the Secretary authorises an officer of Customs as an authorised tester under subsection 6(3) of the 2025 Rules for a purpose specified in column 1 of an item in the table in subsection 6(2) of those Rules:

- (a) the Secretary must give the officer a certificate stating that he or she is an authorised tester for that purpose; and
- (b) the officer must, if requested to do so, show his or her certificate to an Immigration and Border Protection worker who is directed or required to undergo a test for section 34, 35 or 36 of the Act.

This subsection replicates subsection 6(4) of the 2015 Rule with a modification to make clear on the face of the 2025 Rules that the purpose referred to is the purpose specified in subsection 6(2). The modification does not change the scope or operation of the provision being replicated.

Subsection 6(5)

Similarly to subsection 6(4) of the 2025 Rules, subsection 6(5) of those Rules has the effect that, if the Secretary authorises a company under subsection 6(3) of those Rules for a purpose:

- (a) the Secretary must give the company a certificate stating that the company is authorised for that purpose; and
- (b) an individual employed or engaged by the company who is an authorised tester for that purpose under subsection 6(2) of the 2025 Rules must, if requested to do so, show the certificate to an Immigration and Border Protection worker who is directed or required to undergo a test for section 34, 35 or 36 of the Act.

This subsection replicates in full subsection 6(5) of the 2015 Rule.

Section 7 Authorised laboratories and accredited analysts—analysis of body samples

This section replicates in full section 7 of the 2015 Rule to maintain the scope and operation of the latter referred provision.

Paragraph 39(f) of the Act has the effect that, for the purposes of sections 34, 35 and 36 of the Act and in the case of alcohol blood tests and prohibited drug tests, the rules may make provision for and in relation to the accreditation of persons to conduct analyses in connection with such tests.

Section 7 of the 2025 Rules is made for the purposes of paragraph 39(f) of the Act and concerns authorised laboratories and accredited analysts.

Subsection 7(1)

Subsection 7(1) makes clear that section 7 is made for paragraph 39(f) of the Act, which allows for the rules to make provision in relation to the accreditation of persons to conduct analyses in connection with alcohol blood tests and prohibited drug tests.

Subsections 7(2) and (4)

Subsections 7(2) and 7(4) provide that an authorised laboratory is a company that is a laboratory accredited by the National Association of Testing Authorities, Australia (NATA), that is authorised by the Secretary for the purposes of:

- analysing a sample of blood for the purposes relating to the conduct of an alcohol blood test;
- analysing a body sample for purposes relating to the conduct of a prohibited drug test.

These provisions provide clarity that the Secretary may only authorise NATA accredited laboratories as companies authorised to analyse those body samples.

Subsection 7(3)

Subsection 7(3) has the effect that an accredited analyst is an individual employed or engaged by an authorised laboratory.

This provision provides clarification that, although the Secretary authorises the laboratory, the individuals employed or engaged by the authorised laboratory actually conduct the analysis of the samples and do not need a separate instrument of authorisation.

Subsection 7(5)

Subsection 7(5) has the effect that, where the Secretary authorises a company under subsection 7(4), the Secretary must give the company a certificate (but not the accredited analysts within the company) stating that the company is authorised for that purpose.

Section 8 Devices approved for tests

Paragraph 39(e) of the Act has the effect that, for the purposes of sections 34, 35 and 36, the rules may make provision for and in relation to the devices used in conducting alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices.

This section is made for the purposes of paragraph 39(e) of the Act and sets out the devices approved for specified tests. Specifically, a device mentioned in an item of the table is approved for use under section 34, 35 or 36 of the Act to conduct the alcohol or drug test mentioned in that item.

Approved devices for alcohol and drug tests		
Item	Devices	Alcohol or drug test
1	Alcolizer Le5	(a) Alcohol screening test (b) Alcohol breath test
2	AlcoQuant 6020	(a) Alcohol screening test (b) Alcohol breath test
3	Innoscreen Cup	Prohibited drug test – Urine test
4	Medvet Oral 7	Prohibited drug test – Oral fluid test
5	Quantisal	Prohibited drug test – Oral fluid test

This section maintains the scope of section 8 of the 2015 Rule but makes clear on the face of the 2025 Rules the devices for the relevant tests to be used.

Part 3—Conduct of alcohol or drug tests

Section 9 Alcohol or drug tests—procedures

This section replicates in full section 9 of the 2015 Rule and sets out general rules concerning the conduct of alcohol or drug tests for sections 34, 35 or 36 of the Act.

Subsections 9(1) to 9(3)

Subsection 9(1) has the effect that an alcohol or drug test conducted for section 34, 35 or 36 of the Act must be conducted in a respectful manner (paragraph 9(1)(a) refers) and in circumstances affording reasonable privacy to the Immigration and Border Protection worker directed to undergo the test (paragraph 9(1)(b) refers).

Subsection 9(2) has the effect that the test must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the test and must not involve the removal of more clothing than is necessary for the conduct of the test (paragraph 9(2)(a) refers), and more visual inspection than is necessary for the conduct of the test (paragraph 9(2)(b) refers).

Subsection 9(3) has the effect that, if practicable, the test must be conducted by a person of the same sex as the Immigration and Border Protection worker directed to undergo the test.

The purpose and effect of subsections 9(1) to 9(3) is to ensure that tests conducted under the Act are conducted in a respectful manner, affording reasonable privacy to the Immigration and Border Protection worker undergoing the test, and, where practicable, by a person of the same sex.

Subsection 9(4)

Subsection 9(4) provides that where a prohibited drug test requires an Immigration and Border Protection worker to provide a sample of hair, the authorised tester collecting the sample:

- must use the least painful technique known and available to the authorised tester (paragraph 9(4)(a) refers);
- must only collect the amount of hair necessary for the conduct of the test (paragraph 9(4)(b) refers); and
- may collect a sample of hair from any part of the Immigration and Border Protection worker's body, other than the genital or anal area (subparagraph 9(4)(c)(i) refers) or the buttocks (subparagraph 9(4)(c)(i) refers).

This subsection enables a hair sample to be taken in an amount that allows a prohibited drug test to be undertaken and provides certainty as to where on the body a sample of hair can and cannot be taken from. It would be common for samples of hair to be taken from the head, however this subsection provides for the situation where, for example, a person presents for a prohibited drug test with a shaved head.

Section 10 Alcohol or drug tests – collection of information from body sample

This section replicates in full section 10 of the 2015 Rule and provides that the only information which may be collected from an alcohol or drug test conducted for section 34, 35 or 36 of the Act is information relating to the detection of alcohol or prohibited drugs.

This provision provides a general statement which seeks to restrict the information which may be collected from alcohol and drug testing to only that which is related to the detection of prohibited drugs and alcohol.

Section 11 Alcohol or drug tests—security and destruction of body samples and other records

This section replicates, with modification, section 11 of the 2015 Rule and sets out the storage, retention and destruction requirements for body samples and other records obtained from the conduct of an alcohol or drug test.

Subsection 11(1)

Subsection 11(1) requires a body sample or other record that is relevant to an alcohol or drug test conducted for sections 34, 35 or 36 of the Act to be kept in a secure location unless it is destroyed in accordance with this section.

The term “body sample” is defined in section 4 of the Act to mean any of the following:

- any human biological fluid;
- any human biological tissue (whether alive or otherwise);
- any human breath.

“Other record” is a term which is not defined in the Act, but includes, for example, the name of the Immigration and Border Protection worker tested, the date of the test, the type of test, location of the test, identification of the authorised person who directed the Immigration and Border Protection worker to undergo the test and the name or identification of the authorised tester who conducted the test.

Subsection 11(2)

Subsection 11(2) has the effect that a body sample that does indicate the presence of alcohol or prohibited drugs when tested must be destroyed no later than two years from the day the test was conducted (paragraph 11(2)(a) refers), and a body sample that does not indicate the presence of alcohol or prohibited drugs when tested must be destroyed no later than 28 days after the day the test was conducted (paragraph 11(2)(b) refers).

This subsection ensures that retention periods are appropriately aligned with the results of the test. For example, where an Immigration and Border Protection worker returns a positive test result, the worker may be subject to a range of sanctions including dismissal, which the worker may appeal through a court or tribunal. These samples may need to be retained for up to two years to ensure their availability until any actions taken by either party are finalised.

Subsection 11(3)

To enhance the governance of the Department’s Drug and Alcohol Management Program (DAMP), subsection 11(3) allows the Department to retain any “other record” regardless of whether they indicate the presence of alcohol or prohibited drugs, until such time as the worker to whom the record relates ceases, for any reason, to be an Immigration and Border Protection worker. This would align the destruction requirements for “other records” and enable the Department to accurately monitor testing and report accurately on the DAMP and its compliance with Commonwealth procurement and spending requirements. It does this by enabling the Department to compile records of the numbers, dates and locations of testing, invoices, records of samples, laboratory reports resulting from that testing, and reports from the Medical Review Officer.

Subsection 11(4)

Subsection 11(4) has the effect that, despite subsection 11(3), information obtained from the analysis of a sample may be retained for the purpose of compiling a statistical database so long as the information retained cannot be used to identify the Immigration worker and the information relates to:

- the detection of alcohol or prohibited drugs (subparagraph 11(4)(a)(i) refers);
- the name of the prohibited drugs detected (subparagraph 11(4)(a)(ii) refers);
- the quantity of any alcohol or prohibited drugs detected (subparagraph 11(4)(a)(iii) refers);
- how a urine sample was provided or analysed (subparagraph 11(4)(a)(iv) refers);
- whether a urine sample was provided, or analysed in accordance with the Australian/New Zealand Standard mentioned in section 20 (subparagraph 11(4)(a)(v) refers).

This subsection ensures that information retained for the purpose of compiling a statistical database is appropriately limited.

This provision has been replicated with the modifications that subparagraphs 11(4)(a)(iv) and (v) refer to “body sample” instead of “urine sample”. The modifications correct erroneous references and do not change the intended operation of the provision being replicated.

Subsection 11(5)

Subsection 11(5) has the effect that, despite subsection 11(3), information obtained from the analysis of a sample may be retained for security vetting purposes, including for any organisational suitability assessments conducted by the Department, only if the information relates to the detection of alcohol or prohibited drugs.

All current and prospective Immigration and Border Protection workers are subject to an Australian Government security clearance and an organisational suitability assessment. Under both processes, applicants submit a range of information that is used to both establish an individual's suitability to access national security information and to assess whether an individual's character and background is suitable to work in the Department.

In the case of a positive drug test, the information obtained from the analysis of a sample may be relevant to assessing whether the person has provided open and honest answers during the clearance process. This information will be stored on the individual's Personal Security File and Organisational Suitability File. The information contained on these files is stored in compliance with the *Archives Act 1983*.

The information may be used to assess an individual's ongoing suitability to hold a security clearance or an organisational suitability assessment for the Department, particularly if a worker attempts to reapply for a security clearance or suitability assessment after resignation from the Department.

Section 12 Alcohol or drug tests—disclosure of information

This section replicates in full section 12 of the 2015 Rule and provides for the circumstances in which information revealed by an alcohol or drug test may be disclosed by a person, other than the Immigration and Border Protection worker who provides a body sample for an alcohol or drug test. This includes:

- if the information is already lawfully publicly known (paragraph 12(a) refers);
- in accordance with Part 3 (paragraph 12(b) refers);
- for the investigation of any offence or offences generally (paragraph 12(c) refers);

- to enable a conduct issue to be dealt with under the *Public Service Act 1999* and to enable any action to be taken by the Secretary in relation to the issue (paragraph 12(d) refers);
- for a decision whether to institute proceedings for an offence (paragraph 12(e) refers);
- for proceedings for an offence (paragraph 12(f) refers);
- for the Immigration and Border Protection worker's medical treatment where the worker does not have capacity to consent in writing to the disclosure (paragraph 12(g) refers);
- if the Immigration and Border Protection worker consents in writing to the disclosure (paragraph 12(h) refers);
- for the purposes of security vetting of the Immigration and Border Protection worker, including for any organisation suitability assessments conducted by the Department (paragraph 12(i) refers).

Section 13 Alcohol breath tests—procedures

This section replicates, with modification, section 13 of the 2015 Rule and sets out procedures which must be followed in conducting alcohol breath tests.

Subsection 13(1)

Subsection 13(1) has the effect that an alcohol breath test for section 35 or 36 of the Act must be conducted using an approved device for the test. The note under subsection 13(1) draws the reader's attention to section 8 of the 2025 Rules, which approves the devices mentioned. The inclusion of the note under this subsection does not change the scope or operation of the provision.

Subsections 13(2) and (4)

Subsection 13(2) also allows an Immigration and Border Protection worker who is directed to undergo an alcohol breath test under subsection 35(1) of the Act, and where the test indicates the presence of alcohol, to ask the authorised tester conducting the test to arrange for the Immigration and Border Protection worker to undergo an alcohol blood test. If the Immigration and Border Protection worker asks that an alcohol blood test be conducted, the authorised tester conducting the alcohol breath test is then required under subsection 13(4) to take all reasonable steps to contact a person authorised to conduct an alcohol blood test.

Subsection 13(3)

Subsection 13(3) has the effect that, where an Immigration and Border Protection worker makes a request for an alcohol blood test, neither the request nor the alcohol blood test absolves the Immigration and Border Protection worker from the obligation to undergo the alcohol breath test.

Subsection 13(5)

Subsection 13(5) requires the authorised tester who conducted an alcohol breath test to give, as soon as practicable after the test, a certificate to the Immigration and Border Protection

worker who provided the breath sample and the authorised person who directed the Immigration and Border Protection worker to undergo the alcohol breath test.

Subsection 13(6)

Subsection 13(6) provides that the certificate must state the following information:

- the type and serial number of the approved device used to conduct the test (paragraph 13(6)(a) refers);
- the sample number of the test (paragraph 13(6)(b) refers);
- the unique identifying number relating to the Immigration and Border Protection worker tested (paragraph 13(6)(c) refers);
- the full name of the authorised tester who conducted the test (and, if the authorised tester is employed or engaged to conduct the test by a company which is authorised under subsection 6(3), the full name and address of the company) (paragraph 13(6)(d) refers);
- whether the authorised tester conducted a self-test on the approved device before and after the analysis (paragraph 13(6)(e) refers);
- if the authorised tester conducted a self-test: the time and result of the self-test (subparagraph 13(6)(f)(i) refers), and whether the self-test was conducted on override mode (subparagraph 13(6)(f)(ii) refers);
- the date on which, and the time at which, the test was conducted (paragraph 13(6)(g) refers);
- the result of the test as shown by the approved device (paragraph 13(6)(h) refers).

These procedures will ensure that Immigration and Border Protection workers are made aware of the relevant details of the alcohol breath test.

Section 14 Alcohol screening tests and alcohol breath tests—training courses

This section has the effect that, for the purposes of section 6, and in respect of the training course for:

- (a) conducting alcohol screening tests; and
 - (b) conducting alcohol breath tests;
- the training course to be successfully completed by an officer of Customs is a training course that satisfies the unit of competency classified as “HLTPAT005 – Collect specimens for drugs of abuse testing” under the Australian Qualifications Framework.

This section maintains the scope of section 14 of the 2015 Rule but makes clear on the face of the 2025 Rules the training that must be completed before officers of Customs could conduct the afore-mentioned tests.

Part 4—Analysis of body samples from some tests

Section 15 Part 4—scope

This section replicates, with modification, section 15 of the 2015 Rule and provides that Part 4 of the 2025 Rules applies to alcohol blood tests (paragraph 15(a) refers) and prohibited drug tests of body samples other than urine or oral fluid (paragraph 15(b) refers). The modification made is to replace the reference to “saliva” with “oral fluid” for consistency of

reference. Examples of body samples which may be used for a prohibited drug test include hair or blood.

Section 16 Transmission of body samples to authorised laboratories

This section replicates, with modification, section 16 of the 2015 Rule and provides for the process involved in collecting a body sample for the purposes of an alcohol blood test, or a prohibited drug test of a body sample other than urine or oral fluid.

Section 16 of the 2025 Rules has the effect that an authorised tester collecting a body sample for the purpose of an alcohol blood test, or a prohibited drug test of a body sample other than urine or oral fluid, must:

- (a) place approximately equal quantities of the sample into 2 containers; and
- (b) label each container for future identification; and
- (c) ensure that each container is sealed; and
- (d) arrange for both sealed containers to be placed in a transportation container; and sent to an authorised laboratory.

These procedures will ensure the integrity of body samples collected and the availability of a second container in the event of disputed results.

The modification is to paragraph 16(d) to make clear that sealed containers are to be placed in a transportation container before they are sent to an authorised laboratory. The modification reflects the process in practice and as such does not change the intended operation of the process.

Section 17 Accredited analysts—analysis of body samples

This section replicates, with modification, section 17 of the 2015 Rule and provides for the process involved when an accredited analyst employed or engaged by the authorised laboratory analyses a portion of body sample.

Subsection 17(1)

Subsection 17(1) provides that an accredited analyst employed or engaged by the authorised laboratory for the purpose must conduct an analysis of a portion of the body sample from one of the containers (the ***first container***) to determine whether the body sample contains alcohol (paragraph 17(1)(a) refers) or whether the body sample contains a prohibited drug (paragraph 17(1)(b) refers).

The modification is made to paragraph 17(1)(a) to have the effect of requiring the determination of whether the body sample provided for testing contains alcohol.

Subsection 17(2)

Subsection 17(2) has the effect that, if the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug, an analysis of another portion of the sample from the first container must be conducted.

Subsection 17(3)

Subsection 17(3) has the effect that the accredited analyst must ensure that the second container of the body sample sent to the authorised laboratory under section 16 of the 2025 Rules remains sealed.

The note following this subsection reminds the reader that the second container of the body sample may be made available for independent testing under section 19 of the 2025 Rules.

Section 18 Accredited analysts—certificates

This section replicates in full section 18 of the 2015 Rule and concerns the procedure for certificates given by an accredited analyst and the information that must be set out in the certificate.

This procedure will ensure that Immigration and Border Protection workers are made aware of the relevant details of the analysis of a body sample collected from them and are aware of their rights with respect to independent testing.

Subsection 18(1)

Subsection 18(1) provides that as soon as practicable after the analysis is conducted, the accredited analyst must give a certificate to the Immigration and Border Protection worker (paragraph 18(1)(a) refers) and the authorised person who directed that the Immigration and Border Protection worker undergo the test (paragraph 18(1)(b) refers).

Subsection 18(2)

Subsection 18(2) provides that the certificate must state the following information:

- a unique identifying number relating to the worker (paragraph 18(2)(a) refers);
- the date when the sample was collected (paragraph 18(2)(b) refers);
- the date when the sample was received by the laboratory for analysis (paragraph 18(2)(c) refers);
- the laboratory identification number of the sample (paragraph 18(2)(d) refers);
- the date when the analysis was conducted (paragraph 18(2)(e) refers);
- the results of the analysis (paragraph 18(2)(f) refers);
- the name of the accredited analyst (paragraph 18(2)(g) refers);
- any observations made during the course of the analysis which may have affected the test results (paragraph 18(2)(h) refers).

Subsection 18(3)

Subsection 18(3) has the effect that the certificate must also inform the Immigration and Border Protection worker that he or she may collect the second container of the sample mentioned in subsection 17(3) of the 2025 Rules from the laboratory within six months after the sample was collected (paragraph 18(3)(a) refers) and have the portion of the sample independently tested (paragraph 18(3)(b) refers).

Subsection 18(4)

Subsection 18(4) provides that the certificate must be signed by the accredited analyst who conducted the analysis.

Section 19 Analysis—disputed results

This section replicates, with modification, section 19 of the 2015 Rule. Subsection 19(1) has the effect that, if the results of the analysis are disputed by the Immigration and Border Protection worker who provided the sample then the second container of the sample, mentioned in subsection 17(3) of the 2025 Rules must be made available for independent testing (paragraph 19(1)(a) refers), and all records of the original test must be made available for re-examination (paragraph 19(1)(b) refers).

This procedure will ensure the integrity of test results by allowing the Immigration and Border Protection worker with the ability to confirm the presence of alcohol or prohibited drug.

Note 1 to section 19 reminds the reader that due to degradation of the sample over time, the re-testing need only detect the presence of the drug or alcohol. A lower result in the second test may not call into dispute the original test results.

Note 2 to section 19 reminds the reader that subsection 17(3) requires the accredited analyst who initially analysed the body sample to keep the second container sealed.

For the purposes of subsection 19(1), subsection (2) clarifies that the term “independent testing” means alcohol and drug testing of a body sample at an accredited laboratory nominated by the person who provided the sample.

Part 5—Prohibited drug tests using urine or oral fluid samples

Section 20 Taking body samples—procedures

This section sets out the standards that must be complied with in the provision and analysis of body samples referred to in the 2025 Rules.

Subsection 20(1) replicates, with modification, section 20 of the 2015 Rule and provides that the provision and analysis of urine samples for the purpose of a prohibited drug test must be conducted in accordance with the “Australian/New Zealand Standard AS/NZS 4308:2023 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*” as in force on the day this section commences.

The modification is to update the standard that tests are to be conducted in accordance with, being the “Australian/New Zealand Standard AS/NZS 4308:2023 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*”.

Subsection 20(2) replicates, with modification, section 22 of the 2015 Rule and provides that the provision, and the analysis, of an oral fluid sample for the purposes of a prohibited drug test must be in accordance with the Australian/New Zealand Standard AS/NZS 4760:2019 *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*, as in force on the day this section commences.

The modification is to update the standard that tests are to be conducted in accordance with, being the “Australian/New Zealand Standard AS/NZS 4760:2019 Procedure for specimen collection and the detection and quantification of drugs in oral fluid” as in force on the day this section commences.

In respect of the two standards referred to in section 20 of the 2025 Rules, those Rules apply to Immigration and Border Protection workers and relevantly concern the handling and analysis of body samples by authorised testers referred to in those Rules. The 2025 Rules do not otherwise apply to the general public.

The Department advises that the Standard is not currently available for viewing on the Standards Australia virtual library.

The Department has been advised that the National Library and State Libraries on the whole ceased to have access to online copies of the Standard in 2016. The Department understands that libraries are required to either have a subscription or to purchase standards with very strict access requirements and prohibition of copying in any way, so much so that the public are monitored by library staff when accessing materials.

However, the Standard can be purchased online from \$175.82 AUD.

While having regard to Principle (f) of the Committee Guidelines, and the Committee’s expectations in relation to free access and use of incorporated materials, the incorporation of the Standard in the Rules was ultimately informed by consultation with authorised laboratories - consistent with Principle (d) of the Committee Guidelines.

In particular, it should be noted that relevant authorised laboratories (the primary audience for this material, and subject to the Rules) have pre-existing access to the Standard. Accredited laboratories are already compliant with the standards; since compliance with this Standard ensures compliance with legislative and regulatory obligations, their inclusion ensures a reduction in the regulatory burden already applied to the industry. If the Standards are excluded from the Rules, industry would be required to justify its use of existing body sample handling and analysis frameworks under which increases the reporting requirements and regulatory burden on industry participants.

Section 21 Taking urine samples—training courses

This section has the effect that, for the purposes of section 6, and in respect of the training course for supervising the provision of body samples, the training course to be successfully completed by an officer of Customs is any training course that satisfies the unit of competency classified as “HLTPAT005 – Collect specimens for drugs of abuse testing” under the Australian Qualifications Framework.

This section maintains the scope of section 21 of the 2015 Rule but makes clear on the face of the 2025 Rules the training that must be completed before officers of Customs could conduct the afore-mentioned test.

Part 6—Application and transitional provisions

Sections 22 and 23

Section 22 saves the operation of authorisations made, and certificates issued, under provisions in the 2015 Rule such that those authorisations and certificates continue to have effect for the purposes of the 2025 Rules under corresponding provisions. The authorisations made under the 2015 Rule have effect on and after the commencement day as if they were made or given under the 2025 Rules.

Section 23 provides for transitional provisions such that matters or things initiated under the 2015 Rule can continue to be dealt with under corresponding provisions in the 2025 Rules.

Part 7—Repeal

Section 24 Repeal

This section repeals the 2015 Rule, which is no longer required with the making of the 2025 Rules.

Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

Australian Border Force (Alcohol and Drug Tests) Rules 2025

The disallowable instrument titled the *Australian Border Force (Alcohol and Drug Tests) Rules 2015* (2025 Rules) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the disallowable instrument

The 2025 Rules prescribes matters for the purposes of alcohol and drug testing which is to be conducted in the Department of Home Affairs (the Department). The ability to conduct alcohol and drug tests on Immigration and Border Protection workers was introduced by the *Australian Border Force Act 2015* (the Act). Part 5 of the Act provides that Immigration and Border Protection workers may be required to undergo alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests (alcohol or drug tests). Section 38 of the Act provides that alcohol or drug tests are to be conducted in accordance with rules made under the Act (see also sections 39 and 58 of the Act).

The rules that can be prescribed by legislative instrument include the authorisation of persons, the devices to be used in conducting tests, procedures for handling samples taken and the confidentiality of the test results.

- the 2025 Rules provide for the authorisation of persons to conduct alcohol or drug tests and to analyse the results of those tests;
- the 2025 Rules provide for the approval of devices to conduct tests and list the training courses required of officers of Customs in relation to alcohol tests and the taking of body samples. The outline for this part is modified to reflect that the training courses required are now set out in the 2025 Rules. This modification does not change the scope and operation of related provisions;
- in the 2025 Rules, procedures are set out for the conduct of alcohol or drug tests, the handling of body samples and the keeping of records of body samples and other information;
- the 2025 Rules also deal with the transmission of body samples for analysis, the treatment of those samples by analysts, and that urine samples and oral fluid samples are required to be collected and analysed in accordance with the relevant Australian and New Zealand standards. The outline for this part is modified to refer to oral fluid instead of saliva. This modification is made for consistency and does not change the scope and operation of related provisions; and
- the 2025 Rules are made under the Act and replaces the *Australian Border Force (Alcohol and Drug Tests) Rule 2015* (2015 Rule).

Alcohol and drug testing arrangements will be administered under the Department's Drug and Alcohol Management Program (DAMP). DAMP is an established program of collecting samples from Immigration and Border Protection workers who are:

- Australian Border Force workers; or
- Home Affairs workers who are performing work for the Australian Border Force

and then tests those samples for alcohol and drugs. The collection of these samples is an integral component of assessing the safety and integrity of the Australian Border Force workforce inclusive of public facing operational roles.

The collection of these samples is an important part of reducing risk by identifying breaches of the Department's DAMP, corruption and unsafe practices, and also reduces risks to the public.

This part of the outline is modified to reflect the instrument been replaced. This modification does not change the scope or operation of related provisions.

The 2025 Rules commences on 1 October 2025.

Human Rights implications

The 2025 Rules engages the following rights:

- Rights in work (Article 7(b) of the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR));
- Right to protection against arbitrary and unlawful interferences with privacy (Article 17 of the *International Covenant on Economic, Social, and Cultural Rights* (ICCPR));
- Right to security of the person and to freedom from arbitrary detention (Article 9 of the ICCPR) read with Article 2 of the ICCPR; and
- Rights against discrimination (Article 26 of ICCPR and Article 27 of the *Convention on the Rights of Persons with Disabilities* (CRPD)).

Rights in work

Article 7(b) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(b) Safe and healthy working conditions;

By authorising persons to conduct alcohol or drug tests and requiring them to complete relevant training, as well as setting out procedures for the handling of body samples (and associated recording requirements), the 2025 Rules will help to ensure that the Department's workplace is drug and alcohol free and thereby promotes this specific human right.

The training course to be successfully completed by an officer of Customs is a training course that satisfies the unit of competency classified as “HLTPAT005 – Collect specimens for drugs of abuse testing” under the Australian Qualifications Framework.

This requirement makes clear on the face of the 2025 Rules the training that must be completed before officers of Customs could conduct the afore-mentioned tests.

This requirement of the 2025 Rules supports the right to the enjoyment of just and favourable conditions of work which ensure safe and healthy working conditions.

Right to protection against arbitrary and unlawful interferences with privacy

Article 17 of the ICCPR states:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

Pursuant to Article 17(1) of the ICCPR, an interference with an individual’s privacy must have a lawful basis and not be arbitrary. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ such that any interference with privacy is proportional to the end sought and be necessary in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- serve a legitimate objective;
- adopt a means that is rationally connected to that objective; and
- the means adopted are not more restrictive than they need to be to achieve that objective.

The alcohol and drug testing measures contained in the 2025 Rules will impact on the right to privacy, including through the collection and use of personal information within the Department’s workplace, such as results from mandatory alcohol and drug testing, mandatory disclosure of personal information, and the compulsory physical intervention, such as requiring workers to provide a urine sample or taking a blood sample, of a person for testing purposes.

The Department recognises the significant consequences that could arise from Immigration and Border Protection workers acting under the influence of alcohol or drugs in the course of their duties and that corruption can have a significant detrimental effect on the ability to enforce the law. Given the role of the Department in enforcement of Australia’s drug laws, illicit drug use by Immigration and Border Protection workers undermines the ethical standards the Australian community expects. The alcohol and drug testing regime will serve the legitimate objectives of protection against corruption and unethical conduct in law enforcement and of workplace safety.

Through its management of the risks to the Department from employees violating Commonwealth drug laws and the resulting potential for employees to be manipulated and agency systems and information compromised, the alcohol and drug testing regime is also aimed at protecting the Department from the risk of corruption. It is important the Department has mechanisms to provide an evidence based approach to either confirm allegations or clear a worker through alcohol and drug testing.

Alcohol and drug testing arrangements have proven to operate effectively for the Department. Under the arrangements currently in place for the Department, on which the measures contained in the 2025 Rules are based, drug use in the workforce has been identified which has also revealed corrupt and unethical behaviours by officers.

The DAMP is also supported by findings in the Australian Commission for Law Enforcement Integrity's 2014 investigation in relation to an Australian Crime Commission employee who avoided a drug test. This investigation identified several integrity principles that demonstrate risks to law enforcement organisations including the potential for officers involved in illicit drug use to be manipulated by organised crime groups, misplaced loyalty as a result of differing values between an agency and its employees, failure to fully understand risk factors associated with drug use through employees withholding information about past or present drug use and the emerging risk of employees who are not in frontline roles but have access to sensitive information which may be vulnerable to compromise similarly to workers who are in front line roles.

It is the Government's position that the drug testing process is not more restrictive than it needs to be to achieve the legitimate objectives of protection against corruption and unethical conduct in law enforcement and of workplace safety. For example, the procedures in place for the provision and analysis of urine and oral fluids samples are in accordance with the relevant Australian/New Zealand or Australian Standards - *Procedures for specimen collection and the detection and quantification of drugs in urine* (AS/NZS 4308:2023) and *Procedure for specimen collection and the detection and quantification of drugs in oral fluid* (AS 4760:2019). These standards provide safeguards to minimise interferences with privacy as far as possible. In relation to alcohol testing procedures, the Department uses breath analysis instruments that meet the Australian Standard.

To the extent that the 2025 Rules represent an interference with privacy, the 2025 Rules are necessary, reasonable and proportionate, and the least rights intrusive means of giving effect to the need to ensure the safety and security of the workforce and the public.

Personal information

The measures contained in the 2025 Rules do not limit the obligations of the Department under the *Privacy Act 1988*, including the Australian Privacy Principles.

To provide safeguards against arbitrary and unlawful interferences with privacy, a number of provisions in the Rule seek to clarify and limit the information which may be collected and obtained under the Department's alcohol and drug testing regime. This includes the provision which will restrict the information which may be collected from alcohol and drug testing to only information relating to the detection of alcohol or prohibited drugs.

In relation to alcohol and drug testing procedures, the 2025 Rules provide that each sample will only be identified by a unique identifying number. Neither the laboratory staff nor the

Medical Review Officer will know the identities of the persons being tested. Prior to a test being positive it is anticipated that only members of the DAMP team will be able to match a unique identifying number to an individual Immigration and Border Protection worker.

The 2025 Rules also prescribes clear limits on when information obtained from a drug or alcohol test may be disclosed. For example, information revealed by an alcohol or drug test may be necessary to disclose to a medical practitioner in order to provide medical treatment to the individual. However, such information can only be disclosed without the worker's consent if the worker does not have the capacity to consent.

Additionally, the provision authorising disclosure for the purpose of proceedings for an offence does not displace or override section 40 of the Act. Section 40 provides broad protection against self-incrimination by preventing any document relevant to the conducting of a test being admissible in evidence against the Immigration and Border Protection worker who is subject to a test except for proceedings in relation to a decision of the Secretary to terminate the employment or engagement of a contractor, proceedings under the *Safety, Rehabilitation and Compensation Act 1988* or proceedings in tort against the Commonwealth that are instituted by the worker.

The 2025 Rules also clarifies the exact information which may be retained for the purposes of creating a statistical database and limits the retention of any information obtained from the analysis of a sample for this purpose to the extent that it does not contain information that may be used to identify the Immigration and Border Protection worker who provided the sample.

Hair samples

Hair testing is an important drug-test methodology that contributes to the objectives of the DAMP. This methodology can detect evidence of drug use up to six months prior to the test, and thus provide greater assurance to officers that drug use (including historical drug use) can be detected.

To ensure proper protections are in place for Immigration and Border Protection workers, the 2025 Rules requires the authorised person taking the sample to use the least painful technique known and available to the authorised tester. For example, if a hair sample is required for a prohibited drug test but the individual presents with a shaved head, the provisions will allow a sample of hair to be collected from other places on the body, but the 2025 Rules expressly prohibit the authorised tester from taking hair samples from the genital or anal area, or the buttocks. To ensure that hair samples are sufficient for hair testing to be an effective drug-testing methodology, it is not always practicable that the Immigration and Border Protection worker be permitted to specify from which part of the body a hair sample be taken. This is consistent with international guidance and practice and provides certainty that authorised persons are not to take hair samples from intimate regions of the body.

Retention of Records

The time for which records, other than body samples, not indicating the presence of alcohol or prohibited drugs, can be retained will enable the Department's governance of the DAMP by allowing the Department to monitor testing which has been carried out under the program. In particular, the Department will be able to identify Immigration and Border Protection

workers who have been subjected to a test (regardless of the results) and enable the Department to maintain more accurate records of testing.

The Department should be able to report accurately on the DAMP and its compliance with Commonwealth procurement and spending requirements. This can only be done by compiling Departmental records of the numbers, dates, and locations of testing, invoices, records of samples sent to the analytical laboratory, laboratory reports resulting from that testing and reports from the Medical Review Officer. Importantly, body samples which do not indicate the presence of alcohol or prohibited drugs will be required to be destroyed no later than 28 days after the test was conducted.

To the extent that the 2025 Rules represent an interference with privacy, the 2025 Rules are necessary, reasonable and proportionate, and the least rights intrusive means of giving effect to the need to ensure the safety and security of the workforce and the members of the public, and to the legitimate aims of protection against corruption and unethical conduct in law enforcement and of workplace safety.

Right to security of the person and freedom from arbitrary detention

Article 9(1) of the ICCPR states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 2 of the *International Covenant on Civil and Political Rights* (ICCPR) requires parties to the convention to take the necessary steps to give effect to the rights recognised in the ICCPR, including whereby it is necessary to adopt such laws or other measures to give effect to the rights recognised in the Covenant.

The 2025 Rules may require authorised officers to control the movement of workers within a specified area, for the purpose of conducting mandatory testing which may amount to an interference with a person's right to liberty under Article 9(1) of the ICCPR.

The right of security in Article 9(1) exists separately to the right of liberty and protects individuals against intentional and unjustifiable infliction of bodily or mental injury, regardless of whether the victim is detained or not.

However, it is not intended that confining an Immigration and Border Protection worker with an authorised officer for the purposes of mandatory testing a short period of time would amount to a deprivation of liberty under Article 9 of the ICCPR or amount to the intentional infliction of bodily or mental injury. Deprivation of liberty will not be arbitrary unless it is not 'reasonable', 'necessary' or 'proportionate' in all the circumstances.

The Rule contains limitations on the permitted purposes of authorised officer directions, ensuring that the directions are for prescribed purposes and that the worker is aware of the reasoning behind it. However, the Rule does not authorise the use of arbitrary detention or force.

Significantly, the 2025 Rules do not prohibit the redress of any worker, in support of this right. Within Australia, the worker can take proceedings before a civil court. This is consistent with the intent of Article 9(4) of the ICCPR – the entitlement (of an individual) to take proceedings before a court, to determine the lawfulness of a direction.

To the extent that the 2025 Rules represent an interference with on the liberty and security of Immigration and Protection workers, the 2025 Rules are necessary, reasonable and proportionate, and the least rights intrusive means of giving effect to the need to ensure the safety and security of the workforce, and members of the public.

Rights against discrimination

Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27 of the CRPD states:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

...

g) Employ persons with disabilities in the public sector;

h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

...

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

There are also relevant obligations to give effect to the rights of persons to equality before the law and equal protection of the law in Articles 4(1) and 5 of the CRPD.

In its General Comment 18, the UN Human Rights Committee (UNHRC) stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR].

Not all forms of differential treatment constitute impermissible discrimination. It is generally accepted that differential treatment will be ‘legitimate’ where it is:

- aimed at achieving a purpose which is legitimate under the relevant treaty;
- based on reasonable and objective criteria; and
- proportionate to the aim to be achieved.

Alcohol and drug testing of Immigration and Border Protection workers is not an impermissible discrimination on the grounds of Articles 26 or 27 of the ICCPR. The 2025 Rules, as they relate to alcohol and drug testing of employees, support the aims of achieving the purposes of anti-corruption, public safety and the rights and freedoms of others by ensuring a safe working environment and ensuring the professional integrity of Immigration and Border Protection workers. These are legitimate aims that are based on reasonable and objective criteria and are proportionate to the aims to be achieved.

Further, the Department is committed to providing a work environment that is safe, fair and free from harassment, discrimination or bullying. All Immigration and Border Protection workers have a responsibility to ensure that harassment is not tolerated.

The Department has a responsibility under Commonwealth and State legislation to ensure that employees are not subjected to behaviour that may constitute unlawful harassment, discrimination or victimisation.

The 2025 Rules do not limit the obligations of the Department under the existing Commonwealth and State legislation, related to equal opportunity, discrimination or harassment. In addition to legislation, inappropriate conduct may be a breach of the Australian Public Service Code of Conduct.

The Department has developed, with staff and their representatives, policies that are transparent, fair and consistent and which allow the Department to ensure the professional integrity of its workers. These include the:

- DAMP Procedural Instruction (formal);
- Program Guide (informal and organic document, regularly revised and internally consumed);
- Policy positions that pertain to medication use and misuse as guided by toxicology specialist from a contracted service provider, which are evidence-based and gathered through industry experience.

In particular, the Department provides reasonable assessment and support to workers who voluntarily seek assistance with problems associated with alcohol use or misuse and misuse of prescription and over the counter medication.

It is the Department's intention that any action taken will be proportionate to the objectives of ensuring a safe working environment and ensuring the professional integrity of Immigration and Border Protection workers.

The interferences with the right to not be subject to differential treatment contained in the 2025 Rules are considered to be proportionate to the legitimate aims of protection against inappropriate conduct, and the safety and security of the workforce, and members of the public

Conclusion

This legislative instrument is compatible with human rights. To the extent that the 2025 Rules limit human rights, it is a permissible limitation that is considered to be proportionate to the legitimate aims of protection against corruption and unethical conduct in law enforcement and of workplace safety.

**The Hon Tony Burke MP
Minister for Home Affairs**