

South Australia

Security and Investigation Agents Variation Regulations 2005

under the *Security and Investigation Agents Act 1995*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Security and Investigation Agents Variation Regulations 2005*.

2—Commencement

These regulations will come into operation on the day on which Part 4 of the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Security and Investigation Agents Regulations 1996*

4—Variation of regulation 8—Other exemptions

Regulation 8(3)—delete subregulation (3) and substitute:

- (3) A person who is not employed or engaged to deal with persons who behave in a disorderly manner or create a nuisance is exempt from the requirement to hold a licence authorising the performance of the function of controlling crowds unless the person is employed or engaged to control crowds on licensed premises (within the meaning of the *Liquor Licensing Act 1997*).

5—Variation of regulation 11—Duty of person who carries on business or promotes event to provide crowd controllers with identification card and keep register

- (1) Regulation 11(2)(a)(i)—delete "a one or two digit number" and substitute:
a number of up to 3 digits
- (2) Regulation 11(4)(c)—delete "member of the police force" and substitute:
police officer
- (3) Regulation 11(5)—delete "member of the police force" and substitute:
police officer

6—Insertion of Part 4A

After Part 4 insert:

Part 4A—Regulation of security agents

Division 1—General

12A—Interpretation

In this Part—

approved form means a form approved by the Commissioner;

blood test information sheet means an information sheet in the approved form that sets out, for the benefit of sample collectors, the procedures prescribed under regulation 12M;

medical practitioner means a person who is registered as a medical practitioner under the law of this State;

registered nurse means a person who is registered as a nurse under the law of this State;

sample collector means—

- (a) in the case of a blood sample—a medical practitioner or a registered nurse; and
- (b) in the case of a urine sample—a medical practitioner or a registered nurse, or a police officer authorised by the Commissioner of Police to take samples of urine for the purposes of section 23J(1) of the Act;

urine screening test means a test of a kind approved by the Commissioner for the conduct of urine screening tests.

12B—Objection to application for licence

For the purposes of section 8A(3) of the Act, the prescribed period is 90 days.

12C—Specified classes of offences

For the purposes of section 23A(1), 23B(1) and 23G(1) of the Act, the classes of offences set out in Schedule 1A are specified.

12D—Review of licence

For the purposes of section 23H of the Act, the prescribed number of occasions is 2 and the prescribed period is 36 months.

Division 2—Drug testing of persons authorised to control crowds

12E—Prescribed drugs and non-complying sample

For the purposes of Part 3A Division 2 of the Act—

- (a) a *prescribed drug* is—
 - (i) a prohibited substance within the meaning of the *Controlled Substances Act 1984*; or
 - (ii) a drug referred to in schedule 8 of the *Standard for the Uniform Scheduling of Drugs and Poisons* published by the National Drugs and Poisons Schedule Committee as modified by Schedule A(b)(xviii) and (xix) of the *Controlled Substances (Poisons) Regulations 1996*; and
- (b) a *non-complying sample* is a sample of blood or urine containing any trace of a prescribed drug.

12F—Who may take samples

- (1) The following persons may take a blood or urine sample from a licensee for the purposes of a drug testing procedure the licensee has been directed to undertake under section 23J(1) of the Act:
 - (a) in the case of a blood sample—a medical practitioner or a registered nurse;
 - (b) in the case of a urine sample—a medical practitioner or a registered nurse, or a police officer authorised by the Commissioner of Police to take such a sample.
- (2) A police officer may not be authorised to take a urine sample unless the officer has completed to a satisfactory level a course of training approved by the Commissioner of Police.

12G—Taking of blood samples

The following are the prescribed procedures in accordance with which a sample of a licensee's blood must be taken and dealt with for the purposes of section 23J of the Act:

- (a) the sample must be taken by the sample collector in the presence of a police officer;
- (b) the sample collector must place the sample, in approximately equal proportions, in 2 containers suitable for the purpose;
- (c) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of any prescribed drug present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;

- (d) the sample collector must seal each container by application of an adhesive seal bearing an identifying number;
- (e) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the blood of the licensee;
- (f) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the sample collector, the police officer in whose presence the sample has been taken and the licensee;
- (g) the original of the signed certificate must then be delivered to the licensee together with 1 of the sealed containers containing part of the blood sample;
- (h) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to the police officer;
- (i) the blood sample container and copy of the certificate referred to in paragraph (h) must not be delivered into the possession of the licensee;
- (j) the licensee must comply with all reasonable directions of the sample collector or police officer in connection with the taking of the sample and the signing of the certificate.

12H—Taking of urine samples

The following are the prescribed procedures in accordance with which a sample of a licensee's urine must be taken and dealt with for the purposes of section 23J of the Act:

- (a) if the sample collector is not a police officer, the sample collector must carry out the functions under this regulation in the presence of a police officer;
- (b) the sample collector must provide the licensee with a urine collection container and allow the licensee to provide the sample in private;
- (c) the licensee must provide a sample of his or her urine in the container and then deliver the container to the sample collector immediately;
- (d) the sample collector—
 - (i) must, within 4 minutes of receiving the sample, test the temperature, and conduct a visual examination, of the sample; and

- (ii) may conduct any other test designed to determine whether or not the sample is a sample of the licensee's urine and is otherwise suitable for analysis;
- (e) if the sample collector has reasonable cause to suspect that the sample—
 - (i) is not a sample of the licensee's urine or has been diluted or tampered with in any way; or
 - (ii) is not suitable for analysis for some other reason, the sample collector, or the police officer accompanying the sample collector—
 - (iii) must require another sample to be provided in accordance with this regulation; and
 - (iv) may require the licensee to submit to a search before the additional sample is provided;
- (f) if the sample collector or police officer requires the licensee to submit to a search, the search—
 - (i) may only be conducted by, and in the presence of, a person of the same sex as the licensee; and
 - (ii) must be carried out in private; and
 - (iii) must not be witnessed by any more persons than is reasonably necessary;
- (g) if the licensee provides 2 samples that, in the opinion of the sample collector, are not samples of the licensee's urine or are otherwise unsuitable for analysis, the licensee will be taken to have failed to comply with a direction under section 23J;
- (h) when the sample collector is satisfied that the licensee has provided a satisfactory sample of the licensee's urine, the sample collector may subject the sample to a urine screening test to determine whether the sample should be submitted for analysis;
- (i) if the sample collector does not subject the sample to a urine screening test, or a urine screening test indicates that the sample may be a non-complying sample, the sample collector must, in the presence of the licensee, place such amount of the sample in a container (suitable for the purpose) as is necessary to enable an accurate evaluation to be made of any concentration of any prescribed drug present in the urine;
- (j) the sample collector must then seal the container by application of an adhesive seal bearing an identifying number;

- (k) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the urine is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the urine of the licensee;
- (l) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the sample collector, the licensee and, if the sample collector is not a police officer, the police officer in whose presence the sample has been taken;
- (m) the original of the signed certificate must then be delivered to the licensee;
- (n) if the sample collector is not a police officer, a copy of the signed certificate must be delivered by the sample collector to the police officer in whose presence the sample has been taken together with the sealed container containing the urine sample;
- (o) the urine sample container and copy of the certificate referred to in paragraph (n) must not be delivered into the possession of the licensee;
- (p) the licensee must comply with all reasonable directions of the sample collector or police officer in connection with the taking of the sample and the signing of the certificate.

12I—Analysis of sample

- (1) A police officer who takes or is given a sample of blood or urine, or a certificate, under regulation 12G or 12H must cause the sample and certificate to be delivered to State Forensic Science as soon as reasonably practicable.
- (2) The Director of State Forensic Science must, as soon as possible following the delivery of a sample under subregulation (1), ensure that the sample is analysed by or under the supervision of an analyst to determine the level of any prescribed drug in the sample.
- (3) The analyst must then complete and sign a certificate certifying as to the following matters:
 - (a) the date of receipt at State Forensic Science of the sample container and the certificate accompanying the sample container;
 - (b) the identifying number appearing on the adhesive seal used to seal the sample container;
 - (c) the name and professional qualifications of the analyst;
 - (d) the presence of any prescribed drug found to be present in the sample;

- (e) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
 - (f) any other information relating to the sample or analysis (or both) that the analyst thinks fit to include.
- (4) The analyst's certificate must be sent by post to the licensee at the address shown as the licensee's address on the certificate accompanying the sample container.
 - (5) A copy of the analyst's certificate must be sent to the Commissioner and the Commissioner of Police.
 - (6) A urine sample delivered to State Forensic Science under this regulation must be held by State Forensic Science for a period of not less than 6 months following the delivery.
 - (7) A licensee from whom a urine sample was taken may arrange, at the expense of the licensee, for further testing of the sample while the sample is held by State Forensic Science.
 - (8) A licensee from whom a blood sample was taken may cause the sample of blood as contained in the blood sample container delivered to that licensee to be analysed to determine the presence of any prescribed drug present in the blood.

12J—Certificate evidence

In any proceeding under the Act, and in the absence of proof to the contrary, any of the following certificates is evidence of the matters certified in the certificate:

- (a) a certificate purporting to be signed by a sample collector certifying that an identified urine sample was taken or collected—
 - (i) from a named person; and
 - (ii) at a specified date and time; and
 - (iii) in accordance with the regulations;
- (b) a certificate purporting to be signed by a medical practitioner or registered nurse certifying that an identified blood sample was taken or collected—
 - (i) from a named person; and
 - (ii) at a specified date and time; and
 - (iii) in accordance with the regulations;
- (c) a certificate purporting to be signed by an analyst certifying—
 - (i) that an identified blood or urine sample taken from a named person was analysed for drugs in accordance with these regulations; and

- (ii) the results obtained from that analysis.

12K—Prescribed form of identification

- (1) Pursuant to section 23J(5)(c) of the Act, a licensee must produce 1 of the following forms of identification at the time a blood or urine sample is taken:
 - (a) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory;
 - (b) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory;
 - (c) a current passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person and enabling the age of the person to be determined;
 - (d) a current photographic licence issued by the Commissioner under the Act.
- (2) Failure by a licensee to produce identification as required by subregulation (1) will be taken to be a failure by the licensee to comply with a direction under section 23J of the Act.

Division 3—Alcohol testing of persons authorised to control crowds

12L—Conduct of alcotest and breath analysis

- (1) A licensee required under the Act to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of a police officer in relation to the requirement and, in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of a police officer.
- (2) Pursuant to section 23K(4) of the Act, if a licensee submits to a breath analysis, the breath analysis must be conducted in the following manner:
 - (a) the licensee must provide 2 separate samples of breath for analysis;
 - (b) each sample must be provided in accordance with the directions of the operator of the breath analysing instrument and must consist of not less than 1 litre of breath;
 - (c) there must be an interval of not less than 2 minutes and not more than 10 minutes between the provision of the samples.

- (3) Despite subregulation (2)—
- (a) if, on analysing a sample of breath, the breath analysing instrument indicates an error in the analysis of the sample—
 - (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis using a different instrument (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
 - (b) if, on analysing a sample of breath, the breath analysing instrument indicates the presence of alcohol in the mouth of the licensee—
 - (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
 - (c) if, on analysing 2 samples of breath, the breath analysing instrument indicates that the reading obtained on analysis of the second sample was more than 15% higher or lower than the reading obtained on analysis of the first sample—
 - (i) those samples must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
 - (d) if, for any reason, a second sample of breath is not provided within 10 minutes of the provision of the first sample—
 - (i) the first sample is to be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)).
- (4) If a licensee submits to a breath analysis, the result of the breath analysis will, for the purposes of the Act, be taken to be the reading produced by the breath analysing instrument, on analysis of the samples of breath provided by the licensee in accordance with this regulation, that indicates the lower concentration of alcohol in the licensee's breath (not taking into account any samples that, in accordance with this regulation, are to be disregarded).

12M—Procedures for voluntary blood test

The following are the prescribed procedures in accordance with which a sample of a licensee's blood must be taken and dealt with for the purposes of section 23M(2)(a) of the Act:

- (a) the licensee must cause the sample to be taken by a sample collector of the licensee's choice and must deliver to the sample collector—
 - (i) the blood test kit supplied to the licensee under section 23M(5)(b) of the Act for use for that purpose; and
 - (ii) the blood test information sheet supplied to the licensee under regulation 12O;
- (b) the sample must be taken by the sample collector as soon as reasonably practicable but, in any event, within 4 hours of the licensee having submitted to the breath analysis indicating, for the purposes of the Act, the presence of the prescribed concentration of alcohol in the licensee's blood;
- (c) the sample collector must place the sample, in approximately equal proportions, in 2 containers (being the containers provided as part of the blood test kit);
- (d) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of alcohol present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;
- (e) the sample collector must seal each container by application of the adhesive seal bearing an identifying number provided as part of the blood test kit;
- (f) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol present in the blood of the licensee;
- (g) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form;
- (h) the certificate must be signed by the sample collector certifying as to the matters set out in the form;
- (i) the certificate must also bear the signature of the licensee, attested to by the signature of the sample collector;
- (j) the original of the signed certificate must then be delivered to the licensee together with 1 of the sealed containers containing part of the blood sample;

- (k) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to a police officer who must, in turn, deliver that copy of the certificate and the blood sample container to State Forensic Science;
- (l) the blood sample container and copy of the certificate referred to in paragraph (k) must not be delivered into the possession of the licensee;
- (m) on receipt of the blood sample container and certificate at State Forensic Science, the blood in the container must be analysed as soon as reasonably practicable by or under the supervision of an analyst to determine the concentration of alcohol present in the blood expressed in grams in 100 millilitres of blood;
- (n) the analyst must then complete and sign a certificate certifying as to the following matters:
 - (i) the date of receipt at State Forensic Science of the blood sample container and the certificate accompanying the blood sample container;
 - (ii) the identifying number appearing on the adhesive seal used to seal the blood sample container;
 - (iii) the name and professional qualifications of the analyst;
 - (iv) the concentration of alcohol found to be present in the blood expressed in grams in 100 millilitres of blood;
 - (v) any factors relating to the blood sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
 - (vi) any other information relating to the blood sample or analysis or both that the analyst thinks fit to include;
- (o) the analyst's certificate must be sent by post to the licensee at the address shown as the licensee's address on the certificate accompanying the blood sample container;
- (p) a copy of the analyst's certificate must be sent to or retained on behalf of the Minister;
- (q) a copy of the analyst's certificate must also be sent to the Commissioner and the Commissioner of Police;
- (r) the licensee from whom the blood sample was taken may cause the sample of blood as contained in the blood sample container delivered to that licensee to be analysed to determine the concentration of alcohol present in the blood.

12N—Oral advice and written notice on recording of positive breath analysis reading

- (1) The oral advice required to be given for the purposes of section 23M(5)(a) of the Act must be as set out in Part A of Schedule 1B.
- (2) The written notice required to be delivered for the purposes of section 23M(5)(a) of the Act must be as set out in Part B of Schedule 1B.

12O—Request for approved blood test kit

- (1) For the purposes of section 23M(5)(b) of the Act, a request for an approved blood test kit must be made in accordance with the following provisions:
 - (a) the request may, in the first instance, be made orally to the person operating the breath analysing instrument (*the operator*);
 - (b) on such a request having been made by the licensee, the operator or any other police officer present at the scene must complete a written request form in the approved form by inserting the particulars required by the form;
 - (c) the licensee making the request must then sign the request form in the presence of the operator or other police officer and the licensee's signature must be attested to by the signature of the operator or other officer;
 - (d) the original of the signed request form may be retained by the licensee making the request;
 - (e) a copy of the signed request form must be delivered to the operator or other police officer.
- (2) The copy of the request form delivered to the operator or other police officer must be delivered to the Commissioner or retained on the Commissioner's behalf for 12 months from the day on which the request form was signed by the licensee making the request.
- (3) If a licensee requests an approved blood test kit, the operator or any other police officer must provide the licensee with a blood test information sheet.

7—Variation of Schedule 1—Offences preventing persons being licensed agents or process servers

- (1) Schedule 1, clause 1(2)(j)—delete "the law of another place" and substitute:

the law of the Commonwealth, another State or a Territory, or a place outside Australia
- (2) Schedule 1, clause 1(3)(b)—delete "the law of another place" and substitute:

the law of the Commonwealth, another State or a Territory, or a place outside Australia

8—Insertion of Schedules 1A and 1B

After Schedule 1 insert:

Schedule 1A—Classes of offences (regulation 12C)

1—Offences of the purposes of section 23A

- (1) For the purposes of section 23A(1)(a) of the Act, an offence to which this subclause applies is prescribed in relation to the following functions authorised by a licence:
 - (a) controlling crowds;
 - (b) protecting or guarding a person or property;
 - (c) installing or maintaining security alarm or surveillance systems.
- (2) Subclause (1) applies to the following offences:
 - (a) an indictable offence;
 - (b) common assault or an offence of violence;
 - (c) a summary offence against Part 5 of the *Criminal Law Consolidation Act 1935*;
 - (d) an offence against the *Controlled Substances Act 1984* involving a prohibited substance or a drug of dependence, other than a simple cannabis offence within the meaning of section 45A of that Act;
 - (e) an offence against the *Firearms Act 1977*, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act;
 - (f) an offence against section 15 or 15A of the *Summary Offences Act 1953*;
 - (g) an offence against the *Police Act 1998*;
 - (h) an offence against the *Listening and Surveillance Devices Act 1972*;
 - (i) an offence against the *Telecommunications (Interception) Act 1979* of the Commonwealth;
 - (j) an offence against the Act or these regulations;
 - (k) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

2— Offences for the purposes of section 23B

For the purposes of section 23B(1) of the Act, the following offences are prescribed in relation to the function of controlling crowds authorised by a licence:

- (a) common assault or an offence of violence;

- (b) an offence against the *Controlled Substances Act 1984* involving a prohibited substance or a drug of dependence, other than a simple cannabis offence within the meaning of section 45A of that Act;
- (c) an offence against the *Firearms Act 1977*, or any offence involving the use of a firearm;
- (d) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

3— Offences for the purposes of section 23G

For the purposes of section 23G(1) of the Act, the following offences are prescribed:

- (a) in relation to the function of controlling crowds authorised by a licence—the offences prescribed by clause 2;
- (b) in relation to the function of protecting or guarding a person or property authorised by a licence—
 - (i) an offence of violence;
 - (ii) an offence against the *Controlled Substances Act 1984* involving a prohibited substance or a drug of dependence, other than a simple cannabis offence within the meaning of section 45A of that Act;
 - (iii) an offence against the *Firearms Act 1977*, or any offence involving the use of a firearm;
 - (iv) an offence against section 134 (Theft) or 137 (Robbery) of the *Criminal Law Consolidation Act 1935*;
 - (v) an offence substantially similar to any of the above offences against the Commonwealth, another State or a Territory, or a place outside Australia;
- (c) in relation to the function of installing or maintaining security alarm or surveillance systems authorised by a licence—an offence against section 134 (Theft) or 137 (Robbery) of the *Criminal Law Consolidation Act 1935* or an offence substantially similar to either of those offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

Schedule 1B—Prescribed oral advice and written notice

Part A—Oral advice for the purposes of section 23M(5)(a) of *Security and Investigation Agents Act 1995*

The breathalyser reading just taken shows that you had a prohibited level of alcohol in your blood.

Therefore, it appears that your security agents licence may be cancelled by the Commissioner for Consumer Affairs under the *Security and Investigation Agents Act 1995*.

It will be presumed by the Commissioner that the breathalyser accurately indicated your blood alcohol level at the time of the reading and for the preceding two hours. However, the *Security and Investigation Agents Act 1995* allows for contrary evidence based on the results of a blood test.

If you want to have such a blood test you will have to make your own arrangements and follow certain procedures, using a special blood test kit. This blood test kit will be supplied to you on your signing a written request. You will also be supplied with an information sheet that sets out the relevant procedures. You must give the information sheet to the medical practitioner or registered nurse who takes your blood sample.

If you obtain a blood test kit and want to have your blood tested, you should take the kit promptly to a hospital or medical practitioner in order to have a sample of your blood taken.

Alternatively, you may have the sample taken by a registered nurse.

The blood sample must be taken by the medical practitioner or registered nurse within four hours of the breath analysis that indicated the presence of alcohol in your blood.

You must not consume any more alcohol before having a sample of your blood taken and must not open the blood test kit before delivering it to a medical practitioner or registered nurse.

Under the blood test procedure, the sample of blood is divided and sealed in two containers. You will have to sign a form that will be given to you by the medical practitioner or registered nurse.

One of the sealed containers will be given to you and you may make your own arrangements to have the blood in that container analysed.

In any event, the blood in the other container will be analysed by State Forensic Science and you will be given written notice of the results of the analysis.

Further information as to these matters is contained in the written notice which will be delivered to you shortly.

**Part B—Written notice for the purposes of section 23M(5)(a) of the
*Security and Investigation Agents Act 1995***

Operation of Security and Investigation Agents Act in relation to results of breath analysis

1 Cancellation of licence

A security agents licence may be cancelled by the Commissioner for Consumer Affairs if the results of a breath analysis demonstrate that the prescribed concentration of alcohol (as defined in section 23I of the *Security and Investigation Agents Act 1995*) was present in the licensee's blood when the licensee was performing the function of controlling crowds.

2 Breath analysis

Your breath has just been analysed by means of a breath analysing instrument which indicated that the prescribed concentration of alcohol was present in your blood.

Accordingly, it appears that your security agents licence may be cancelled as described above.

3 Legal effect of breath analysis result

The result of the breath analysis will be presumed to accurately record the concentration of alcohol in your blood at the time of the analysis and throughout the preceding 2 hours (section 23M(1),(3)).

You will be able to challenge the accuracy of the breath analysis reading—

- if you have a sample of your blood taken and analysed as described below AND
- if the result of analysis of the blood sample shows that the breath analysing instrument gave a false reading of the concentration of alcohol present in your blood (section 23M(2)).

Procedures for optional blood test

- 1 You may have a sample of your blood taken and analysed if you wish.
- 2 For that purpose, you must request the breath analysis operator to supply you with an approved blood test kit (you must sign a written request form for the kit and should retain a copy of the signed request form).
- 3 You should then proceed promptly to a hospital or a medical practitioner or registered nurse of your choice and request that a sample of your blood be taken (using the blood test kit). You must give the medical practitioner or registered nurse the blood test information sheet that was supplied to you with the blood test kit.
- 4 The sample of your blood must be taken within four hours of the breath analysis that indicated the presence of alcohol in your blood.
- 5 Do not consume any further alcohol before the sample is taken.
- 6 Do not open the blood test kit.
- 7 The medical practitioner or registered nurse taking the sample of your blood will divide it and place it into two containers and seal the containers. One container will be delivered to you—do not break the seal on this container.
- 8 Sign the form presented to you by the medical practitioner or registered nurse—the original of the form will be given to you which you should retain.
- 9 You may, if you wish, have the blood sample (in the container delivered to you) analysed at a laboratory to determine the concentration of alcohol present in the blood.
- 10 The other blood sample container will, in any event, be sent to State Forensic Science where the blood will be analysed. The results of this analysis will be sent to you at your address (as indicated on the form presented to you by the medical practitioner or registered nurse who took the blood sample).

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 8 December 2005

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