

South Australia

## **Road Traffic (Miscellaneous) (Drink and Drug Driving) Variation Regulations 2018**

under the *Road Traffic Act 1961*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Road Traffic (Miscellaneous) (Drink and Drug Driving) Variation Regulations 2018*.

#### **2—Commencement**

These regulations will come into operation on the day on which section 28 of the *Statutes Amendment (Drink and Drug Driving) Act 2017* 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 *Road Traffic (Miscellaneous) Regulations 2014***

### **4—Substitution of regulation 14**

Regulation 14—delete the regulation and substitute:

#### **14—Approval of apparatus and kits for breath analysis etc (section 47H of Act)**

- (1) The following apparatus are approved as breath analysing instruments:
  - (a) Dräger Alcotest 7110 Mk V;
  - (b) Lion Intoxilyzer 8000.
- (2) The Alcolizer 5 Series is approved for the purpose of conducting alcotests.
- (3) The Securetec Drugwipe II Twin is approved for the purposes of conducting drug screening tests.
- (4) The "APPROVED 'BLOOD TEST KIT'" produced by Sarstedt Australia Pty. Ltd. is an approved blood test kit.

### **5—Variation of Schedule 1—Forms**

- (1) Schedule 1, Form 1—delete the form and substitute:

#### **Form 1—Notice of licence disqualification or suspension (Sections 45B, 45D and 47IAA of Act)**

**Road Traffic (Miscellaneous) (Drink and Drug Driving) Variation Regulations 2018**  
 Variation of Road Traffic (Miscellaneous) Regulations 2014—Part 2



**Schedule 1 Road Traffic (Miscellaneous) Regulations 2014**

**NOTICE OF LICENCE  
 DISQUALIFICATION OR SUSPENSION  
 under section 47IAA, 45B or 45D Road Traffic Act 1961**

NOTICE NUMBER:				
OCC	AP	TIN	ILOL	REF:

FAMILY NAME: ..... LICENCE NUMBER: ..... STATE OF ISSUE ..... PHONE: .....

GIVEN NAMES: ..... DATE OF BIRTH: [ ][ ][ ][ ][ ][ ][ ][ ][ ] SEC: M / F

ADDRESS: ..... SUBURB / TOWN: ..... POST CODE: .....

**Notice under section 47IAA Road Traffic Act 1961 (category 2 or 3 offences and refuse/fail to comply offences)**

It is alleged that at about ..... am/pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ] at ..... (location) you committed the offence of:

<input type="checkbox"/> category 2 offence - blood alcohol concentration of 0.08 to 0.149 (Section 47B(1) Road Traffic Act 1961)	<input type="checkbox"/> category 3 offence - blood alcohol concentration of or above 0.150 (Section 47B(1) Road Traffic Act 1961)
<input type="checkbox"/> category 2 offence - blood alcohol concentration of 0.08 to 0.149 – child under 16 present in or on motor vehicle (Section 47B(1a) Road Traffic Act 1961)	<input type="checkbox"/> category 3 offence - blood alcohol concentration of or above 0.150 – child under 16 present in or on motor vehicle (Section 47B(1a) Road Traffic Act 1961)
<input type="checkbox"/> refuse/fail to comply with directions in relation to drug screening test, oral fluid analysis or blood sample (Section 47EAA(9) Road Traffic Act 1961)	<input type="checkbox"/> refuse/fail to comply with directions in relation to alcohol test or breath analysis (Section 47E(3) Road Traffic Act 1961)
<input type="checkbox"/> refuse/fail to comply with directions in relation to drug screening test, oral fluid analysis or blood sample – child under 16 present in or on motor vehicle (Section 47EAA(9a) Road Traffic Act 1961)	<input type="checkbox"/> refuse/fail to comply with directions in relation to alcohol test or breath analysis - child under 16 present in or on motor vehicle (Section 47E(3a) Road Traffic Act 1961)
	<input type="checkbox"/> refuse/fail to comply with request for blood sample (when treated in hospital) - child under 16 present in or on motor vehicle (Section 47I(7) Road Traffic Act 1961, driver of a m/v involved in an accident)
	<input type="checkbox"/> refuse/fail to comply with request for blood sample (when treated in hospital) (Section 47I(14) Road Traffic Act 1961, driver of a m/v involved in an accident)

As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 47IAA of the Act, being a period of up to:  
 6 months

As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 47IAA of the Act, being a period of up to:  
 12 months

**Notice under section 45B or 45D Road Traffic Act 1961**

At about ..... am/pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ] at ..... (location) an offence was allegedly committed against:

<input type="checkbox"/> Section 45A of the Road Traffic Act 1961 (Excessive speed) As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45B of the Act being a period of up to <u>6 months</u> .	<input type="checkbox"/> Section 45C(1) of the Road Traffic Act 1961 (Speed restrictions for trucks and buses on prescribed roads) <input type="checkbox"/> Section 45C(2) of the Road Traffic Act 1961 (Gear restrictions for trucks and buses on prescribed roads) As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45D of the Act being a period of up to <u>6 months</u> .	<input type="checkbox"/> Section 79B of the Road Traffic Act 1961 (Being owner of a vehicle that appears from evidence obtained by a photographic detection device to have been involved in an offence against section 45A of that Act) As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45B of the Act being a period of up to <u>6 months</u> .	<input type="checkbox"/> Section 79B of the Road Traffic Act 1961 (Being owner of a vehicle that appears from evidence obtained by a photographic detection device to have been involved in an offence against section 45C(1) of that Act) As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45D of the Act being a period of up to <u>6 months</u> .
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**It is an offence punishable by imprisonment to drive a motor vehicle whilst your licence is suspended or you are disqualified.**

The licence suspension or disqualification commences:

<input type="checkbox"/> forthwith - when this notice is given to you	<input type="checkbox"/> 48 hours after this notice is given to you	<input type="checkbox"/> If your driver's licence is already suspended or you are already disqualified from holding or obtaining a driver's licence, this notice will take effect at the conclusion of that suspension or disqualification
<input type="checkbox"/> 24 hours after this notice is given to you	<input type="checkbox"/> 28 days after this notice is given to you	

**TIME AND DATE NOTICE GIVEN:**

This notice was given at ..... am / pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ]

Issuing Officer's Signature ..... Name: ..... Rank: ..... ID [0][ ][ ][ ][ ][ ][ ][ ][ ]

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE:**

I acknowledge receipt of this notice at the time and date recorded above.

Signature ..... Name: .....

Witness's Signature ..... Name: ..... Rank: ..... ID [0][ ][ ][ ][ ][ ][ ][ ][ ]

DRIVER / OCCUPANT OF VEHICLE REFUSED / UNABLE TO SIGN / ACCEPT ORDER (to be as applicable)

CHECKED BY ..... RANK ..... ID [0][ ][ ][ ][ ][ ][ ][ ][ ] DATE ..... / ..... / .....

ORIGINAL: EXPIRATION NOTICE BRANCH (7/8) WITHIN 24 HOURS DUPLICATE: OFFENDER TRIPLICATE: AP QUADRUPPLICATE: TO BE RETAINED IN BOOK PD 318 Revised: 31/1/2018

## ADVICE TO NOTICE RECIPIENT

### Review of Licence Suspension / Disqualification - Road Traffic Act 1961

#### **Section 45E—Application to Court to have disqualification or suspension under section 45D lifted**

If a person is given a notice of licence disqualification or suspension under section 45D (or is sent particulars of such a notice by the Registrar of Motor Vehicles) but is not given an expiation notice for an offence to which section 45D applies (or such an expiation notice is withdrawn or the person elects to be prosecuted in accordance with the *Expiation of Offences Act 1996*), the person may apply to the Magistrates Court for an order that the person is not disqualified, or the person's driver's licence is not suspended, by the notice.

#### **Section 47IAB—Application to Court to have disqualification or suspension under section 47IAA lifted**

A person who has been given a notice of immediate licence disqualification or suspension under section 47IAA or who has been sent particulars of such a notice by the Registrar of Motor Vehicles may apply to the Magistrates Court for an order that the person is not disqualified, or the person's driver's licence is not suspended, by the notice; or reducing the period of disqualification or suspension applicable under the notice.

#### **Lodging an Application**

The application pursuant to section 45E or section 47IAB must be commenced by lodging written application with the Magistrates Court, in the form prescribed by rules of the Court, setting out the grounds on which the application is made and particulars of the evidence that will be relied on by the applicant. Refer to the respective section, namely section 45E or section 47IAB, for further information.

Go to website [www.courts.sa.gov.au](http://www.courts.sa.gov.au), Magistrates Court section, obtain an application form and information on how to lodge your application or contact the Magistrates Court Call Centre on 8204 2444 between 8.30 am and 5.30 pm Monday to Friday.

- (2) Schedule 1, Form 4—delete the form and substitute:

**Form 4—Prescribed oral advice and written notice**

**(Section 47K(2a)(a) of Act)**

**Part A—Oral advice for the purposes of section 47K(2a)(a) of *Road Traffic Act 1961***

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

Therefore, it appears that you have committed an offence against section 47B(1) or (1a) of the *Road Traffic Act 1961*.

In any court proceedings for an offence against section 47B(1) or (1a), or for an offence against section 47 of the Road Traffic Act (driving under the influence of liquor), it will be presumed that the breathalyser accurately indicated your blood alcohol level at the time of the reading and for the preceding two hours. However, the Road Traffic Act 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.

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.]

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 Forensic Science SA 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.

\* Advice as to the alternative of a registered nurse is to be given only if the breath analysis was conducted outside Metropolitan Adelaide.

**Part B—Written notice for the purposes of section 47K(2a)(a) of *Road Traffic Act 1961***

**Operation of Road Traffic Act in relation to results of breath analysis**

**1 Offence**

Section 47B(1) of the *Road Traffic Act 1961* provides that a person commits an offence if the person drives a motor vehicle, or attempts to put a motor vehicle in motion, while there is present in the person's blood the prescribed concentration of alcohol (as defined in section 47A of the Act). Section 47B(1a) provides that if a person engages in conduct involving a motor vehicle that constitutes an offence against section 47B(1) (other than a category 1 offence) while a child under the age of 16 years is present in or on that motor vehicle, the person commits an offence against section 47B(1a) and is liable to the same penalty as is prescribed for an offence against section 47B(1).

## **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 you have committed an offence described above.

## **3 Legal effect of breath analysis result**

In proceedings for an offence described above or an offence against section 47(1) of the *Road Traffic Act 1961* (driving under the influence of liquor), 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 47K(1), (1ab)).

In any proceedings against you for such an offence, 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
- the result of analysis of the blood sample shows that the breath analysing instrument gave an exaggerated reading of the concentration of alcohol present in your blood (section 47K(1a)).

## **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).
- 4 Do not consume any further alcohol before the sample is taken.
- 5 Do not open the blood test kit.
- 6 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.
- 7 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.
- 8 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.

- 9 The other blood sample container will, in any event, be sent to Forensic Science SA 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).
- \* The alternative of a registered nurse applies only if the breath analysis was conducted outside Metropolitan Adelaide.

**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 13 February 2018

No 46 of 2018

MRS18/01CS