

Reprint
as at 3 February 2010

**Transport (Breath Tests) Notice
(No 2) 1989**
(SR 1989/389)

Transport (Breath Tests) Notice (No 2) 1989: revoked, on 3 February 2010, by clause 9 of the Land Transport (Breath Tests) Notice 2009 (SR 2009/386).

PURSUANT to section 57A of the Transport Act 1962 (as substituted by section 7 of the Transport Amendment Act (No 2) 1988), the Minister of Transport hereby gives the following notice.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This notice is administered in the Ministry of Transport.

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1 Title and commencement

- (1) This notice may be cited as the Transport (Breath Tests) Notice (No 2) 1989.
- (2) This notice shall come into force on the 15th day of December 1989.

2 Interpretation

- (1) In this notice—

Alcosensor II means an Alcosensor II with a 4 digit readout; and includes any device with a 4 digit readout having the trade name **Alcosensor** and associated with the number II

Alcotech AR 1005 means an Alcotech AR 1005 handheld breath analyser; and includes any device having the trade name **Alcotech** and associated with the expression **AR 1005**

Alcotech AR 1005: this definition was inserted by regulation 2 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 2 (SR 1993/51).

DataMaster*[Revoked]*

DataMaster: This definition was revoked, as from 7 October 1994, by regulation 2(a) Transport (Breath Tests) Notice (No 2) 1989, Amendment No 4 (SR 1994/224).

[Revoked]

Dräger Alcotest means a Dräger Alcotest® 80/A, Draeger Normalair Alcotest® 80, Draeger Safety Alcotest® 80, or Alcotest 80/A; and includes any device having the trade name “Dräger”, “Drager”, or “Draeger”, and associated with the number 80 or the expression “80A”, “80/A”, or “Alcotest®”

Dräger 6510 means a Dräger Alcotest 6510; and includes any device having the trade name **Dräger, Drager, or Draeger**, and associated with the number 6510 or the expression **6510NZ**

Dräger 6510: this definition was inserted, as from 1 October 2006, by clause 4 Transport (Breath Tests) Amendment Notice 2006 (SR 2006/292).

Dräger 7110 means a Dräger Alcotest 7110; and includes any device having the trade name **Dräger, Drager, or Draeger**, and associated with the number 7110

Enforcement officer means the enforcement officer (within the meaning of section 2 of the Land Transport Act 1998) who is conducting the test

Enforcement officer: this definition was substituted, as from 1 March 1999, pursuant to clause 2 Transport (Breath Tests) Amendment Notice 1999 (SR 1999/019).

Intoxilyzer 5000 means an Intoxilyzer® 5000 breath analysis instrument; and includes an Intoxilyzer® 5000EN breath analysis instrument and any other device having the trade name “Intoxilyzer” and associated with the number 5000 or with an expression containing the number 5000

Intoxilyzer 5000: this definition was substituted, as from 4 May 2001, by clause 2 Transport (Breath Tests) Amendment Notice 2001 (SR 2001/82).

Lion Alcolmeter means a Lion Alcolmeter S-L2A NZ; and includes any device having the trade name **Lion Alcolmeter** or **lion alcolmeter**, and associated with the expression **S-L2** or with an expression containing the elements **S-L2**

Seres means a Seres Ethylometre model 679T or a Seres Ethylometre model 679ENZ; and includes any device having the trade name **Seres** and associated with the number 679.

Seres: the original definition was amended, as from 7 October 1994, by regulation 2(b) Transport (Breath Tests) Notice (No 2) 1989, Amendment No 4 (SR 1994/224) by substituting the expression “679 T” for the expression “S 679”.

Seres: this definition was substituted, as from 1 November 2002, by clause 3 Transport (Breath Tests) Amendment Notice 2002 (SR 2002/357).

- (2) For the purposes of subclause (1) of this clause, a device shall be deemed to have a particular trade name or be associated with a particular number or expression if that trade name or number or expression—

- (a) Appears on the device (whether by means of a label or otherwise) or is shown on the display panel on the device; or
- (b) Is printed out by the device on a card or on paper; or
- (c) Appears on any printed matter that accompanies the device or is issued by or on behalf of the manufacturer of the device.

2A Approval of passive breath-testing devices

The following devices are approved as kinds of passive breath-testing devices:

- (a) Alcotech AR 1005:
- (b) Dräger 6510.

Clause 2A was inserted, as from 1 April 1993, by clause 3 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 2 (SR 1993/51).

Clause 2A was substituted, as from 1 October 2006, by clause 5 Transport (Breath Tests) Amendment Notice 2006 (SR 2006/292).

3 Approval of breath screening devices

The following devices are hereby approved as kinds of breath screening devices for the purposes of breath screening tests:

- (a) Dräger Alcotest:
- (b) Alcoyser:
- (c) Lion Alcolmeter.
- (d) Alcotech AR 1005.
- (e) Dräger 6510.

Clause 3 was substituted, as from 8 September 1995, by clause 2 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 5 (SR 1995/191).

Paragraph (e) was inserted, as from 1 October 2006, by clause 6 Transport (Breath Tests) Amendment Notice 2006 (SR 2006/292).

4 Manner of carrying out breath screening tests by means of Dräger Alcotest

Breath screening tests carried out by means of a Dräger Alcotest device shall be carried out in the following manner:

- (a) *Step 1:* The sealed tips of both ends of the tube shall be broken off:
- (b) *Step 2:* The green end of the tube shall be inserted into the collar of an empty measuring bag, so that the arrow marked on the tube points towards the bag:

- (c) *Step 3:* The white end of the tube shall be pushed firmly into a mouthpiece:
- (d) *Step 4:* The person being tested shall blow through the mouthpiece and the tube until the bag is fully inflated. As far as possible, this should be done with one single breath in 10 to 20 seconds:
- (e) *Step 5:* The enforcement officer shall within 5 minutes examine the tube by daylight, or by the light of a torch or of any motor vehicle headlight or internal light, or by any other artificial light except mercury or sodium-vapour street lighting:
- (f) *Step 6 (results of test):*
 - (i) If any of the yellow crystals in the tube are stained a green colour and this green stain extends from the end of the crystals closest to the arrow marked on the tube to and beyond the yellow ring marked around the middle of the portion of the tube containing the crystals, the test shall be taken to indicate that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath:
 - (ii) If any of the yellow crystals in the tube are stained a green colour, the test shall be taken to indicate that there is some alcohol in the person's breath.

5 Manner of carrying out breath screening tests by means of Alcoyser

Breath screening tests carried out by means of an Alcoyser device shall be carried out in the following manner:

- (a) *Step 1:* The sealed tips of both ends of the tube shall be broken off:
- (b) *Step 2:* The red end of the tube shall be inserted into the collar of an empty measuring bag, so that the arrow marked on the tube points towards the bag:
- (c) *Step 3:* The end of the tube nearest the arrow shall be pushed firmly into a mouthpiece:
- (d) *Step 4:* The person being tested shall blow through the mouthpiece and the tube until the bag is fully inflated.

As far as possible, this should be done with one single breath in 10 to 20 seconds:

- (e) *Step 5:* The enforcement officer shall within 5 minutes examine the tube by daylight, or by the light of a torch or of any motor vehicle headlight or internal light, or by any other artificial light except mercury or sodium-vapour street lighting:
- (f) *Step 6 (results of test):*
 - (i) If any of the yellow crystals in the tube are stained a green colour and this green stain extends from the end of the crystals closest to the arrow marked on the tube to or beyond the red line marked on the middle of the portion of the tube containing the crystals, the test shall be taken to indicate that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath:
 - (ii) If any of the yellow crystals in the tube are stained a green colour, the test shall be taken to indicate that there is some alcohol in the person's breath.

6 Manner of carrying out breath screening tests by means of Lion Alcolmeter

Breath screening tests carried out by means of a Lion Alcolmeter device shall be carried out in the following manner:

- (a) *Step 1 (zero test):* The enforcement officer shall depress the SET button and shall then depress the READ button for approximately 10 seconds and observe that the green READY light on the device comes on and remains lit for that period before the screening test may proceed:
- (b) *Step 2 (breath screening test):*
 - (i) The enforcement officer shall depress the SET button and attach the mouthpiece; and
 - (ii) The person being tested shall blow through the mouthpiece at a pressure and for a period sufficient to cause the green B light on the device to come on and to enable the enforcement officer to depress the READ button; and

- (iii) The enforcement officer shall depress the READ button while the green B light on the device is on; and
 - (iv) The enforcement officer shall observe the amber PASS and red FAIL lights on the device:
- (c) *Step 3 (results of test):*
- (i) If the amber PASS light alone comes on and then goes out, the result shall be taken to indicate that the test is negative:
 - (ii) If the amber PASS light comes on and then the red FAIL light comes on, and then the red FAIL light goes out, the result shall be taken to indicate that the proportion of alcohol in the person's breath exceeds 150 micrograms of alcohol per litre of breath:
 - (iii) If the amber PASS light comes on and then the red FAIL light comes on, and then the amber PASS light goes out, the result shall be taken to indicate that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath.

6A Manner of carrying out breath screening tests by means of Alcotech AR 1005

Breath screening tests carried out by means of an Alcotech AR 1005 device shall be carried out in the following manner:

- (a) *Step 1 (preliminary action):* The enforcement officer shall attach a mouthpiece to the breath inlet port of the device:
- (b) *Step 2 (breath screening test):*
 - (i) The enforcement officer shall depress a second button from the display panel and shall observe the display which must show "SCREENING READY" before the breath screening test can proceed. The enforcement officer may press the button nearest the display panel at any time to illuminate the display:
 - (ii) The person being tested shall blow through the mouthpiece at a pressure and for a period to pro-

vide a specimen of breath sufficient for analysis, when instructed by the enforcement officer. If the device automatically turns off at any time before this step 2(ii) is completed then the enforcement officer may recommence the test at step 2(i) unless the enforcement officer believes the person being tested has failed or refused and will continue to fail or refuse to undergo forthwith the test:

- (iii) When the person being tested stops blowing, the enforcement officer shall observe the display panel of the device:
- (iv) If the display panel shows “BLOW AGAIN”, it means that no specimen of breath sufficient for analysis has been provided. In that case steps 2(ii), 2(iii), and this step 2(iv) may be repeated unless the enforcement officer believes that the person being tested has failed or refused and will continue to fail or refuse to undergo forthwith the test:

(c) *Step 3 (results of test):*

- (i) If the display panel shows “PASS”, the result shall be taken to indicate that the test is negative:
- (ii) If the display panel shows “FAIL YOUTH”, the result shall be taken to indicate that the proportion of alcohol in the person’s breath exceeds 150 micrograms of alcohol per litre of breath:
- (iii) If the display panel shows “FAIL GENERAL”, the result shall be taken to indicate that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath.

Clause 6A was inserted, as from 8 September 1995, by regulation 3 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 5 (SR 1995/191).

6B Manner of carrying out breath screening tests by means of Dräger 6510

Breath screening tests carried out by means of a Dräger 6510 device must be carried out in the following manner:

- (a) *step 1* (preliminary action)—

- (i) the enforcement officer must observe the display panel showing **READY**. If the display panel does not show **READY**, the officer must depress the **OK** button briefly and repeat this step 1(i):
- (ii) the enforcement officer must, before or after step 1(i), attach a mouthpiece to the breath inlet port of the device:
- (b) *step 2* (breath screening test)—
 - (i) the person being tested must blow through the mouthpiece at a pressure and for a period to provide a specimen of breath sufficient for analysis, when instructed by the enforcement officer:
 - (ii) after the person being tested stops blowing, the enforcement officer must observe the display panel of the device:
 - (iii) if the display panel shows **Insufficient Volume**, it means that no specimen of breath sufficient for analysis has been provided. In that case, the enforcement officer may depress the **OK** button on the device, and repeat step 1(i) and this step 2, unless the officer believes the person being tested has failed or refused and will continue to fail or refuse to undergo the test without delay:
 - (iv) if the display panel shows **NO ALCOHOL** or **ALCOHOL**, during or after the purported breath screening test, it means the **OK** button has been depressed during the test. In that case the enforcement officer must depress the **OK** button on the device, and repeat step 1(i) and this step 2:
- (c) *step 3* (results of test)—
 - (i) if the display panel shows **PASS**, the result indicates that the test is negative. As a confirmation, the indicator light will be a steady green for a short time (approximately 20 seconds or such shorter time as the officer may permit):
 - (ii) if the display panel shows **FAIL YTH**, the result indicates that the proportion of alcohol in the person's breath exceeds 150 micrograms of alcohol per litre of breath. As a confirmation, the indica-

tor light will be a steady amber or red for a short time (approximately 20 seconds or such shorter time as the officer may permit):

- (iii) if the display panel shows **FAIL GEN**, the result indicates that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath. As a confirmation, the indicator light will be a steady red for a short time (approximately 20 seconds or such shorter time as the officer may permit).

Clause 6B was inserted, as from 1 October 2006, by clause 7 Transport (Breath Tests) Amendment Notice 2006 (SR 2006/292).

7 Approval of evidential breath-testing devices

The following devices are hereby approved as kinds of evidential breath-testing devices for the purposes of evidential breath tests:

- (a) Alcosensor II:
- (b) Dräger 7110:
- (c) Intoxilyzer 5000:
- (d) Seres.

Clause 7 was substituted, as from 7 October 1994, by clause 3 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 4 (SR 1994/224).

8 Approval of conclusive evidential breath-testing devices

[Revoked]

Clause 8 was amended, as from 7 October 1994, by clause 4 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 4 (SR 1994/224) by substituting the expression "paragraphs (b) to (d)" for the expression "paragraphs (b) to (e)".

Clause 8 was amended, as from 1 March 1999, by clause 3 Transport (Breath Tests) Amendment Notice 1999 (SR 1999/19), by omitting the words "section 58(5) of the Transport Act 1962", and substituting the words "section 77(5) of the Land Transport Act 1998".

Clause 8 was revoked, as from 29 December 2001, by section 14(4) Land Transport (Road Safety Enforcement) Amendment Act 2001 (2001 No 104).

9 Manner of carrying out evidential breath tests by means of Alcosensor II

Evidential breath tests carried out by means of an Alcosensor II device shall be carried out in the following manner:

- (a) *Step 1 (first zero test)*: The enforcement officer shall depress the SET button, and shall then depress the READ button for approximately 10 seconds and observe the resulting digital reading, which must be 0000 before the standardisation test (*step 2*) may proceed:
- (b) *Step 2 (standardisation test)*: The enforcement officer shall—
 - (i) Depress the SET button; and
 - (ii) Introduce into the device alcohol vapour from a container marked with the words “Breath Test Standard Alcohol Vapour supplied by the Institute of Environmental Health and Forensic Sciences Limited” or “Breath Test Standard Alcohol Vapour supplied by the Institute of Environmental Science and Research Limited” or “Breath Test Standard Alcohol Vapour supplied by the Department of Scientific and Industrial Research”; and
 - (iii) Depress the READ button while the vapour is being introduced and observe the maximum digital reading. If this reading is equal to or less than the level indicated on the Breath Test Standard Alcohol Vapour container, the second zero test (*step 3*) may proceed:
- (c) *Step 3 (second zero test)*: The enforcement officer shall depress the SET button, and shall then depress the READ button for approximately 10 seconds and observe the resulting digital reading, which must be 0000 before the evidential test (*step 4*) may proceed:
- (d) *Step 4 (evidential breath test)*:
 - (i) The enforcement officer shall depress the SET button and attach the mouthpiece; and
 - (ii) The person being tested shall blow through the mouthpiece; and
 - (iii) The enforcement officer shall depress the READ button while the person is blowing through the mouthpiece and observe the maximum digital reading; and

- (iv) The enforcement officer shall record the maximum digital reading in writing:
- (e) *Step 5 (result of test)*: The maximum digital reading so recorded shall be taken to indicate the number of micrograms of alcohol per litre of breath of the person tested.

Clause 9(b)(ii) was amended by clause 2 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 1 (SR 1992/174) and substituted by clause 2 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 3 (SR 1993/376).

10 Manner of carrying out evidential breath tests by means of DataMaster, Dräger 7110, Intoxilyzer 5000, or Seres

Evidential breath tests carried out by means of a Dräger 7110, an Intoxilyzer 5000, or a Seres shall be carried out in the following manner:

- (a) *Step 1 (start of testing sequence)*: The enforcement officer shall depress the button for starting the test:
- (b) *Step 2 (evidential breath test)*: The enforcement officer shall carry out the testing sequence in accordance with the instructions appearing on the display panel on the device; and—
 - (i) The enforcement officer shall attach a new mouthpiece to the breath inlet tube and instruct the person being tested to blow through the mouthpiece; and
 - (ii) The person being tested shall blow through the mouthpiece to provide a subject breath specimen sufficient for analysis, when instructed by the enforcement officer; and
 - (iii) Step 2(i) and Step 2(ii) shall be repeated, as required, until the testing sequence has been completed:
- (c) *Step 3 (results of test)*:
 - (i) The results of the various steps in the testing sequence will be shown on the result card or print-out, and will include the Evidential Breath Test Result which shall be taken to indicate the number of micrograms of alcohol per litre of breath of the person tested:

- (ii) If the Evidential Breath Test Result is “Incomplete Test”, the test has been unable to be carried out.

Clause 10 was amended, as from 7 October 1994, by clause 5 Transport (Breath Tests) Notice (No 2) 1989, Amendment No 4 (SR 1994/224) by omitting the expression “a DataMaster,”.

There has been an extra sentence added to the notices printed with the 15th day of December 1989 as the coming into force date. In clause 10(b) the words “The enforcement ... device; and—” have been added.

11 Revocation

The Transport (Breath Tests) Notice 1989¹ is hereby revoked.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 14 December 1989.

¹ SR 1989/68

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Notes**1 General**

This is an eprint of the Transport (Breath Tests) Notice (No 2) 1989. It incorporates all the amendments to the notice as at 3 February 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/legislation/reprints.shtml>.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please *see* "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Land Transport (Breath Tests) Notice 2009 (SR 2009/386): clause 9
