

# **Sentencing Act 2002**

## **Sentencing (Alcohol and Drug Testing of Offenders) Rules 2017**

These rules are made under section 80ZT of the Sentencing Act 2002 by the Chief Executive of the Department of Corrections, who is satisfied that they comply with section 80ZU(2) of that Act.

## Sentencing (Alcohol and Drug Testing of Offenders) Rules 2017

### 1 Title

These rules are the Sentencing (Alcohol and Drug Testing of Offenders) Rules 2017.

### 2 Commencement

These rules come into force on (that is to say, at the beginning of) whichever is the later of the following days:

- (a) the date or day on which the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (under section 2(1)(a) or (b) of that Act) comes into force; and
- (b) the day after the date of first publication of the *Gazette* notice by which these rules are made.

### 3 Interpretation

- (1) In these rules —

**Act** means the Sentencing Act 2002

**Alcohol breath testing procedure** means testing carried out by means of a breath screening device or an evidential breath testing device in accordance with rule 5

**Breath screening device** means each of the following kind of devices:

- (a) a Dräger 6510;
- (b) a Dräger 7510NZ.

**Evidential breath testing device** means each of the following kind of devices:

- (a) a Dräger 7510NZ;
- (b) a Dräger 9510NZ.

**SCRAM CAM** means a device of a kind that is a Secure Continuous Remote Alcohol Monitoring Continuous Alcohol Monitoring (SCRAM CAM) device

- (2) Words and expressions defined in the Act, and used but not defined in these rules, have the same meaning as in the Act.

### 4. Procedures

The following procedures are prescribed as types of testing procedures that an offender with a drug or alcohol condition may be required to undergo—

- (a) an alcohol breath test, as described in rule 5.
- (b) a drug, alcohol or psychoactive substance urine test, as described in rule 6.

- (c) the requirement to wear an electronic monitoring device as described in rule 7.

## 5. Alcohol breath test

### *Testing procedure*

- (1) The procedure for carrying out an alcohol breath test using a breath screening device, or an evidential breath testing device, as the case may be, is prescribed as follows:

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

#### (a) Step 1: Preliminary action

- (i) The authorised person must observe the display panel showing **READY**. If the display panel does not show **READY**, the authorised person must depress the **OK** button briefly and repeat this Step 1(i).
- (ii) The authorised person 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 when instructed by the authorised person blow through the mouthpiece at a pressure and for a period to provide a specimen of breath sufficient for analysis.
- (ii) After the person being tested stops blowing, the authorised person 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 authorised person may depress the **OK** button on the device, and repeat Step 1 and this Step 2, unless the authorised person 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 authorised person must depress the **OK** button on the device, and repeat Step 1 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.
- (ii) If the display panel shows **Under 250**, the result indicates that the person's breath contains alcohol but the proportion of alcohol in the person's breath does not exceed 250 micrograms of alcohol per litre of breath. As a confirmation, the indicator light will be a steady amber for a short time.
- (iii) If the display panel shows **250+Over**, the result indicates that the proportion of alcohol in the person's breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath. As a confirmation, the indicator light will flash red and amber alternately for a short time.

- (iv) If the display panel shows **Over 400**, 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.

Breath screening tests carried out by means of a Dräger 7510NZ must be carried out in the following manner:

(a) Step 1: Preliminary action

- (i) The authorised person must select **SCREENING** from the display panel, then depress the **OK** button.
- (ii) The authorised person must when prompted to do so by the device attach a mouthpiece to the breath inlet port of the device.

(b) Step 2: Breath screening test

- (i) The person being tested must when instructed by the authorised person blow through the mouthpiece at a pressure and for a period to provide a specimen of breath sufficient for analysis.
- (ii) After the person being tested stops blowing, the authorised person 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 authorised person may depress the **OK** button on the device, and repeat Step 1 and this Step 2, unless the authorised person believes the person being tested has failed or refused and will continue to fail or refuse to undergo the test without delay.

(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.
- (ii) If the display panel shows **Under 250**, the result indicates that the person's breath contains alcohol but the proportion of alcohol in the person's breath does not exceed 250 micrograms of alcohol per litre of breath. As a confirmation, the indicator light will be a steady amber for a short time.
- (iii) If the display panel shows **250+Over**, the result indicates that the proportion of alcohol in the person's breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath. As a confirmation, the indicator light will flash red and amber alternately for a short time.
- (iv) If the display panel shows **Over 400**, 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.

Evidential breath tests carried out by means of a Dräger 7510NZ or a Dräger 9510NZ must be carried out in the following manner:

(a) Step 1: Start of testing sequence

The authorised person must depress the button for starting the test.

(b) Step 2: Evidential breath test

The authorised person must carry out the testing sequence in accordance with the instructions that appear on the display panel of the device, and—

- (i) the authorised person must attach a new mouthpiece to the breath inlet port or tube of the device and instruct the person being tested to blow through the mouthpiece; and
- (ii) the person being tested must when instructed by the authorised person blow through the mouthpiece at a pressure and for a period to provide a breath specimen sufficient for analysis; and
- (iii) Step 2(i) and Step 2(ii) must be repeated, as required, until the testing sequence is completed.

(c) Step 3: Results of test

- (i) The result of the Evidential Breath Test will appear on the display panel of the device.
- (ii) If the Evidential Breath Test Result is “Incomplete Test”, the test has been unable to be carried out, and Step 2 can be repeated.

*Results of the alcohol breath test*

- (2) Following a positive result on an alcohol breath test using a breath screening device the offender may be required under section 80ZO(2) of the Act to undergo a second alcohol breath testing procedure, using an evidential breath testing device, or urine test to confirm the consumption of alcohol.

*How often testing procedure may be carried out*

- (3) An offender will not be required to undergo an alcohol breath testing procedure for the purpose of this Act more than once a day, unless the authorised person has reasonable grounds for believing that the offender has consumed alcohol.

**6. Drug, alcohol or psychoactive substance urine test**

*Testing procedure*

- (1) The procedure for carrying out a drug, alcohol or psychoactive substance urine test is:
  - (a) Step 1: The offender is required by the person carrying out the testing procedure to accompany that person to a private area with a toilet where it is likely that it will be reasonably practicable for the offender to undergo testing and that affords the offender as much privacy and dignity as is reasonably practicable.
  - (b) Step 2: The offender will be given a receptacle. The offender must, in full view of the person carrying out the testing procedure, urinate into the receptacle until it contains an adequate volume to enable the temperature of the sample to be assessed and testing to be conducted. The person carrying out the testing procedure must be the same sex as the offender unless the offender consents otherwise.
  - (c) Step 3: The urine in the receptacle is sent to a laboratory for testing.

- (d) Step 4: If the result is positive for a drug, alcohol or psychoactive substance, the offender may elect to have part of the urine sample independently tested in a different laboratory certified to conduct the testing, provided the offender meets in advance all actual and reasonable costs.
- (2) Collection and analysis of samples collected will be done in accordance with all relevant and applicable laws and standards, including but not limited to:
- (a) AS/NZS 4308:2008: Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine.

*How often testing procedure may be carried out*

- (3) An offender will not be required to undergo a drug, alcohol or psychoactive substance urine test for the purpose of this Act more than once a day, unless the authorised person has reasonable grounds for believing that the offender has consumed alcohol or has been using (as defined in section 4(1) of the Act) a controlled drug or psychoactive substance.
- (4) An offender who is required by notice to contact an automated system will not be required to do so more than once per day.

**7. Monitoring devices**

- (1) The SCRAM CAM is prescribed as a type of drug or alcohol monitoring device that may be connected to an offender with a drug or alcohol condition that prohibits the offender from consuming alcohol (whether or not the condition also prohibits the offender from using (as defined in section 4(1) of the Act) a controlled drug, using a psychoactive substance, or both).
- (2) The requirement to wear a SCRAM CAM drug or alcohol monitoring device for the purpose of continuous monitoring of an offender's compliance with a drug or alcohol condition must be assessed at least once every 90 days.

Signed at Wellington

This 8<sup>th</sup> day of May 2017



Chief Executive of the  
Department of Corrections

### Explanatory note

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on whichever is the later of the commencement date of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 and the day after the date of their first publication in the *Gazette*, are made under the Sentencing Act 2002 (the **Act**) by the Chief Executive of the Department of Corrections. They apply to an offender to whom section 80ZO of the Act applies because he or she has a drug or alcohol condition. An offender of that kind may be given a notice requiring him or her to-

- undergo testing using a prescribed procedure; or
- submit to continuous monitoring through a prescribed device; or
- contact a specified automated system and, if required by a response given by the automated system, undergo testing using a prescribed procedure.

These rules prescribe the testing procedures and monitoring devices that may be used. They also specify how often each of the prescribed testing procedures may be carried out.

These rules apply to:

- offenders with a drug or alcohol condition imposed under section 52(2)(bb) of the Act as a special condition of a sentence of supervision;
- offenders with a drug or alcohol condition imposed under section 54I(3)(ba) of the Act as a special condition of a sentence of intensive supervision;
- offenders with a drug or alcohol condition imposed under section 80D(4)(ca) of the Act as a special condition of a sentence of home detention;
- offenders with a drug or alcohol condition imposed under sections 80N(1) and 80N(2)(b) of the Act as a special post-detention condition of a sentence of home detention;
- offenders with a drug or alcohol condition imposed under section 93(1) or section 93(2)(b) of the Act as a post-imprisonment condition in relation to a short term sentence of imprisonment.