



Tonga

**TRAFFIC (ALCOHOL BREATH TESTS)
NOTICE 2019**



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TRAFFIC (ALCOHOL BREATH TESTS) NOTICE 2019

TRAFFIC ACT [CAP 156]

IN EXERCISE of the powers conferred by section 25E of the Traffic Act, as amended, the Minister for Police makes the following Notice -

1 Short Title

This Notice may be cited as the Traffic (Alcohol Breath Tests) Notice 2019.

2 Interpretation

(1) In this notice—

“**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 6810**” means a Dräger Alcotest 6810, and includes any device having the trade name “**Dräger**”, “**Drager**”, or “**Draeger**”, and associated with the number 6810 or the expression “**6810NZ**”;

“Dräger 6820” means a Dräger Alcotest 6820, and includes any device having the trade name **“Dräger”**, **“Drager”** or **“Draeger”**, and associated with the number 6820 or the expression **“6820NZ;”**;

“Enforcement officer” in respect of a test carried out under this Notice means the Police officer who is conducting the test.”.

- (2) For the purposes of sub-clause (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;
 - (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.

3 Approval of passive breath-testing devices

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

- (a) Dräger 6510.

5 Manner of carrying out passive breath screening tests by means of Dräger 6510

Passive breath screening tests carried out by means of a Dräger 6510 device shall be carried out in the following manner:

- (a) step 1 (preliminary action)—
 - (i) the enforcement officer shall observe the display panel showing “READY”. If the display panel does not show “READY”, the officer shall depress the “OK” button briefly and repeat this step 1(i);
- (b) step 2 (passive breath screening test)—
 - (i) the person being tested shall speak into the device for a period to provide a specimen of breath sufficient for analysis, when instructed by the enforcement officer;
 - (ii) after the person being tested speaking, the enforcement officer shall observe the display panel of the device;
- (c) step 3 (results of test)—

- (i) if the display panel shows “NO ALCOHOL”, the result indicates that the test is negative;
- (ii) if the display panel shows “ALCOHOL”, the result indicates that there is alcohol present in that person’s breath.

6 Approval of breath screening devices

The following device is hereby approved as a breath screening device for the purposes of breath screening tests:

- (a) Dräger 6510.

7 Manner of carrying out breath screening tests by means of Dräger 6510

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

- (a) step 1 (preliminary action)—
 - (i) the enforcement officer shall observe the display panel showing “READY”. If the display panel does not show “READY”, the officer shall depress the “OK” button briefly and repeat this step 1(i);
 - (ii) the enforcement officer shall, 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 shall 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 shall 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 shall 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 “ALERT”, the result indicates that the proportion of alcohol in the person's breath exceeds 150 micrograms of alcohol per litre of breath but is less than 250 micrograms of alcohol per litre of breath. As a confirmation, the indicator 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”, the result indicates that the proportion of alcohol in the person's breath exceeds 250 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).

8 Approval of evidential breath-testing devices

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

- (a) Dräger 6810;
- (b) Dräger 6820

9 Manner of carrying out evidential breath tests by means of Dräger 6810

Evidential breath tests carried out by means of a Dräger 6810 shall be carried out in the following manner:

- (a) step 1 (preliminary action)—
 - (i) the enforcement officer shall observe the display panel showing “READY”. If the display panel does not show “READY”, the officer shall depress the “OK” button briefly and repeat this step 1(i);
 - (ii) the enforcement officer shall, before or after step 1(i), attach a mouthpiece to the breath inlet port of the device;

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- (b) step 2 (1st evidential breath screening test)—
 - (i) the person being tested shall 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 shall 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;
 - (c) step 3 (preliminary test result)—
 - (i) the display panel will show a digital numeric result which is the breath alcohol level for that test;
 - (ii) if the display panel shows a level between 150 and 250, an infringement offence has been committed;
 - (iii) if the display panel shows a level greater than 251 the result indicates that an offence has been committed;
 - (iv) the result will be shown on the display, or a result card or a printout 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.
 - (d) step 4 (2nd evidential breath test)
 - (i) using another Dräger 6810 device with a different serial number;
 - (ii) repeat step 2 and step 3;
 - (e) step 5 (final test result)
 - (i) the result of the two Dräger 6810 tests will be compared and as long as the results are within 20% of the highest level the result will be deemed to be a valid result;
 - (ii) the lower of the two Dräger 6810 results will be the final test result.

10 Manner of carrying out evidential breath tests by means of Drager 6820

Evidential breath tests carried out by means of a Drager 6820 shall be carried out in the following manner –

- (a) step 1 (preliminary action)—
 - (i) the enforcement officer shall observe the display panel showing “READY”. If the display panel does not show “READY”, the officer shall depress the “OK” button briefly and repeat this step 1(i);
 - (ii) the enforcement officer shall, before or after step 1(i), attach a mouthpiece to the breath inlet port of the device;
- (b) step 2 (1st evidential breath screening test)—
 - (i) the person being tested shall 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 shall 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;
- (c) step 3 (preliminary test result)—
 - (i) the display panel will show a digital numeric result which is the breath alcohol level for that test;
 - (ii) if the display panel shows a level between 150 and 250, an infringement offence has been committed;
 - (iii) if the display panel shows a level greater than 251 the result indicates that an offence has been committed;
 - (iv) the result will be shown on the display, or a result card or a printout 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.
- (d) step 4 (2nd evidential breath test)
 - (i) using another Dräger 6820 device with a different serial number;
 - (ii) repeat step 2 and step 3;
- (e) step 5 (final test result)
 - (i) the result of the two Dräger 6820 tests will be compared and as long as the results are within 20% of the highest level the result will be deemed to be a valid result;

- (ii) the lower of the two Dräger 6820 results will be the final test result.

11 Repeal

The Traffic (Alcohol Breath Tests) Notice 2010 is hereby repealed.

Made at Nuku'alofa this **12th** day of **December** 2019.

Lord Nuku
Minister for Police