

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Australian Federal Police Act 1979

Australian Federal Police (Approval of Screening Devices) Instrument 2021

The *Australian Federal Police Act 1979* (the Act) provides the statutory basis for the alcohol screening testing of Australian Federal Police (AFP) appointees in certain circumstances, including the type of equipment to be used for the conduct of tests.

Section 40R of the Act permits the Minister to approve in writing certain devices of a type to be “approved screening devices” for the use of tests permitted under sections 40LA, 40M and 40N of the Act.

Section 40LA of the Act provides for the use of alcohol screening tests by an authorised manager where an AFP appointee is on duty and the manager reasonably suspects that the appointee is under the influence of alcohol. Section 40M provides for an AFP appointee who is on duty to be required by a person authorised by the *Australian Federal Regulations 2018* (the Regulations) to undergo alcohol screening testing (or other testing), in accordance with the Regulations. Section 40N provides for an AFP appointee, whether or not they are on duty, to be required by a person authorised by the Regulations to undergo alcohol screening testing (or other testing), after certain incidents have occurred, and in accordance with the Regulations.

Alcohol screening tests are conducted as a preliminary form of testing. An alcohol screening test is conducted using an “approved screening device” which is a portable hand held device used for identifying the presence of alcohol on a person’s breath. Where a preliminary alcohol screening test shows that alcohol is present on the subject’s breath, they may be required to proceed to a full breath test which can determine the amount of alcohol in the person’s blood.

The *Australian Federal Police (Approval of Screening Devices) Instrument 2021* (the Instrument) repeals the *Australian Federal Police Act 1979 - Section 40R - Approval of Screening Device Instrument 2011*, which is otherwise due to sunset on 1 October 2021.

Instrument

This Ministerial authorisation provides for the following breath screening devices to be “approved screening devices”:

- the Lion Alcolmeter SD-400 breath screening device; the Alcolizer LE breath screening device; and
- a device that is exhaled into and has been approved for the purpose of indicating whether alcohol is present in the blood of a person:
 - (i) under the law of a state or territory in which the breath screen is conducted; or
 - (ii) in an external territory or a foreign country under the law of a state or territory.

The Lion Alcolmeter SD-400 and the Alcolizer LE are breath screening devices that are currently approved for use in random breath testing roadside stops in the Australian Capital Territory under subsection 5(2) of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) and are used in a number of other Australian jurisdictions for the same purpose.

The authorisation for the use of alcohol screening testing devices that have been approved in the states, territories and external territories will enable AFP appointees operating in those jurisdictions to be subject to the alcohol screening test provisions in sections 40LA, 40M and 40N of the Act using devices that are available and approved for that purpose in those jurisdictions.

Written Ministerial approval of certain devices as “approved screening devices” under section 40R of the Act is required to enable the operation of sections 40LA, 40M and 40N, and does not otherwise change the effect of these provisions.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment A.

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

Consultation

The AFP were consulted to ensure the list of approved screening devices in the Instrument was accurate and replicated the list of devices in the current 2011 instrument, as intended.

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulatory Impact Statement is not required. The OBPR reference number is 43545.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Federal Police (Approval of Screening Devices) Instrument 2021

This Disallowable Legislative Instrument (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Australian Federal Police Act 1979* (the Act) provides the statutory basis for the alcohol screening testing of all Australian Federal Police (AFP) appointees in certain circumstances, including the type of equipment to be used for the conduct of tests.

Section 40LA of the Act provides for the use of alcohol screening tests by an authorised manager where an AFP appointee is on duty and the manager reasonably suspects that the appointee is under the influence of alcohol. Section 40M provides for an AFP appointee who is on duty to be required by a person authorised by the *Australian Federal Regulations 2018* (the Regulations) to undergo alcohol screening testing (or other testing), in accordance with the Regulations. Section 40N provides for an AFP appointee, whether or not they are on duty, to be required by a person authorised by the Regulations to undergo alcohol screening testing (or other testing), after certain incidents have occurred, and in accordance with the Regulations.

Alcohol screening tests are conducted as a preliminary form of testing. An alcohol screening test is conducted using an “approved screening device” which is a portable hand held device used for identifying the presence of alcohol on a person’s breath. Where a preliminary alcohol screening test shows that alcohol is present on the subject’s breath they may be required to proceed to a full breath test which can determine the amount of alcohol in the person’s blood.

This Instrument provides for the following breath screening devices to be “approved screening devices”:

- the Lion Alcolmeter SD-400 breath screening device;
- the Alcolizer LE breath screening device; and
- a device that is exhaled into and has been approved for the purpose of indicating whether alcohol is present in the blood of a person:
 - (i) under the law of a state or territory in which the breath screen is conducted; or
 - (ii) in an external territory or a foreign country under the law of a state or territory.

The *Australian Federal Police (Approval of Screening Devices) Instrument 2021* repeals the *Australian Federal Police Act 1979 - Section 40R - Approval of Screening Device Instrument 2011*, which was otherwise due to sunset on 1 October 2021.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The Act provides the statutory basis for the alcohol testing of all AFP appointees. The *Australian Federal Police Regulations 2018* (the Regulations) makes further provision for matters relevant to the purpose of sections 40LA, 40M and 40N such as the conduct of alcohol screening and breath tests and the confidentiality of tests results (see section 40P of the Act). The Explanatory Statement for the Regulations, remade in 2018, provides detailed discussion of how alcohol screening and breath testing and related provisions engages applicable rights and freedoms.

While the provisions in the Act and Regulations that provide for the alcohol testing of AFP appointees and related matters engage applicable rights and freedoms, this instrument merely provides a list of approved devices which are deemed suitable by the Minister for use in tests conducted under sections 40LA, 40M and 40N and does not engage any rights and freedoms in and of itself.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Peter Dutton MP
Minister for Home Affairs