

**In Confidence**

Office of the Minister of Transport  
Office of the Minister of Police

Chair, Cabinet Economic Development Committee

**APPROVAL OF CRIMINAL LIMITS AND BLOOD INFRINGEMENT THRESHOLDS FOR INCLUSION IN THE LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL**

**Proposal**

- 1 This paper seeks Cabinet agreement to:
  - 1.1 set criminal limits and blood infringement thresholds<sup>1</sup> for 25 impairing drugs, based on the advice of the Independent Expert Panel on Drug Driving (the Panel); and
  - 1.2 incorporate blood infringement thresholds for 25 impairing drugs into the relevant infringement offence provisions of the Land Transport (Drug Driving) Amendment Bill (the Bill).
- 2 These changes are drafted in a Supplementary Order Paper (SOP) attached for your approval (refer **Appendix 1**).

**Relation to government priorities**

- 3 The Government's road safety strategy for 2020-30, *Road to Zero*, puts safety at the forefront of decision making on land transport. *Road to Zero* is underpinned by a vision where no one is killed or seriously injured in road crashes and includes a target of a 40 percent reduction in deaths and serious injuries by 2030. Strengthening the detection and deterrence of drug driving is a key action in the initial *Road to Zero* Action Plan 2020-2022.

**Executive Summary**

- 4 There are a number of recreational, prescription and illicit drugs which impair driving ability and increase the risk of crashes. Drivers in New Zealand are using these drugs and driving.
- 5 To address this issue, Cabinet agreed in December 2019 to introduce a random roadside oral fluid testing scheme [DEV-19-MIN-0360 and CAB-19-MIN-0675 refers].
- 6 The Bill was introduced to Parliament on 30 July 2020 and referred to the Transport and Infrastructure Committee (the Committee) for consideration.

---

<sup>1</sup> In the Supplementary Order Paper, 'criminal limits' are referred to as 'high-risk levels' and 'blood infringement thresholds' are referred to as 'tolerance levels'.

The Ministers at the time indicated that specified criminal limits would be included in the Bill via SOP, following advice from the Panel. The Panel was also asked to provide advice on infringement thresholds, although at the time it was not proposed to include infringement thresholds in the Bill.

- 7 The Panel has completed a report on recommended criminal limits and blood infringement thresholds for 25 impairing drugs (refer **Appendix 3**).
- 8 We now seek Cabinet's agreement to include the Panel's recommended criminal limits **and** blood infringement thresholds in the Bill. Inclusion of blood infringement thresholds will move the Bill closer to justifying the limitations on the human rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (BORA).
- 9 The attached SOP:
  - 9.1 sets the Panel's recommended criminal limits and blood infringement thresholds;
  - 9.2 ties the blood infringement thresholds to the relevant infringement offence provisions throughout the Bill;
  - 9.3 amends the criteria in the Bill to enable criminal limits and infringement thresholds to be set and amended in future;
  - 9.4 amends the Gazette notice requirements for approved oral fluid testing devices; and
  - 9.5 makes a minor change to the wording of drug driving offences to align them with drink driving offences.

## Background

*The Drug Driving Bill was introduced last year to address the road safety risks associated with drug-impaired driving*

- 10 There are a number of recreational, prescription and illicit drugs which impair driving ability and increase the risk of crashes. Drivers in New Zealand are using these drugs and driving. Our current approach to deterrence and detection is not as effective as it could be.
- 11 Cabinet agreed in December 2019 to introduce a new compulsory random roadside oral fluid testing regime in New Zealand. This regime will sit alongside the current compulsory impairment test (CIT)<sup>2</sup> process.
- 12 The previous Associate Minister of Transport introduced the Bill to Parliament on 30 July 2020. The Bill passed its First Reading on 4 August 2020 and was referred to the Committee for consideration.

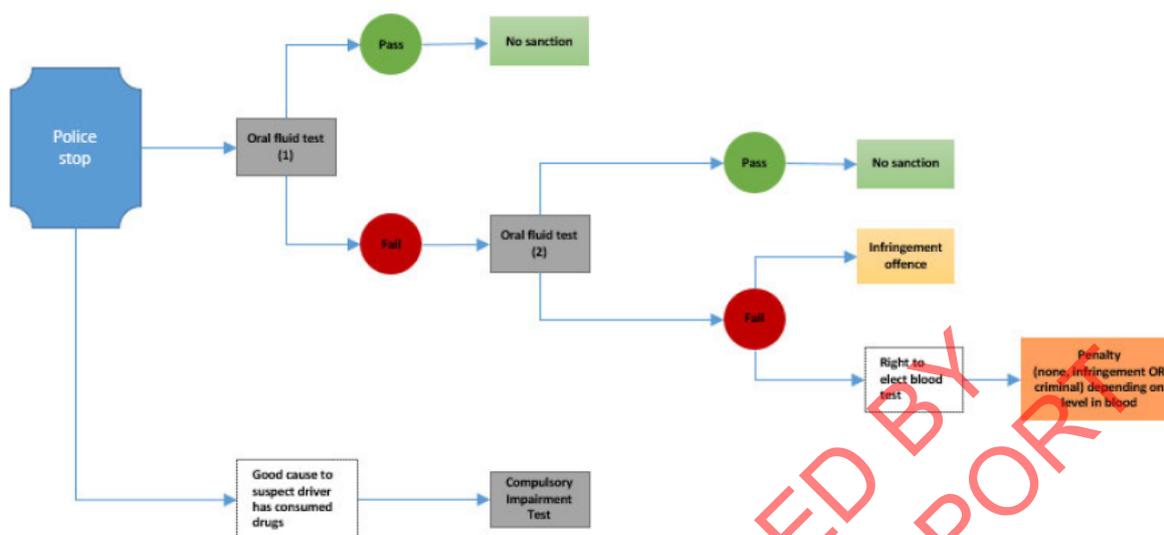
---

<sup>2</sup> A CIT is a behavioural test, undertaken by a trained police officer. It comprises eye, walk and turn, and one-leg-stand assessments.

*The Bill sets out a new regime to detect and deter the use of impairing drugs most commonly consumed by New Zealand drivers*

- 13 Under the new drug driving testing regime, a police officer will be able to stop any driver of a motor vehicle and administer an oral fluid test. This is similar to the approach currently taken with roadside alcohol testing. This will enable Police to test a much larger number of drivers each year, for the most prevalent impairing drugs used by New Zealand drivers.
- 14 It is expected that oral fluid devices will test for tetrahydrocannabinol (THC) (the psycho-active ingredient in cannabis), methamphetamine, benzodiazepines (sedatives), MDMA (ecstasy), opiates (e.g. morphine) and cocaine, although the specific combination of drugs will be determined through the procurement process.
- 15 A police officer will still be able to require a driver to undergo a CIT instead of carrying out an oral fluid test, if the officer has good cause to suspect a driver has consumed drugs.
- 16 Most drivers who are required to take an oral fluid test and provide a negative result will be free to go. Drivers who have two consecutive positive oral fluid test results will incur an infringement penalty, aligned to the drink driving infringement penalty (a \$200 infringement fee, 50 demerit points, and an immediate 12-hour suspension from driving).
- 17 Drivers who have two consecutive positive oral fluid test results will be able to elect an evidential blood test. Depending on the level of a drug in their blood sample, they could receive no sanction, or either infringement or criminal penalties (refer Figure 1 below).
- 18 The Bill extends the existing medical defence to drivers. Drivers who have taken prescription drugs in accordance with their prescription may elect a blood test and seek a medical defence if the blood test confirms they have taken only prescription drugs they were permitted to drive after consuming.

Figure 1: Oral fluid testing process



- 19 A driver who does not satisfactorily complete a CIT will be required to take an evidential blood test. Depending on the level of a drug in their blood sample, they could receive no sanction, or either infringement or criminal penalties.<sup>3</sup>
- 20 In recognition of the additional road safety risk of driving after consuming multiple drugs (or drugs and alcohol), the Bill also introduces infringement combination offences and criminal combination offences. These offences would apply when a driver has consumed more than one impairing substance.
- 21 The regime incorporates a harm minimisation approach to drug driving. Drivers liable for an infringement offence will be provided with drug or alcohol health related information. Under section 65 of the Land Transport Act 1998 (LTA), courts must already require a driver who commits a second or subsequent criminal drink or drug driving offence to attend an assessment centre. These compulsory health referrals will also apply to the new drug driving offences.

*The regime has graduated sanctions based on criminal limits and blood and oral fluid infringement thresholds*

- 22 Three key limits/thresholds underpin the drug driving testing regime (as set out in Figure 2 below):
- 22.1 *criminal limits* will determine the level at which a driver commits a criminal offence following an evidential blood test. Oral fluid testing will not result directly in a criminal offence.
- 22.2 *blood infringement thresholds* will determine the level at which a driver receives an infringement offence following an evidential blood test.

<sup>3</sup> This is a change from the current CIT regime where the presence of a drug is a criminal offence only.

- 22.3 *oral fluid infringement thresholds* set in roadside testing devices will determine the level at which a person gets a positive result on an oral fluid test, leading to an infringement offence at the roadside.

Figure 2: Drug thresholds and limits



**The Independent Expert Panel on Drug Driving was appointed to provide advice to the Government on criminal limits and infringement thresholds**

- 23 The Panel was appointed by the previous Associate Minister of Transport and the previous Minister of Police to provide independent advice on criminal limits and blood and oral fluid infringement thresholds.
- 24 The Panel consists of the following five members (and their fields of expertise): Dr Helen Poulsen (Chair) (toxicology), Associate Professor Malcolm Tingle (pharmacology), Dr Sharon Kletchko (medical specialist), Andrew McGlashan (pharmacy) and Professor Ian Shaw (toxicology and biochemistry).
- 25 The previous Government introduced the Bill before the New Zealand General Election to provide public visibility of the regime prior to the cannabis referendum. At this time the Panel had not prepared its advice on criminal limits. Previous Ministers indicated to the public that criminal limits would be added to the Bill via SOP.

*The Panel has completed a report recommending criminal limits and blood infringement thresholds for 25 impairing drugs<sup>4</sup>*

- 26 The Minister of Police and I have considered the Panel's report on recommended criminal limits and blood infringement thresholds (refer **Appendix 3** for the full report). The Panel will provide further information to

<sup>4</sup> The Panel prioritised providing advice on drugs based on their prevalence in New Zealand drivers and risk.

**IN CONFIDENCE**

the Minister of Police and me on oral fluid infringement thresholds by April 2021.

- 27 Table 1 below summarises the Panel's recommendations. It includes an indication of blood concentration thresholds set by overseas jurisdictions for comparison.

*Table 1: Recommended blood concentration criminal limits and infringement thresholds compared with corresponding limits for other jurisdictions*

Drug Type/Drug <sup>5</sup> (Appendix 3 page reference)	Recommended Blood Concentration ng/mL		Blood Concentrations Set by Overseas Jurisdictions <sup>6</sup> ng/mL (x = No concentration set)
	Criminal Limit	Infringement Threshold	
<b>Recreational</b>			
Amphetamine (p19)	100	20	20 to 250
Cocaine (p21)	20	5	20 to 50
GHB (p22)	50000	10000	10300 to 123600
Ketamine <sup>7</sup> (p23)	50	10	20 to 329
MDMA (p19)	50	10	10 to 48
Methamphetamine (p17)	50	10	10 to 50
THC (p8)	3	1	1 to 9
<b>Opioids</b>			
Buprenorphine (p36)	1	1	0.5 to 0.9
Codeine (p37)	200	50	10
Dihydrocodeine (p37)	200	50	x
Fentanyl (p38)	0.5	0.5	0.3
Methadone (p39)	200	50	25 to 500
Morphine (p40)	20	10	10 to 80
Oxycodone (p41)	50	20	20
Tramadol (p41)	250	100	50
<b>Sedatives</b>			
Alprazolam (p26)	50	20	3 to 15

<sup>5</sup> Methylendioxyamphetamine (MDA) was also considered by the Panel (p 21) but no limits are proposed.

<sup>6</sup> Data from Norway, Denmark and the UK. The structure and severity of penalties attached to these limits differs across jurisdictions.

<sup>7</sup> Ketamine is frequently administered by medical personnel to drivers injured in a crash.

Clonazepam (p27)	50	20	1 to 50
Diazepam (p28)	200	100	60 to 550
Lorazepam (p28)	30	10	15 to 100
Midazolam (p29)	30	10	30
Nitrazepam (p29)	50	20	20 to 98
Oxazepam (p30)	800	200	170 to 860
Temazepam (p31)	800	200	1000
Triazolam (p31)	4	4	x
Zopiclone (p32)	50	20	10 to 58

28 It should be noted that this is not an exact science. While the Panel has provided its best estimate based on available information, there are limited studies that have directly addressed the issue of driving impairment after a given dose of a drug. For any given individual the effects of a drug dose will be different, and will depend on factors such as the route of administration, time since the last dose, cumulative effect of previous doses and the ability of that individual to eliminate the drug from their body.

**We are now seeking Cabinet agreement to set criminal limits and blood infringement thresholds in the Bill as recommended by the Panel**

29 The Panel used data from the scientific literature, considered statutory limits in overseas jurisdictions, and used New Zealand data on drug blood concentrations in road traffic crashes to develop its recommendations.

30 The Panel has also been guided by the policy intent and outcomes set by previous Ministers (refer Table 2 below from the Panel’s revised Terms of Reference).

Table 2: Outcomes sought when setting criminal limits and infringement thresholds

Outcome sought	
<b>Criminal limits</b>	<ul style="list-style-type: none"> <li>• A high level of confidence that the individual is impaired.</li> <li>• Criminal penalties are only applied where the drug is at a level likely to impair driving.</li> </ul>
<b>Blood and oral fluid thresholds</b>	<ul style="list-style-type: none"> <li>• A high level of confidence that the individual has recently consumed the drug.</li> <li>• Drivers taking normal prescription amounts are not detected and do not have to rely on a medical defence (due to time and cost for the individual and the system).</li> <li>• Should avoid penalising drivers who have accidental or passive exposure to drugs.</li> </ul>

31 For prescription medicines, the Panel has also considered:

- 31.1 what dose of the drug is known to impair;
  - 31.2 the maximum dose of the drug that may typically be prescribed; and
  - 31.3 the blood concentrations expected from such a dose.
- 32 We are now seeking Cabinet's agreement to include the Panel's recommended criminal limits and blood infringement thresholds in the Bill. We acknowledge the complexity and uncertainty the Panel faced. We consider the approach the Panel has taken provides us with the best available estimates for criminal limits and blood infringement thresholds.

**Incorporating the blood infringement thresholds into the Bill may help justify the limitations on human rights and freedoms affirmed in the BORA**

*The Attorney-General considered the Bill as introduced did not justify the limitations on human rights*

- 33 The Government understood that the drug driving regime was likely to have implications for rights and freedoms protected under the BORA, similar to drink driving legislation when it was originally introduced.
- 34 The Attorney-General concluded that the provisions of the Bill are inconsistent with the rights to be secure against unreasonable search and seizure, the right not to be arbitrarily detained, and the right to be presumed innocent until proved guilty as affirmed in sections 21, 22 and 25(c) of the BORA.<sup>8</sup> The Attorney-General drew this to the attention of the House of Representatives under Standing Order 269.
- 35 The Attorney-General considered that two changes, to focus on preventing impaired drivers from driving rather than general deterrence, if implemented, would be more likely to be make the Bill consistent with the BORA:
- 35.1 introducing an infringement offence threshold, below which the presence of a qualifying drug would not be an infringement offence; and
  - 35.2 a consequential amendment to the approval of an oral fluid testing device to include only those devices that are likely to detect the presence of drugs at this infringement offence level.
- 36 The Attorney-General noted that Cabinet requested that Ministers consider these changes be raised at the Select Committee stage.

---

<sup>8</sup> Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Land Transport (Drug Driving) Amendment Bill (2020). Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/S7-report-Land-Transport-Drug-Driving-Amendment-Bill.pdf>

*The SOP adds further safeguards to the Bill*

- 37 The proposed drug driving regime includes safeguards that are intended to help justify the limitations on rights and freedoms affirmed in the BORA. These safeguards include:
- 37.1 the procedural safeguard of requiring drivers to take and have two consecutive positive oral fluid test results before being liable for an infringement offence;
  - 37.2 extending the existing medical defence to this regime;
  - 37.3 the roadside testing regime primarily being an infringement offence regime only; and
  - 37.4 drivers having the option to elect an evidential blood test.
- 38 We are now seeking Cabinet's agreement to add further safeguards to the Bill to help justify the limitations on rights and freedoms affirmed in the BORA:
- 38.1 Setting the blood concentration infringement thresholds alongside the criminal limits in the Bill.
  - 38.2 Amending the relevant infringement offence provisions in the Bill to indicate that the presence of a drug below the blood infringement threshold would not be an infringement offence.
  - 38.3 Requiring the oral fluid drug concentration thresholds built into any approved oral fluid testing device to be published in the Gazette notice approving the device.
- 39 While criminal limits were always intended to be included in the Bill once the Panel had provided its advice, Cabinet had not previously agreed to include infringement thresholds in the Bill. These infringement thresholds were originally going to be set and provided to blood testing labs but not publicised.
- 40 Importantly, incorporating blood infringement thresholds into the Bill goes some way to addressing the Attorney-General's concerns with the Bill in the following ways:
- 40.1 It ensures that drivers who have low levels of a drug in their blood will not be penalised. This will prevent drivers who undertake an evidential blood test being liable for an infringement offence based solely on the presence of a drug in their blood.
  - 40.2 It provides visibility of blood infringement thresholds to enable an infringement offence to be effectively challenged.
  - 40.3 It also better aligns the drug driving testing regime with the drink driving regime. Under the drink driving regime, there is a blood-alcohol infringement threshold and criminal limit explicitly included in the LTA.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**The Panel has identified some issues in relation to prescribing criminal limits and blood and oral fluid infringement thresholds for THC that may be raised in public consultation**

- 46 The Panel has indicated that the relationship between bodily fluid concentrations of THC and impairment can be difficult to establish precisely. THC principally acts at sites in the brain. Blood concentrations correlate poorly with the effects of the drug because it is the concentration in the brain that determines impairment. Blood THC concentration depends on a range of factors such as the physiology of the individual, the type of cannabis product consumed, the amount consumed and how it was taken.
- 47 The Panel's report also indicates that:
- 47.1 passive exposure to cannabis smoke in extreme situations may result in elevated blood and oral fluid levels of THC;
  - 47.2 chronic cannabis use can result in elevated blood and oral fluid THC concentrations for an extended time; and

- 47.3 in some situations oral fluid and blood levels can reduce rapidly after consumption, while THC may still be having impairing effects on the brain.
- 48 The public may therefore be concerned that the Panel's recommendations for THC could penalise drivers who may not be impaired, or alternatively, not detect some impaired drivers.
- 49 The Panel has considered scientific literature, analysis of blood THC concentrations in deceased, impaired and hospitalised New Zealand drivers, and the limits set by other jurisdictions to develop its recommendations.
- 50 The Panel's recommended blood infringement threshold (1 ng/mL) and criminal limit (3 ng/mL) for THC are at the lower end of the spectrum when compared to limits set by overseas jurisdictions. However, these recommendations take into account the following key points:
- 50.1 Blood THC concentrations will likely drop below 3 ng/mL within 3 hours of smoking an impairing dose.
- 50.2 Impairment following the use of cannabis would be expected to last for 3 to 4 hours.
- 50.3 There will inevitably be a delay between stopping a driver and obtaining a blood sample during which time blood THC levels will continue to fall.
- 50.4 Of 523 drivers found to be impaired by THC in a police CIT test, 25% had THC blood concentrations less than 3 ng/mL and 10% had blood concentrations less than 1 ng/mL.
- 50.5 Overseas jurisdictions have set limits for THC ranging from 1 to 9 ng/mL.
- 51 We have considered the Panel's expert advice, which has carefully examined this complexity while aiming to reduce harm on New Zealand's roads. We are satisfied that the Panel's recommendations should be included in the Bill. As far as possible, the Panel's advice aims to avoid capturing people who are unlikely to be impaired, while effectively increasing detection and deterrence of drug-impaired driving on our roads.

**We recommend three other amendments to the Bill be included in the SOP**

*We recommend an amendment to the criteria for setting and amending criminal limits and infringement thresholds to ensure changes can be made in future*

- 52 The Panel was originally tasked with recommending criminal limits for drugs that align with a level of impairment associated with a blood alcohol concentration of 80 mg per 100 mL. This same criteria was included in the Bill as a requirement for setting or amending criminal limits in future.

- 53 However, the Panel advised previous Ministers that this approach to setting criminal limits for drugs was not possible, due to the complex relationship between the concentration of drugs in blood and the degree of impairment when driving.
- 54 We recommend removing any references in the Bill to the blood-alcohol criminal limit of 80mg/100mL and replacing it with new criteria. The proposed amendment in the SOP will require independent experts to consider the blood concentration likely to impair a person's driving (for criminal limits) and the blood concentration likely to indicate a person has recently used the drug (for blood infringement thresholds). This will enable changes to be made over time as new drugs enter the market, drug use patterns change, and further information about drug impairment comes to light.

*We recommend strengthening the requirements for approving oral fluid testing devices*

- 55 We recommend the drug concentration thresholds built into any approved oral fluid testing device are published in the Gazette notice approving the device. This requirement will improve transparency of the oral fluid testing regime.

*We recommend a minor amendment to ensure offence settings are described consistently*

- 56 We recommend a minor amendment to clarify that drivers will be liable for an offence if their blood-drug concentration "exceeds" the prescribed blood infringement threshold or criminal limit. The current wording in the Bill is "equals or exceeds".
- 57 This change will better align the drug driving and alcohol offences. It will also reduce the risk of any interpretation concerns or confusion in the courts, particularly in regard to combination offences.

### **Legislative Implications**

- 58 The Bill has been introduced and is currently being considered by the Committee. The amendments proposed in this paper would be included in the Bill via a SOP.
- 59 In accordance with Cabinet Office circular *CO (13) 3: Disclosure Requirements for Government Legislation*, a Supplementary Disclosure Statement outlining the material changes to the previous Disclosure Statement for the Bill is attached (refer **Appendix 2**).

### **Implementation**

- 60 The regime requires a new blood testing process that tests for specific blood-drug levels, rather than just presence of a drug in blood. The Institute of Environmental Science and Research's<sup>9</sup> (ESR) testing process will be

---

<sup>9</sup> ESR is responsible for carrying out toxicological analysis of blood samples submitted by Police.

informed by the criminal limits and blood infringement thresholds in the Bill once it is enacted.

- 61 The inclusion of these criminal limits and blood infringement thresholds via a SOP will not otherwise change how the scheme is implemented.

### **Compliance**

- 62 The Amendments outlined in the attached SOP comply with each of the following:

- 62.1 the principles of the Treaty of Waitangi;
- 62.2 the Human Rights Act 1993;
- 62.3 the principles and guidelines set out in the Privacy Act 2020;
- 62.4 relevant international standards and obligations; and
- 62.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **The New Zealand Bill of Rights Act 1990**

- 63 The Attorney-General concluded that the provisions of the Bill are inconsistent with the rights to be secure against unreasonable search and seizure, the right not to be arbitrarily detained, and the right to be presumed innocent until proved guilty as affirmed in sections 21, 22 and 25(c) of the BORA.<sup>10</sup>
- 64 This paper proposes changes to the Bill to help justify the limitations on rights and freedoms affirmed in the BORA. However, the Ministry of Justice has advised that these changes do not address one of the key concerns outlined in the Attorney-General's Section 7 report on the Bill. The Attorney-General may still consider that the Bill does not justify the limitations on the rights in the BORA (refer paragraphs 33 to 44 for further comment on the BORA).

### **Financial Implications**

- 65 The financial implications of the proposals in this paper are the costs of evidential blood tests. Blood tests that test for a specific drug concentration are more costly (estimated to be around \$2,500) than blood tests that test for presence alone (around \$670). This cost will fall primarily on NZ Police and will be funded through the National Land Transport Fund.
- 66 Following a blood test, if a driver is liable for an infringement offence, there is currently no requirement to pay a fee towards the cost of the blood test. This is a matter being considered by the Committee and may result in drivers paying a small portion of the cost of the blood test. Officials intend to

---

<sup>10</sup> Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Land Transport (Drug Driving) Amendment Bill (2020). Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/S7-report-Land-Transport-Drug-Driving-Amendment-Bill.pdf>

recommend to the Committee a blood test fee equivalent to the alcohol blood test fee of \$111.99.

- 67 There are no other financial implications arising directly from the SOP proposed by this paper.

## **Impact Analysis**

### *Regulatory Impact Assessment*

- 68 The Regulatory Impact Assessment (RIA) prepared for the Bill does not address the proposed amendments in the SOP. However these amendments do not vary materially from the policy options analysed in the RIA. A testing regime with criminal limits and infringement thresholds was included in the policy options considered by the RIA.
- 69 The specific criminal limits and infringement thresholds proposed in the SOP are assessed in the Panel's report (refer **Appendix 3**).

### *Climate Implications of Policy Assessment*

- 70 There are no climate implications arising directly from this paper.

## **Population Implications**

- 71 The population implications of the proposed drug driving regime were discussed in detail at the time the Bill was introduced. There are no additional implications arising from the SOP proposed in this paper.

## **Certification by Parliamentary Counsel**

- 72 The Parliamentary Counsel Office has certified the Amendment as being in order for submission to Cabinet.

## **Binding on the Crown**

- 73 The Bill amends the LTA, which binds the Crown.
- 74 The Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

## **Allocation of decision making powers**

- 75 The Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

## **Associated Regulations**

- 76 The SOP amends the Land Transport (Offences and Penalties) Regulations 1999, to include specified criminal limits and blood infringement thresholds, for the new infringement offences created by the drug driving regime.

### **Definition of Minister/department**

- 77 The Bill does not contain definitions of a Minister, department, an agency, or a chief executive of a department.

### **Commencement of legislation**

- 78 The Bill is expected to come into force one year after it receives Royal Assent. This time period is necessary to enable NZ Police and Waka Kotahi NZ Transport Agency to implement the new regime. For example, to confirm funding, procure oral fluid testing devices, make relevant ICT changes, introduce new internal processes, and train frontline staff.
- 79 Many of the costs and the timing of implementation will be influenced by both the deployment model and available oral fluid testing devices. Delays in procuring suitable oral fluid tests could mean that NZ Police are not be able to operationalise the Bill at the expected commencement date.

### **Parliamentary stages**

- 80 The Committee has invited public submissions on the Bill by Friday, 16 April 2021. Once submissions have closed, the Committee will then hold public hearings to listen to some of those who made submissions. After hearing submissions the Committee will work through the issues raised, and decide what changes, if any, should be made to the Bill. The Committee will prepare a report for the House by 8 June 2021.

### **Consultation**

- 81 The following departments were consulted during the development of this paper: Waka Kotahi NZ Transport Agency, the Treasury, Ministry of Justice, Ministry of Health, Department of Corrections, Te Puni Kōkiri, Ministry of Social Development, Office for Seniors, Office for Disability Issues, Ministry for Women, Ministry of Business, Innovation and Employment, WorkSafe, ACC, Department of Internal Affairs and Ministry for Primary Industries (Rural Communities). The Department of the Prime Minister and Cabinet was also informed.

### **Communications**

- 82 If you agree with the amendments set out in the SOP, I will write to the Committee inviting it to consider the SOP alongside the Bill.

### **Proactive Release**

- 83 This paper (and the attached SOP) will be proactively released on the Ministry of Transport's website once decisions have been made, with any redactions in line with the Official Information Act 1982.

## Recommendations

We recommend that the Cabinet Economic Development Committee:

- 1 **note** that in December 2019, Cabinet agreed to introduce a new compulsory random roadside oral fluid testing scheme in New Zealand under which a Police officer can stop any driver of a motor vehicle and administer an oral fluid test without cause to suspect a driver has consumed drugs [DEV-19-MIN-0360 refers];
- 2 **note** that the Bill was introduced to Parliament on 30 July 2020 without specified criminal limits and referred to the Transport and Infrastructure Committee for consideration [CAB-20-MIN-0354 refers];
- 3 **note** that Cabinet previously agreed to criminal limits for the presence of drugs in blood to be prescribed in legislation, based on advice from an Expert Panel;
- 4 **note** that the Expert Panel has now completed a report on recommended criminal limits and blood infringement thresholds for 25 impairing drugs, detailed in the table below;

Drug Type/Drug	Recommended Blood Concentration ng/mL	
	Criminal Limit	Infringement Threshold
<b>Recreational</b>		
Amphetamine	100	20
Cocaine	20	5
GHB	50000	10000
Ketamine <sup>11</sup>	50	10
MDMA	50	10
Methamphetamine	50	10
THC	3	1
<b>Opioids</b>		
Buprenorphine	1	1
Codeine	200	50
Dihydrocodeine	200	50
Fentanyl	0.5	0.5
Methadone	200	50
Morphine	20	10
Oxycodone	50	20
Tramadol	250	100
<b>Sedatives</b>		
Alprazolam	50	20

<sup>11</sup> Ketamine is frequently administered by medical personnel to drivers injured in a crash.

IN CONFIDENCE

Clonazepam	50	20
Diazepam	200	100
Lorazepam	30	10
Midazolam	30	10
Nitrazepam	50	20
Oxazepam	800	200
Temazepam	800	200
Triazolam	4	4
Zopiclone	50	20

- 5 **note** that the Expert Panel has identified some issues in its report that may be raised in public consultation;
- 6 **agree** to set criminal limits for 25 impairing drugs in the Land Transport (Drug Driving) Amendment Bill as recommended by the Expert Panel;
- 7 **agree** to set blood infringement thresholds for 25 impairing drugs in the Land Transport (Drug Driving) Amendment Bill as recommended by the Expert Panel;
- 8 **agree** to amend the relevant infringement offence provisions in the Land Transport (Drug Driving) Amendment Bill to indicate that the presence of a drug below the blood infringement threshold would not be an infringement offence;
- 9 **agree** to remove references in the Bill to blood-alcohol criminal limits and amend the criteria for setting and amending criminal limits to align with the Expert Panel's revised Terms of Reference;
- 10 **agree** to amend the Gazette notice requirements for approved oral fluid testing devices to require the oral testing thresholds to be published;
- 11 **agree** to amend the Bill to clarify that drivers will be liable for an offence if their blood-drug concentration "exceeds" the prescribed blood infringement threshold or criminal limit;
- 12 **agree** that the Parliamentary Counsel Office can continue to make technical or minor amendments to the SOP before it is sent to the Transport and Infrastructure Committee;
- 13 **invite** the Minister of Transport and Minister of Police to write to the Transport and Infrastructure Committee to invite the Committee's consideration of the Supplementary Order Paper alongside the Bill; and

- 14 **agree** that the Government propose that the Land Transport (Drug Driving Amendment) Bill be enacted before October 2021.

Authorised for lodgement

Hon Michael Wood

Minister of Transport

Hon Poto Williams

Minister of Police

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT

**Appendices**

**Appendix 1** – Supplementary Order Paper – Land Transport (Drug Driving) Amendment Bill

**Appendix 2** – Supplementary Disclosure Statement – Land Transport (Drug Driving) Amendment Bill

**Appendix 3** – Interim Report 3 - Setting Statutory Limits for Blood Drug Concentrations Relating to Impaired Driving

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT