

In Confidence

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

Chair, Cabinet Economic Development Committee

PUBLIC CONSULTATION: ENHANCED DRUG DRIVER TESTING

Proposal

1. This paper seeks Cabinet's agreement to the release of the discussion document, *Enhanced Drug Driver Testing*.

Background

2. Studies show that many illicit and prescription drugs impair driving, particularly when taken in conjunction with alcohol or other drugs. Research shows that drivers in New Zealand are using these drugs and driving. Preventing drug impaired driving is an important objective if we are to make our roads safer.
3. New Zealand's current drug impaired driver regime is based on a behavioural test – the Compulsory Impairment Test (CIT). The CIT is effective at identifying drug impaired drivers and removing them from the road, however, the time taken to complete the test, and the requirement to establish 'good cause to suspect' a driver is impaired by drugs before conducting the test, means that not enough tests are able to be completed to effectively deter drug driving.
4. On 5 September 2018, the Member's Bill: Land Transport (Random Oral Fluid Testing) Amendment Bill (the Member's Bill) commenced its first reading. The Member's Bill sought to introduce oral fluid testing as an enhancement to the current CIT regime. The Government voted against the Member's Bill in favour of developing a government Bill to progress legislation.
5. New measures to address drug impaired driving are likely to engage rights and freedoms affirmed under the Bill of Rights Act 1990, such as the right to be secure against unreasonable search and seizure (section 21), the right not to be arbitrarily detained (section 22), and the right to be presumed innocent until proven guilty (section 25(c)). The Attorney-General found that the Member's Bill was inconsistent with sections 21, 22 and 25(c) of the Bill of Rights Act, and the inconsistencies could not be justified under the Act.
6. It is important that New Zealanders have a say on these issues before policy options are considered and the Government decides whether any limits on rights and freedoms under the Bill of Rights Act 1990 are a justifiable and proportionate response to the harm of drug driving.
7. On 17 September 2018, Cabinet agreed to undertake public consultation to inform the development of policy options for a government Bill. Cabinet invited the Minister of Police and the Associate Minister of Transport to report back to the Cabinet Economic Development Committee with a draft public discussion document, to enable consultation to take place, before the end of 2018 [CAB-18MIN-0453 refers].
8. The draft discussion document, *Enhanced Drug Driver Testing*, is attached to this paper as Appendix One.

Objectives of drug impaired driver detection and enforcement

9. On 17 September 2018, Cabinet agreed that a more effective drug impaired driver detection regime should support the following objectives:
- deter people from driving while impaired;
 - remove drug impaired drivers from the road;
 - sanction drug impaired drivers in a way that is proportionate with risk;
 - be consistent with the National Drug Policy 2015-2020; and
 - not unjustifiably limit rights affirmed by the New Zealand Bill of Rights Act 1990.

Matters for consultation

10. Cabinet agreed that public consultation should be undertaken on the following matters:
- methods of testing for the presence of drugs or levels of drugs, for example oral fluid or blood testing;
 - the types of drugs that may be tested for and the process for prescribing them;
 - the circumstances in which drivers may be tested for drug driving, for example, randomly, following a crash, or when there is 'good cause to suspect';
 - the evidence that would be required to establish that an offence has been committed; and
 - the sanctions that might apply to offences of drug driving, for example, criminal or infringement penalties.
11. In addition to these matters, the discussion document seeks feedback on non-enforcement options for addressing drug driving. It highlights that, at its core, drug use is a health issue with impacts on a number of other sectors.

Public consultation period

12. Subject to Cabinet's approval of the discussion document, we propose to consult the public over a period of 6 weeks commencing in March 2019. This will include workshops with stakeholders with an interest in drug driving.

Consultation

13. The following departments were consulted during the development of this paper and the discussion document: New Zealand Police, NZ Transport Agency, Ministry of Justice, Ministry of Health, Ministry of Social Development, Ministry of Business, Innovation and Employment, Department of Corrections, ACC, Treasury, Te Puni Kōkiri, and WorkSafe New Zealand. The Department of the Prime Minister and Cabinet was informed of the paper.

Financial Implications

14. There are no financial, fiscal or economic implications arising directly from this paper. The proposed public consultation will inform the development of policy options with financial implications to be addressed in future papers.

Legislative Implications

15. There are no legislative implications arising directly from this paper. The proposed public consultation will inform the development of policy options with legislative implications to be addressed in future papers.

Impact Analysis

16. The Ministry of Transport has previously prepared two Regulatory Impact Statements (RISs) in relation to proposals to address drug driving. The Regulatory Quality Team at the Treasury agrees that no formal separate Regulatory Impact Assessment (RIA) is required in support of the proposal to undertake a public consultation process to seek the public's views on the design of enhancements to New Zealand's current drug driver regime.
17. Treasury advises that extensive RIA analysis already undertaken has enabled the preparation of a full and informative discussion document, leading in turn to a well-informed public debate and eventually a well-evidenced RIA in support of any regulatory proposals.
18. In September 2018, we advised the Cabinet Economic Development Committee that we intended to provide an updated RIA and cost-benefit analysis (CBA) with the draft public discussion document. However, for the reasons identified by Treasury above, and because the discussion document does not identify discrete policy options, we now propose to provide the updated RIA and CBA when firm regulatory proposals are developed following consultation.

Human Rights

19. This paper does not include policy proposals, however, the matters proposed for consultation do have human rights implications. New measures to address drug impaired driving are likely to engage rights and freedoms affirmed under the Bill of Rights Act 1990, such as the rights to be secure against unreasonable search and seizure (section 21), not to be arbitrarily arrested or detained (section 22), and to be presumed innocent until proved guilty (section 25(c)). These matters will be addressed more fully in future papers, prior to any policy decisions.

Gender Implications

20. There are no gender implications arising directly from this paper. The proposed public consultation will inform the development of policy options with gender implications to be considered in future papers.

Disability Perspective

21. There are no disability implications arising directly from this paper. The proposed public consultation will inform the development of policy options with disability perspectives to be considered in future papers.

Publicity

22. Subject to Cabinet's agreement to our proposed approach to consultation, we propose to jointly announce the public consultation process in February 2019.

23. The issues to be canvassed are complex and public views on them are likely to be diverse. The consultation process is likely to provoke significant media and public comment.

Proactive Release

24. We intend to release this paper proactively by publishing it on the Ministry of Transport's website. The release may be subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

25. The Associate Minister of Transport and the Minister of Police recommend that the Committee:
1. **note** that on 17 September 2018 Cabinet:
 - 1.1. noted that a significantly large number of drivers in New Zealand are using impairing drugs and driving
 - 1.2. agreed, in principle, subject to public consultation, to develop a government Bill to progress legislation to enhance New Zealand's current drug driver testing regime
 - 1.3. agreed to undertake public consultation to inform the development of policy options for a government Bill
 - 1.4. invited the Minister of Police and the Associate Minister of Transport to report back to the Cabinet Economic Development Committee with a draft public discussion document, to enable consultation to take place, before the end of 2018 [CAB-18MIN-0453 refers].
 2. **agree** to the release of the discussion document: *Enhanced Drug Driver Testing* for public consultation for 6 weeks commencing in March 2019.
 3. **authorise** the Minister of Police and the Associate Minister of Transport to make any necessary editorial, formatting, or minor content changes to the discussion document prior to its release.
 4. **note** that, subject to Cabinet's agreement, the Minister of Police and the Associate Minister of Transport will jointly announce the public consultation process in February 2019.

Authorised for lodgement

Hon Julie Anne Genter
Acting Associate Minister of Transport
(__ / __ / 2019)

Hon Stuart Nash
Minister of Police
(__ / __ / 2019)