

## LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL: SECOND READING

### LEGISLATIVE STATEMENT

Presented to the House in accordance with Standing Order 272

#### Introduction

- 1) This legislative statement supports the second reading of the Land Transport (Drug Driving) Amendment Bill (the Bill). The Bill aims to reduce road trauma and make our roads safer by detecting and deterring people from driving after taking potentially impairing drugs.
- 2) The Bill primarily amends the Land Transport Act 1998 and related regulations. The Bill also includes minor consequential amendments to the Sentencing Act 2002 and the Legislation Act 2019.

#### Background

- 3) Delivery of a drug driving testing regime is a key action under *Road to Zero*, the Government's road safety strategy for 2020-2030. On 4 August 2020, the Bill was referred to the Transport and Infrastructure Committee (the Committee), which reported back to Parliament on 17 June 2021.
- 4) The Bill establishes a new random roadside oral fluid testing regime that would be complemented by the current compulsory impairment test (CIT) approach to drug driving. The core elements of the drug driving regime include:
  - a) Police officers will be able to conduct oral fluid tests at the roadside to detect the most prevalent impairing illicit and prescription drugs, without needing a reason to suspect a person has consumed a drug or drugs (in the same way as the roadside breath testing regime for alcohol operates).
  - b) The Bill establishes both infringement and criminal offences, depending on the testing process and the quantity of drugs found in a driver's system.
  - c) Criminal limits will apply only to offences established through blood testing. The oral fluid testing regime is an infringement offence regime.
  - d) Two consecutive failed oral fluid tests will be required before a driver is liable for an infringement offence. The penalties for a drug driving infringement offence align with the penalties for the drink driving infringement offence (\$200 fee, 50 demerit points and a 12 hour suspension from driving).
  - e) A driver who receives a negative result on a first or second oral fluid test will be free to go unless a police officer has good cause to suspect that the driver has consumed a drug or drugs.
  - f) A Police officer will be able to require a driver to undergo a CIT in some situations following an oral fluid test if they have good cause to suspect a driver has consumed drugs.
  - g) Drivers will be able to elect a blood test to challenge the outcome of an oral fluid test.

- h) Drivers who are taking a prescription medication may be able to access a medical defence.
- i) A driver who does not satisfactorily complete a CIT will be required to take an evidential blood test, as is the case now.
- j) Oral fluid testing devices will have built in cut-off thresholds to avoid penalising drivers with low levels of drugs in their system that are unlikely to be impairing.
- k) In recognition of the additional road safety risk of driving after consuming multiple drugs (or drugs and alcohol), infringement combination offences and criminal combination offences will apply when a driver has consumed more than one substance.
- l) Compulsory referrals for assessment to drug education or rehabilitation programmes will be required for second criminal offences in some situations and all third and subsequent criminal offences.

### **Amendments to the Land Transport (Drug Driving) Amendment Bill**

- 5) A Supplementary Order Paper (SOP) to the Bill was agreed to by Cabinet and referred to the Committee on 1 April 2021. The Committee's report back recommended the amendments proposed in the SOP with some additional recommendations.
- 6) On 2 September 2020, the Attorney-General issued a Section 7 report finding the Bill to be inconsistent with the Bill of Rights Act 1990. On 20 April 2021, the Attorney-General reported on the SOP. He concluded that he is satisfied that the changes proposed in the SOP have made the Bill consistent with the Bill of Rights Act 1990.
- 7) The amendments contained in the SOP included:
  - a) Setting high-risk blood concentration levels (criminal limits) and tolerance blood concentration levels (blood infringement thresholds) for 25 impairing drugs, following advice from the Independent Expert Panel on Drug Driving.
  - b) Linking the blood infringement thresholds to the relevant infringement offence provisions throughout the Bill, to ensure drivers who have low levels of a drug in their blood, which are unlikely to be impairing, do not receive an infringement offence.
  - c) Amending the criteria in the Bill to enable criminal limits and blood infringement thresholds to be set and amended by Order in Council in future.
  - d) Requiring the Minister of Police to publish the built in oral fluid cut-off thresholds for any approved oral fluid testing device.
  - e) A new medical defence pathway for drivers taking prescription drugs who return two positive oral fluid test results. This would not require a blood test.
- 8) Further amendments recommended by the Committee include:
  - a) Amending the criteria for the approval of oral fluid testing devices to require the Minister of Police to have regard to relevant New Zealand Standards or joint Australian/New Zealand Standards relating to oral fluid drug testing.
  - b) Enabling a blood test fee to be charged for drivers who are liable for an infringement offence, similar to the alcohol testing regime.
  - c) Clarifying that a drug offence established through a blood test cannot be challenged on the basis of an error in an oral fluid test, to align with the approach to blood alcohol tests and alcohol breath tests.

- d) Clarifying when an enforcement officer may carry out a CIT and that in each instance an officer must have good cause to suspect a driver has consumed drugs.
  - e) Enabling enforcement officers to require a person to move a second time to a location where they can safely undergo an oral fluid test, if necessary.
  - f) Incorporating the new criminal limits and blood infringement thresholds into offences for causing death or bodily injury when drugs are present in a person's blood.
  - g) Clarifying that a person can only be required to undergo one further oral fluid test, where an initial test fails to produce a result.
- 9) The Committee also invited the Regulations Review Committee to comment on the delegated legislation-making powers in the Bill, specifically in regards to setting and amending criminal limits and blood infringement thresholds and approving oral fluid testing devices. The Committee considers these powers to be appropriately and sufficiently constrained.

### **Conclusion**

- 10) Delivery of the drug driving testing regime is a key action in the Government's *Road to Zero Action Plan*. The Bill aims to reduce road trauma by improving the approach to detecting and deterring the high-risk behaviour of drug-impaired driving. The SOP set criminal limits and blood infringement thresholds for 25 impairing drugs as recommended by the Independent Expert Panel on Drug Driving. The amendments in the SOP addressed many of the concerns raised by submitters and those of the Attorney General.