

House of Representatives

# Supplementary Order Paper

Thursday, 25 March 2021

**Land Transport (Drug Driving) Amendment Bill**

*Proposed amendments for the consideration of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**



## Explanatory note

This Supplementary Order Paper sets out proposed amendments to the Land Transport (Drug Driving) Amendment Bill (the **Bill**) to address the following policy matters and makes other minor and technical amendments.

### High-risk and tolerance blood concentration levels specified for certain qualifying drugs

The amendments to *new Schedule 5* of the Land Transport Act 1998 (the **principal Act**) insert,—

- for each drug listed in *Part 1* of the schedule, a high-risk blood concentration level for the purposes of—
  - offences against *new sections 57A(1), 57B(1), and 57C(1)* and section 61(2) (as amended by *clause 13* of the Bill); and
  - mandatory suspension of driver licences under section 95 (as amended by *clause 28* of the Bill); and
  - the impoundment of vehicles under section 96 (as amended by *clause 29* of the Bill);
- for each drug listed in *Part 2* of the schedule, a tolerance blood concentration level for the purposes of infringement offences against *new sections 57A(2), 57B(2), 57C(2)* and an offence against section 62 (as amended by *clause 14* of the Bill).

*New section 56AAA* (inserted by *new clause 8A*) provides that, for the purposes of infringement offences relating to drug driving, a person's blood contains evidence of use of a qualifying drug listed in *new Schedule 5* only if the level of the drug in the person's blood exceeds the tolerance level specified in *Part 2* of that schedule.

### Amendments to power to amend *new Schedule 5* by Order in Council

The amendments to *new sections 167A and 167B*—

- provide that the Minister of Transport and the Minister of Police must seek and consider advice from independent experts on the appropriate high-risk level or tolerance level for a qualifying drug before recommending that a high-risk level or tolerance level be added to *new Schedule 5* or amended by Order in Council under *new section 167A*; and
- specify revised factors that the independent experts appointed under *new section 167B* must take into account when advising Ministers on the appropriate high-risk level or tolerance level for a qualifying drug, including that—
  - high-risk levels should, as far as practicable, be set at a blood concentration level that is likely to impair a person's driving and in line with the high-risk levels set for other qualifying drugs in *new Schedule 5*; and
  - tolerance levels should, as far as practicable, be set at a blood concentration level that is likely to indicate a person has recently used the drug

and is unlikely to be exceeded by a person with such a low level of the drug in their blood that their driving is unlikely to be impaired.

#### **Amendment to requirements relating to oral fluid testing**

*New section 168D* and the definition of positive in section 3 of the principal Act (as amended by *clause 4* of the Bill) are amended to require the Minister of Police to specify in a *Gazette* notice given under *new section 168D* the concentration level of a qualifying drug in a person's oral fluid at or above which the result of an oral fluid test will appear positive (*new section 168D(2A)(a)*).

#### **New medical defence available if 2 oral fluid tests return positive results**

*New section 64(1AB)* (as inserted by *clause 15*) provides for a medical defence to be available for a person whose oral fluid indicates use of a qualifying drug if—

- the person has a current and valid prescription for the relevant qualifying drug and has complied with the instructions (if any) given by a health practitioner or by the manufacturer of the qualifying drug about driving, consuming alcohol or other prescription medicines, or both, while consuming the relevant qualifying drug; or
- the relevant drug was administered by a health practitioner and the person has complied with the instructions (if any) given by the health practitioner.

#### **Departmental disclosure statement**

The Ministry of Transport is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2021&no=24&>

**The Honourable Michael Wood, in Committee, to propose the amendments shown in the following document.**

*Hon Michael Wood*

## **Land Transport (Drug Driving) Amendment Bill**

Government Bill

### **Contents**

	Page
1 Title	5
2 Commencement	5
<b>Part 1</b>	
<b>Amendments to Land Transport Act 1998</b>	
3 Amendments to Land Transport Act 1998	5
4 Section 2 amended (Interpretation)	5
<i>Amendments to primary responsibilities concerning use of drugs</i>	
5 Section 11A replaced (Persons may not drive or attempt to drive while impaired and their blood contains evidence of use of qualifying drug)	6
<del>11A</del> <del>Persons not to drive or attempt to drive while oral fluid or blood contains qualifying drug</del>	<del>6</del>
<u>11A</u> <u>Persons not to drive or attempt to drive while blood contains evidence of, or oral fluid indicates, use of qualifying drug</u>	<u>7</u>
6 Section 13 amended (Drivers and other road users to comply with directions of enforcement officers, etc)	7
<i>Drug-related offences and penalties</i>	
7 Part 5 heading amended	7
8 Cross-heading above section 34 amended	7
<u>8A</u> <u>New section 56AAA and cross-heading inserted</u>	<u>7</u>
<i>Definition for purposes of this Part</i>	
<u>56AAA</u> <u>Meaning of evidence of use of qualifying drug</u>	<u>8</u>

**Proposed amendments to  
Land Transport (Drug Driving) Amendment Bill**

9	Section 57A replaced (Driving while impaired and with blood that contains evidence of use of qualifying drug)	8
	57A Driving with <del>oral fluid that indicates</del> or blood that contains evidence of, <u>or oral fluid that indicates</u> , use of 1 qualifying drug	8
	57B Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs	9
	57C Driving while blood or breath contains alcohol and blood contains evidence of, <u>or oral fluid indicates</u> , use of <u>1</u> qualifying drug	11
	57D Penalties for offences against sections 57A(1), 57B(1), and 57C(1)	14
10	Section 58 amended (Contravention of section 12)	14
11	Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)	14
12	Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test)	15
13	Section 61 amended (Person in charge of motor vehicle causing injury or death)	15
14	Section 62 amended (Causing injury or death in circumstances to which section 61 does not apply)	15
15	Section 64 amended (Defences)	16
16	Section 65AB amended (Qualifying offences)	16
	<i>Blood test fee</i>	
17	Section 67 amended (Blood test fee)	17
	<i>Enforcement procedures</i>	
18	Section 68 amended (Who must undergo breath screening test)	17
19	Section 70A amended (Right to elect blood test)	17
20	Section 71A replaced (Requirement to undergo compulsory impairment test)	17
	<i>Enforcement procedures for offences involving use of qualifying drugs</i>	
	71A Who must undergo first oral fluid test	17
	71B Who must undergo second oral fluid test	19
	71C Person must undergo further oral fluid test if either first or second oral fluid test fails to produce result	19
	71D Person has right to elect blood test after 2 positive oral fluid tests	20
	71E Person may be required to accompany enforcement officer to undergo blood test	20
	71F Who must undergo compulsory impairment test	21

**Proposed amendments to  
Land Transport (Drug Driving) Amendment Bill**

<i>Enforcement procedures involving taking of blood specimens</i>		
21	New cross-heading above section 72 inserted	22
<i>Enforcement procedures involving taking of blood specimens</i>		
22	Section 72 amended (Who must give blood specimen at places other than hospital or medical centre)	22
<i>Evidential provisions</i>		
23	Section 73A replaced (Evidence of controlled drug in blood sample taken under section 72 or 73 may not be used as evidence of use of controlled drugs in prosecutions under Misuse of Drugs Act 1975)	23
73A	Purposes for which blood specimen taken under section 72 or 73 may be used as evidence	23
24	Section 75 amended (Certificates in blood-alcohol proceedings)	23
25	New section 77A inserted (Presumptions relating to drug-testing)	23
77A	Presumptions relating to drug-testing	23
26	Section 79 amended (Circumstances in which certificate not admissible in proceedings)	24
<i>Mandatory prohibition from driving for 12-hour period</i>		
27	New section 94A and cross-heading inserted	25
<i>Mandatory prohibition from driving following 2 positive oral fluid tests</i>		
94A	Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid tests appear positive	25
<i>Mandatory suspension of driver licence</i>		
28	Section 95 amended (Mandatory 28-day suspension of driver licence in certain circumstances)	26
<i>Impoundment of vehicles</i>		
29	Section 96 amended (Vehicle seized and impounded for 28 days in certain circumstances)	26
<i>Reduction of disqualifications</i>		
30	Section 99 amended (Court may reduce disqualification)	27
<i>Powers of entry and immobilisation</i>		
31	Section 119 amended (Powers of entry)	27
32	Section 120 amended (Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer)	27
33	Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)	27

**Proposed amendments to  
Land Transport (Drug Driving) Amendment Bill**

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*Regulations*

34	Section 167 amended (Regulations)	27
35	New sections 167A <del>and</del> to 167B inserted	27
167A	<del>Setting or amending level of qualifying drug in blood specimen at or over which person commits offence against <b>section 57A(1), 57B(1), or 57C(1)</b> high-risk blood concentration levels and tolerance blood concentration levels for drug-driving offences</del>	27
167B	Ministers may appoint independent experts for purposes of section 167A	29
36	New section 168D and cross-heading inserted	30

*Gazette notices*

	168D <i>Gazette notices approving oral fluid tests and oral fluid testing devices</i>	30
--	---	----

*Analysing oral fluid samples for statistical or research purposes*

37	Section 209 amended (Taking of blood specimens for statistical or research purposes)	32
38	Section 209A amended (Analysing blood specimens for statistical or research purposes related to use of drugs or alcohol)	32

*Transitional, savings, and related provisions*

39	Schedule 1 amended	32
	<del><i>Level of qualifying drugs at and over which person commits offence</i></del> <i><u>Blood concentration levels for offences relating to drug-driving</u></i>	
40	New Schedule 5 inserted	33

**Part 2**

**Related and consequential amendments**

Subpart 1—Amendments to Acts

*Amendment to Legislation Act 2012*

41	Amendment to Legislation Act 2012	33
----	-----------------------------------	----

*Amendment to Sentencing Act 2002*

42	Amendment to Sentencing Act 2002	33
----	----------------------------------	----

Subpart 2—Amendments to Land Transport (Offences and Penalties) Regulations 1999

43	Amendments to Land Transport (Offences and Penalties) Regulations 1999	33
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**Schedule 1**

**New Part 2 inserted into Schedule 1**

36



**Schedule 2**  
**New Schedule 5 inserted**

37

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Land Transport (Drug Driving) Amendment Act **2020**.

**2 Commencement**

This Act comes into force immediately after the expiry of the 12-month period that starts on the date of Royal assent.

**Part 1**  
**Amendments to Land Transport Act 1998**

**3 Amendments to Land Transport Act 1998**

This Part amends the Land Transport Act 1998.

**4 Section 2 amended (Interpretation)**

(1) In section 2(1), insert in their appropriate alphabetical order:

**blood concentration level** means, for a qualifying drug, the proportion of the drug in a person's blood

**first oral fluid test** means an oral fluid test carried out under **section 71A**

**high-risk level** means, for a listed qualifying drug, the blood concentration level specified for the drug in **Part 1 of Schedule 5**

**listed qualifying drug** means a qualifying drug listed in **Schedule 5**

**oral fluid test** means a test that is carried out— ~~by means of an oral fluid testing device in a manner prescribed for that device by the Minister of Police under **section 168D**~~

(a) by means of an oral fluid testing device; and

(b) in a manner prescribed for that device by the Minister of Police under **section 168D**

**oral fluid testing device** means a device of a kind approved by the Minister of Police under **section 168D** for the purpose of testing oral fluid for the presence of the qualifying drugs specified in the notice

**second oral fluid test** means an oral fluid test carried out under **section 71B**

**tolerance level** means, for a listed qualifying drug, the blood-drug concentration level specified for the drug in **Part 2 of Schedule 5**

**unlisted qualifying drug** means a qualifying drug not listed in **Schedule 5**

Proposed amendments to

Part 1 cl 5

Land Transport (Drug Driving) Amendment Bill

(2) In section 2(1), definition of **compulsory impairment test**, replace “determine” with “indicate”.

(3) In section 2(1), replace the definition of **positive** with:

**positive**,—

(a) ~~in relation to an evidential breath test, means an evidential breath test result that~~ for the result of an evidential breath test, means the result of the test indicates,—

(i) in the case of a person who holds an alcohol interlock licence or a zero alcohol licence, that the breath of the person who underwent the test contains alcohol; or

(ii) in the case of a person who is apparently younger than 20, that the breath of the person who underwent the test contains alcohol; or

(iii) in the case of any other person, that the proportion of alcohol in the breath of the person who underwent the test exceeds 250 micrograms of alcohol per litre of breath:

(b) ~~in relation to an oral fluid test, means an oral fluid test result that indicates that the oral fluid of the person who underwent the test contains 1 or more qualifying drugs~~

(b) for the result of an oral fluid test, means the result of the test indicates that the concentration level of a qualifying drug in the oral fluid of the person who underwent the test equals or exceeds the level specified for the drug in a notice given under **section 168D**

(4) In section 2(1), definition of **qualifying drug**, replace paragraph (a)(~~†~~) with:

(a) means any substance, preparation, mixture, or article containing a controlled drug specified in Schedule 1 or 2 of the Misuse of Drugs Act 1975 or any of Parts 1 to 5 and Part 7 of Schedule 3 of the Misuse of Drugs Act 1975; and

*Amendments to primary responsibilities concerning use of drugs*

**5 Section 11A replaced (Persons may not drive or attempt to drive while impaired and their blood contains evidence of use of qualifying drug)**

Replace section 11A with:

**11A ~~Persons not to drive or attempt to drive while oral fluid or blood contains qualifying drug~~**

~~A person may not drive or attempt to drive a motor vehicle while—~~

(a) ~~the person’s oral fluid, as ascertained by the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C**, indicates use of a qualifying drug; or~~

- (b) ~~the person's blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or 73, contains evidence of the use of a qualifying drug.~~

Replace section 11A with:

**11A Persons not to drive or attempt to drive while blood contains evidence of, or oral fluid indicates, use of qualifying drug**

- (1) A person may not drive or attempt to drive a motor vehicle while—
- (a) the person's blood contains evidence of use of a qualifying drug (see **sections 57A(1) and (2), 57B(1) and (2), and 57C(1) and (2)**); or
- (b) the person's oral fluid indicates use of a qualifying drug (see **sections 57A(3), 57B(3), and 57C(3) and (4)**).
- (2) For the purposes of **subsection (1)(a)**, evidence of use of a qualifying drug has the same meaning as in **section 56AAA**.
- (3) For the purposes of **subsection (1)(b)**, a person's oral fluid **indicates use of a qualifying drug** if—
- (a) the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C** are positive; and
- (b) the first oral fluid test and the second oral fluid test indicate the use of the same qualifying drug.

**6 Section 13 amended (Drivers and other road users to comply with directions of enforcement officers, etc)**

Replace section 13(1) and (2) with:

- (1) A person must comply with sections 68, 69, 70, **71A, 71B, 71C, 71E, 71F**, 72, and 73 (which relate to the administration of breath screening tests, evidential breath tests, oral fluid tests, and blood tests).
- (2) A person must comply with all lawful requirements, directions, and requests made by an enforcement officer under any of sections 68, 69, 70, **71A, 71B, 71C, 71E, 71F**, 72, and 73.

*Drug-related offences and penalties*

**7 Part 5 heading amended**

In the Part 5 heading, replace “**alcohol-related**” with “**alcohol- and drug-related**”.

**8 Cross-heading above section 34 amended**

In the cross-heading above section 34, after “*alcohol*”, insert “*or drugs*”.

**8A New section 56AAA and cross-heading inserted**

After the Part 6 heading, insert:

*Definition for purposes of this Part*

**56AAA Meaning of evidence of use of qualifying drug**

In this Part, a person's blood contains **evidence of use of a qualifying drug** if—

- (a) the blood concentration level of a listed qualifying drug exceeds the tolerance level for the drug; or
- (b) the blood contains any level of an unlisted qualifying drug.

**9 Section 57A replaced (Driving while impaired and with blood that contains evidence of use of qualifying drug)**

Replace section 57A with:

**57A Driving with ~~oral fluid that indicates or~~ blood that contains evidence of, or oral fluid that indicates, use of 1 qualifying drug**

- (1) ~~A person who drives or attempts to drive a motor vehicle on a road commits an offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or 73, contains evidence of the use of 1 qualifying drug and,—~~
  - (a) ~~if the qualifying drug is listed in **Schedule 5**, the proportion of the drug in the person's blood equals or exceeds the level specified in that schedule for the drug; or~~
  - (b) ~~if the qualifying drug is not listed in **Schedule 5**, the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.~~
- (2) ~~A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or 73, contains evidence of the use of 1 qualifying drug and,—~~
  - (a) ~~if the qualifying drug is listed in **Schedule 5**, the proportion of the drug is less than the level specified in that schedule for the drug; or~~
  - (b) ~~if the qualifying drug is not listed in **Schedule 5**, the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.~~

*Offence: driving while blood contains evidence of use of 1 qualifying drug*

- (1) A person who drives or attempts to drive a motor vehicle on a road commits an offence if, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or 73, the person's blood—
  - (a) contains evidence of use of a listed qualifying drug and the blood concentration level of the drug exceeds the high-risk level for the drug; or

- (b) contains evidence of use of an unlisted qualifying drug and the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.

*Infringement offence: driving while blood contains evidence of use of 1 qualifying drug*

- (2) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or 73, the person's blood—

- (a) contains evidence of use of 1 listed qualifying drug and the blood concentration level of the drug equals or is less than the high-risk level (if any) for the drug; or  
(b) contains evidence of use of 1 unlisted qualifying drug and the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.

*Infringement offence: driving while oral fluid indicates use of qualifying drug*

- (3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if—

- (a) the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C** are positive; and  
(b) the first oral fluid test and the second oral fluid test indicate the use of the same qualifying drug; and  
(c) the person does not elect to have a blood test in accordance with **section 71D**.

**57B Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs**

- (1) ~~A person who drives or attempts to drive a motor vehicle on a road commits an offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, contains evidence of the use of 2 or more qualifying drugs and—~~

- ~~(a) the proportion of 1 or more of the qualifying drugs in the person's blood equals or exceeds the level specified in **Schedule 5** for the drug; or  
(b) if 1 or more of the qualifying drugs in the person's blood are not listed in **Schedule 5**, the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.~~

- (2) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if the person's blood, as ascertained from an analysis of a

Proposed amendments to

~~blood specimen subsequently taken under section 72 or 73, contains evidence of the use of 2 or more qualifying drugs but,—~~

- ~~(a) if 1 or more of the qualifying drugs in the person's blood are listed in **Schedule 5**, the proportion of each of those qualifying drugs in the person's blood is less than the level specified in that schedule for each drug;~~
- ~~(b) if 1 or more of the qualifying drugs in the person's blood are not listed in **Schedule 5**, the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.~~

~~*Offence: driving while blood contains evidence of use of 2 or more qualifying drugs*~~

- ~~(1) A person who drives or attempts to drive a motor vehicle on a road commits an offence if, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the person's blood contains evidence of use of 2 or more qualifying drugs and either or both of the following apply:~~

- ~~(a) 1 or more of the drugs are listed qualifying drugs and the blood concentration level for 1 or more listed qualifying drugs exceeds the applicable high-risk level;~~
- ~~(b) 1 or more of the drugs are unlisted qualifying drugs and the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.~~

~~*Infringement offence: driving while blood contains evidence of use of 2 or more qualifying drugs*~~

- ~~(2) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the person's blood—~~

- ~~(a) contains evidence of use of 2 or more listed qualifying drugs and the blood concentration level of each listed qualifying drug equals or is less than the high-risk level for the drug; or~~
- ~~(b) contains evidence of use of 2 or more unlisted qualifying drugs and the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken; or~~
- ~~(c) contains evidence of use of 1 or more listed qualifying drugs and 1 or more unlisted qualifying drugs and—
  - ~~(i) the blood concentration level of each listed qualifying drug equals or is less than the high-risk level for the drug; and~~
  - ~~(ii) the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.~~~~

*Infringement offence: driving while oral fluid indicates use of 2 or more qualifying drugs*

- (3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if—
- (a) the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C** are positive; and
  - (b) the first oral fluid test and the second oral fluid test indicate the use of 2 or more of the same qualifying drugs; and
  - (c) the person does not elect to have a blood test in accordance with **section 71D**.

**57C Driving while blood or breath contains alcohol and blood contains evidence of, or oral fluid indicates, use of 1 qualifying drug**

- (1) ~~A person who drives or attempts to drive a motor vehicle on a road commits an offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, contains both alcohol and evidence of the use of a qualifying drug if any or all of the following apply:~~
- (a) ~~the proportion of alcohol in the person's blood—~~
    - (i) ~~exceeds 80 milligrams of alcohol per 100 millilitres of blood; or~~
    - (ii) ~~if the person is younger than 20, exceeds 30 milligrams of alcohol per 100 millilitres of blood; or~~
    - (iii) ~~if the person holds an alcohol interlock licence or zero alcohol licence, does not exceed 50 milligrams of alcohol per 100 millilitres of blood:~~
  - (b) ~~the proportion of a qualifying drug in the person's blood that is listed in **Schedule 5** equals or exceeds the level specified in that schedule for the drug:~~
  - (e) ~~if the person's blood contains evidence of the use of a qualifying drug that is not listed in **Schedule 5**, the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.~~
- (2) ~~A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, contains both alcohol and evidence of the use of a qualifying drug but—~~
- (a) ~~the proportion of alcohol in the person's blood equals or is less than—~~
    - (i) ~~80 milligrams of alcohol per 100 millilitres of blood; or~~
    - (ii) ~~if the person is younger than 20, 30 milligrams of alcohol per 100 millilitres of blood; and~~

- (b) ~~if the person's blood contains evidence of the use of 1 or more qualifying drugs that are listed in **Schedule 5**, the proportion of each of those drugs in the person's blood is less than the level specified in that schedule for the drug; and~~
- (e) ~~if the person's blood contains evidence of the use of a qualifying drug that is not listed in **Schedule 5**, the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.~~

*Offence: driving while blood contains alcohol and evidence of use of 1 qualifying drug*

- (1) A person who drives or attempts to drive a motor vehicle on a road commits an offence if, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the person's blood contains alcohol and evidence of use of 1 qualifying drug and any or all of the following apply:

- (a) the proportion of alcohol in the person's blood—
  - (i) exceeds 80 milligrams of alcohol per 100 millilitres of blood; or
  - (ii) if the person is younger than 20, exceeds 30 milligrams of alcohol per 100 millilitres of blood; or
  - (iii) if the person holds an alcohol interlock licence or zero alcohol licence, equals or is less than 50 milligrams of alcohol per 100 millilitres of blood;
- (b) the drug is a listed qualifying drug and the blood concentration level of the drug exceeds the high-risk level for the drug;
- (c) the drug is an unlisted qualifying drug and the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.

*Infringement offence: driving while blood contains alcohol and evidence of use of 1 qualifying drug*

- (2) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if the person's blood, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73,—

- (a) contains alcohol and the proportion of alcohol in the person's blood equals or is less than—
  - (i) 80 milligrams of alcohol per 100 millilitres of blood; or
  - (ii) if the person is younger than 20, 30 milligrams of alcohol per 100 millilitres of blood; and
- (b) contains evidence of use of a qualifying drug and,—



- (i) if the drug is a listed qualifying drug, the blood concentration level of the drug equals or is less than the high-risk level (if any) for the drug; and
- (ii) if the drug is an unlisted qualifying drug, the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.

*Infringement offence: Driving while blood contains alcohol and oral fluid indicates use of 1 qualifying drug*

- (3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if—
- (a) ~~the person's blood,~~ as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the person's blood contains alcohol but the proportion of alcohol in the person's blood equals or is less than—
    - (i) 80 milligrams of alcohol per 100 millilitres of blood; or
    - (ii) if the person is younger than 20, 30 milligrams of alcohol per 100 millilitres of blood; and
  - (b) the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C** are positive and—
    - (i) the first oral fluid test and the second oral fluid test indicate the use of the same qualifying drug; and
    - (ii) the person does not elect to have a blood test in accordance with **section 71D**.

*Infringement offence: driving while breath contains alcohol and oral fluid indicates use of 1 qualifying drug*

- (4) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if—
- (a) the proportion of alcohol in the person's breath, as ascertained by an evidential breath test subsequently undergone by the person under section 69, equals or is less than—
    - (i) 400 micrograms of alcohol per litre of breath; or
    - (ii) if the person is younger than 20, 150 micrograms of alcohol per litre of breath; and
  - (b) the results of 2 oral fluid tests subsequently undergone by the person under any of **sections 71A to 71C** are positive and—
    - (i) the first oral fluid test and the second oral fluid test indicate the use of the same qualifying drug; and
    - (ii) the person does not elect to have a blood test in accordance with **section 71D**.

**57D Penalties for offences against sections 57A(1), 57B(1), and 57C(1)**

- (1) If a person is convicted of a first or second offence against **section 57A(1)**,—
  - (a) the maximum penalty is imprisonment for a term not exceeding 3 months or a fine not exceeding \$4,500; and
  - (b) the court must order the person to be disqualified for 6 months or more from holding or obtaining a driver licence.
- (2) If a person is convicted of a first or second offence against **section 57B(1) or 57C(1)**,—
  - (a) the maximum penalty is imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,500; and
  - (b) the court must order the person to be disqualified for 9 months or more from holding or obtaining a driver licence.
- (3) If a person is convicted of a third or subsequent offence against any of sections 56(1), 56(2), **57A(1), 57B(1), 57C(1)**, 58(1), 60(1), 61(1), and 61(2) (whether or not that offence is of the same kind as the person's first or second offence against any of those provisions),—
  - (a) the maximum penalty is imprisonment for a term not exceeding 2 years or a fine not exceeding \$6,000; and
  - (b) the court must order the person to be disqualified for more than 1 year from holding or obtaining a driver licence.
- (4) If an offence against **section 57A(1), 57B(1), or 57C(1)** is a concurrent offence in relation to a qualifying offence for an alcohol interlock sentence, then the mandatory disqualification in **subsection (1)(b), (2)(b), or (3)(b)** does not apply and section 65AH(3)(b) applies.
- (5) **Subsection (3)(b)** does not apply if an order is made under section 65.
- (6) The imposition of a mandatory disqualification under this section is subject to section 81 (which allows a court not to order disqualification for special reasons relating to the offence).

**10 Section 58 amended (Contravention of section 12)**

In section 58(1)(b), replace “controlled drug specified in Schedule 1 of the Misuse of Drugs Act 1975” with “qualifying drug”.

**11 Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)**

- (1) In section 59(1)(b) and (c), replace “71A” with “**71A, 71B, 71E, 71F**”.
- (2) In section 59(1)(d), after “section 69 or a compulsory impairment test under section 71A”, insert “, an oral fluid test under a requirement under **section 71A or 71B**, or a compulsory impairment test under **section 71F**”.

**12 Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test)**

- (1) In section 60(1)(d), replace “section 71A” with “**section 71F**”.
- (2) In section 60(3), replace “57A(1)” with “**57A(1), 57B(1), 57C(1)**”.

**13 Section 61 amended (Person in charge of motor vehicle causing injury or death)**

- (1) Replace section 61(2)(b) and (c) with:
  - (b) ~~if the blood of the person in charge, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, contains evidence of the use of a qualifying drug and,—~~
    - (i) ~~if the qualifying drug is listed in **Schedule 5**, the proportion of the drug in the person’s blood equals or exceeds the level specified in that schedule for the drug; or~~
    - (ii) ~~if the qualifying drug is not listed in **Schedule 5**, the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.~~
  - (b) if, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the blood of the person in charge—
    - (i) contains evidence of use of a listed qualifying drug and the blood concentration level of the drug exceeds the high-risk level for the drug; or
    - (ii) contains evidence of use of an unlisted qualifying drug and the blood specimen was taken after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**.
- (2) In section 61(2A), delete “or (2)(c)”.
- (3) In section 61(3A), replace “or section 56(1) or (2), or section 57A(1), or section 58(1), or section 60(1)” with “any of sections 56(1), 56(2), **57A(1), 57B(1), 57C(1)**, 58(1) and 60(1)”.

**14 Section 62 amended (Causing injury or death in circumstances to which section 61 does not apply)**

- (1) In section 62(1)(b), replace “controlled drug specified in Schedule 1 of the Misuse of Drugs Act 1975” with “qualifying drug”.
- (2) Replace section 62(1B) with:
  - (1B) ~~A person commits an offence if the person causes bodily injury to, or the death of, a person by driving or attempting to drive a vehicle if the blood of the person driving, as ascertained from an analysis of a blood specimen subsequently~~

Proposed amendments to

~~taken under section 72 or 73, contains evidence of the use of a qualifying drug and—~~

- ~~(a) if the qualifying drug is listed in **Schedule 5**, the proportion of the drug in the person's blood is less than the level specified in that schedule for the drug; or~~
- ~~(b) if the qualifying drug is not listed in **Schedule 5**, the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.~~

(1B) A person commits an offence if the person causes bodily injury to, or the death of, a person by driving or attempting to drive a vehicle if, as ascertained from an analysis of a blood specimen subsequently taken under section 72 or 73, the blood of the person driving—

- (a) contains evidence of use of a listed qualifying drug and the blood concentration level of the drug equals or is less than the high-risk level for the drug; or
- (b) contains evidence of use of an unlisted qualifying drug and the person was not required to undergo a compulsory impairment test under **section 71F** before the blood specimen was taken.

**15 Section 64 amended (Defences)**

(1) In section 64(1A), replace “section 57A(1)” with “**section 57A(1) or (2), 57B(1) or (2), 57C(1) or (2)**”.

(1A) After section 64(1A), insert:

(1AB) It is a defence to proceedings for an offence against **section 57A(3), 57B(3), or 57C(3) or (4)** if the court is satisfied that the person's oral fluid indicates use of a qualifying drug and—

- (a) the person—
  - (i) has a current and valid prescription for the qualifying drug that was written for that person by a health practitioner; and
  - (ii) has complied with the instructions (if any) from a health practitioner or from the manufacturer of the qualifying drug about driving, consuming alcohol or other prescription medicines, or both, while consuming the qualifying drug; or
- (b) the drug was administered by a health practitioner, and the person complied with the instructions (if any) given by the health practitioner.

(2) In section 64(2), replace “and 77” with “77, and **77A**”.

**16 Section 65AB amended (Qualifying offences)**

In section 65AB(1), after “57AA,”, insert “**57C**”.

*Blood test fee*

**17 Section 67 amended (Blood test fee)**

- (1) In section 67(1)(a)(i), replace “72(1)” with “**72(1)(a)(i)**, (b), (c), or (d)”.
- (2) After section 67(1)(a), insert:

- (aa) any person who—
  - (i) elects or is required to undergo a blood test under **section 71D or 72(1)(a)(ii), (e), (f), or (g)**; and
  - (ii) is advised in accordance with **section 71A(4)(c), 71D(3), or 72(1F)** before undergoing the blood test; and
  - (iii) commits an offence against **section 57A(1), 57B(1), or 57C(1)**.

*Enforcement procedures*

**18 Section 68 amended (Who must undergo breath screening test)**

After section 68(5), insert:

- (6) An enforcement officer may require a person to undergo a breath screening test whether or not a person has already undergone an oral fluid test under any of **sections 71A to 71C** and regardless of the outcome of any such tests.

**19 Section 70A amended (Right to elect blood test)**

Replace the heading to section 70A with “**Who has right to elect blood test after positive evidential breath test**”.

**20 Section 71A replaced (Requirement to undergo compulsory impairment test)**

Replace section 71A with:

*Enforcement procedures for offences involving use of qualifying drugs*

**71A Who must undergo first oral fluid test**

- (1) An enforcement officer may require any of the following persons to undergo a first oral fluid test without delay:
  - (a) a driver of, or a person attempting to drive, a motor vehicle on a road;
  - (b) a person who the officer has good cause to suspect has recently committed an offence against this Act that involves the driving of a motor vehicle;
  - (c) if an accident has occurred involving a motor vehicle,—
    - (i) the driver of the vehicle at the time of the accident; or
    - (ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person who

Proposed amendments to

the officer has good cause to suspect was in the motor vehicle at the time of the accident.

- (2) An enforcement officer—
  - (a) may require a person to undergo an oral fluid test whether or not the person has already undergone a breath screening test under section 68 or an evidential breath test under section 69 and regardless of the outcome of any such tests; but
  - (b) must not require a person to undergo an oral fluid test if an enforcement officer has required the person to undergo a compulsory impairment test under **section 71F(1)**.
- (3) An enforcement officer may require the person—
  - (a) to remain in the place where stopped to undergo the first oral fluid test; or
  - (b) if it is not practicable for the person to undergo an oral fluid test at the place where stopped, to accompany an enforcement officer to any other place where it is likely that the person can undergo a first oral fluid test.
- (4) An enforcement officer who requires a person to undergo a first oral fluid test under this section must, without delay, advise the person that,—
  - (a) if the person refuses to undergo a first oral fluid test under this section or a second oral fluid test under **section 71B**, the person will be required to permit the taking of a blood specimen under **section 72(1)(a)**; and
  - (b) if the result of a blood test indicates the presence of alcohol or 1 or more qualifying drugs in the person's blood, the person may be issued with an infringement offence notice or charged with an offence, depending on the proportion of the alcohol or qualifying drugs in the person's blood and the type of qualifying drugs; and
  - (c) the person may be liable to pay a blood test fee and associated medical costs if the result of the blood test establishes that the person has committed an offence against **section 57A(1), 57B(1), or 57C(1)**.
- (5) A person must—
  - (a) accompany an enforcement officer to a place when required to do so under this section:
  - (b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to undergo an oral fluid test under this section:
  - (c) if the person has undergone an oral fluid test under this section, remain at the place where the person underwent the test until after the result of the test is ascertained.
- (6) An enforcement officer may arrest without warrant a person who contravenes **subsection (5)**.

- (7) An enforcement officer may require a person who has been arrested under **subsection (6)** and taken to or detained at a place to undergo a first oral fluid test at that place.
- (8) An enforcement officer may not require a person who is in a hospital or medical centre as a result of an accident involving a motor vehicle to undergo an oral fluid test under this section.

**71B Who must undergo second oral fluid test**

- (1) An enforcement officer must require a person to undergo a second oral fluid test without delay if the person has undergone a first oral fluid test and the result of the first oral fluid test is positive unless the person is instead required to undergo a compulsory impairment test in the circumstances described in **section 71F(5)**.
- (2) An enforcement officer may require the person—
  - (a) to remain in the place where the person underwent the first oral fluid test to undergo the second oral fluid test; or
  - (b) if it is not practicable for the person to undergo a second oral fluid test at the place where the person underwent the first oral fluid test, to accompany an enforcement officer to any other place where it is likely that the person can undergo a second oral fluid test.
- (3) A person must—
  - (a) accompany an enforcement officer to a place when required to do so under this section;
  - (b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to undergo an oral fluid test under this section;
  - (c) if the person has undergone an oral fluid test under this section, remain at the place where the person underwent the test until after the result of the test is ascertained.
- (4) An enforcement officer may arrest without warrant a person who contravenes **subsection (3)**.
- (5) An enforcement officer may require a person who has been arrested under **subsection (4)** and taken to or detained at a place to undergo a second oral fluid test at that place.

**71C Person must undergo further oral fluid test if either first or second oral fluid test fails to produce result**

- (1) An enforcement officer must require a person to undergo without delay a further oral fluid test if—
  - (a) a first oral fluid test carried out under **section 71A** fails to produce a result:

- (b) a second oral fluid test carried out under **section 71B** fails to produce a result.
- (2) A requirement under **subsection (1)** is deemed,—
  - (a) in the case of a person who underwent a first oral fluid test that failed to produce a result, to be a requirement under **section 71A**;
  - (b) in the case of a person who underwent a second oral fluid test that failed to produce a result, to be a requirement under **section 71B**.
- (3) If for any reason a further oral fluid test under **subsection (1)** fails to produce a result, the result of the further oral fluid test is deemed to have produced a result that is not positive.

#### **71D Person has right to elect blood test after 2 positive oral fluid tests**

- (1) A person has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in **section 77A(3)(a)**, to elect to have a blood test to assess the proportion of a qualifying drug in the person's blood if—
  - (a) the person has undergone a first oral fluid test and a second oral fluid test that have produced positive results; and
  - (b) the results of both tests indicate the use of 1 or more of the same qualifying drugs.
- (2) An enforcement officer who advises a person of the matters specified in **section 77A(3)(a)** must also, without delay, advise the person that if the person elects to have a blood test the person may be liable to pay a blood test fee and associated medical costs if the result of the blood test establishes that the person has committed an offence against **section 57A(1), 57B(1), or 57C(1)**.

#### **71E Person may be required to accompany enforcement officer to undergo blood test**

- (1) An enforcement officer may require the following persons to accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test when required to do so by the officer:
  - (a) a person who fails or refuses to undergo an oral fluid test without delay after having been required to do so by the officer under any of **sections 71A to 71C**;
  - (b) a person who has undergone 2 oral fluid tests under any of **sections 71A to 71C** that have produced positive results if—
    - (i) the person was the driver of a motor vehicle at the time an accident occurred involving the motor vehicle or an enforcement officer has good cause to suspect that the person was in the motor vehicle at the time of the accident; and
    - (ii) the enforcement officer has good cause to suspect that another person has been injured or killed as a result of the accident:



- (c) a person who has elected to have a blood test under **section 71D**;
  - (d) a person who fails to complete a compulsory impairment test in a manner satisfactory to an enforcement officer, who is trained to give the test, when required to do so by an enforcement officer under **section 71F**.
- (2) The person must—
- (a) accompany the enforcement officer to a place when required to do so under this section;
  - (b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to provide a blood specimen for collection under section 72 or 73.
- (3) An enforcement officer may arrest without warrant a person who contravenes **subsection (2)**.

**71F Who must undergo compulsory impairment test**

- (1) An enforcement officer may require any of the following persons to undergo a compulsory impairment test given by an enforcement officer trained to give the test if the enforcement officer has good cause to suspect that the person has consumed a drug or drugs:
- (a) a driver of, or a person attempting to drive, a motor vehicle on a road;
  - (b) a person who the officer has good cause to suspect has recently committed an offence against this Act that involves the driving of a motor vehicle;
  - (c) if an accident has occurred involving a motor vehicle,—
    - (i) the driver of the vehicle at the time of the accident; or
    - (ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person who the officer has good cause to suspect was in the motor vehicle at the time of the accident.
- (2) An enforcement officer may require a person specified in **subsection (1)** to—
- (a) remain in the place where stopped, for a period of time that is reasonable in the circumstances, to undergo the compulsory impairment test; or
  - (b) accompany an enforcement officer to another place to undergo the compulsory impairment test if it would enhance road safety, personal safety, the person's privacy, or the giving or taking of the test.
- (3) A person who has undergone a compulsory impairment test must remain at the place where the person underwent the test until the result of the test is ascertained.
- (4) An enforcement officer may arrest a person without warrant if the person refuses or fails to comply with **subsection (2) or (3)**.

Proposed amendments to

- (5) An enforcement officer may exercise the powers in **subsections (1) and (2)** in any of the following circumstances:
- (a) in addition to any breath screening tests under section 68 or evidential breath tests under section 69 and regardless of the outcome of any such tests:
  - (b) in addition to an oral fluid test under any of **sections 71A to 71C** if the oral fluid test does not produce a positive result but the enforcement officer has good cause to suspect that the person has consumed a qualifying drug:
  - (c) in addition to a first oral fluid test under **section 71A** that produces a positive result and indicates the use of more than 1 qualifying drug.

*Enforcement procedures involving taking of blood specimens*

**21 New cross-heading above section 72 inserted**

After section 71A, insert:

*Enforcement procedures involving taking of blood specimens*

**22 Section 72 amended (Who must give blood specimen at places other than hospital or medical centre)**

- (1) Replace section 72(1)(a) with:
- (a) the person fails or refuses to undergo without delay—
    - (i) an evidential breath test after having been required to do so by an enforcement officer under section 69; or
    - (ii) an oral fluid test after having been required to do so by an enforcement officer under any of **sections 71A to 71C**; or
- (2) Replace section 72(1)(e) with:
- (e) the person has undergone a second oral fluid test under **section 71B** and—
    - (i) it appears to the officer that the test is positive; and
    - (ii) within 10 minutes of being advised by an enforcement officer of the matters specified in **section 77A(3)(a)** (which sets out the conditions of the admissibility of the test), the person advises the officer that the person wishes to undergo a blood test; or
  - (f) the person has undergone 2 oral fluid tests under any of **sections 71A to 71C** and the person has accompanied an enforcement officer to a place where the person can undergo an evidential blood test under **section 71E(1)(b)**; or

- (g) the person fails to complete a compulsory impairment test in a manner satisfactory to an enforcement officer, who is trained to give the test, when required to do so by an enforcement officer under **section 71F**.
- (3) In section 72(1B) and (1C), replace “section 68 or evidential breath tests under section 69” with “section 68, evidential breath tests under section 69, or oral fluid tests under any of **sections 71A to 71C**”.
- (4) In section 72(1E), replace “(c), (d), or (e)” with “(c) or (d)”.
- (5) After section 72(1E), insert:
- (1F) An enforcement officer who requires a person to permit the taking of a blood specimen under **subsection (1)(e), (f), or (g)** must advise the person, without delay, that the person may be liable to pay a blood test fee and associated medical costs if the result of the blood test establishes that the person has committed an offence against **section 57A(1), 57B(1), or 57C(1)**.

*Evidential provisions*

**23 Section 73A replaced (Evidence of controlled drug in blood sample taken under section 72 or 73 may not be used as evidence of use of controlled drugs in prosecutions under Misuse of Drugs Act 1975)**

Replace section 73A with:

**73A Purposes for which blood specimen taken under section 72 or 73 may be used as evidence**

- (1) Evidence of alcohol or ~~the use of a qualifying drug~~ evidence of use of any 1 or more qualifying drugs in a blood specimen taken under section 72 or 73 may be used as evidence in a prosecution for any offence under this Act (*see also* sections 77(2) and **77A(1)**, which specify presumptions for the purposes of this Act relating to ~~drug and alcohol testing~~ drug-testing and alcohol-testing).
- (2) Neither of the following may be used as evidence of the use of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975:
- (a) a positive result of an oral fluid test taken under any of **sections 71A to 71C**;
- (b) a blood specimen taken under section 72 or 73.

**24 Section 75 amended (Certificates in blood-alcohol proceedings)**

In the heading to section 75, after “**blood-alcohol**”, insert “**and drug-driving**”.

**25 New section 77A inserted (Presumptions relating to drug-testing)**

After section 77, insert:

**77A Presumptions relating to drug-testing**

- (1) For the purposes of proceedings for an offence against this Act arising out of the circumstances in respect of which a blood specimen was taken from the

Proposed amendments to

- defendant under section 72 or 73, it is to be conclusively presumed that the proportion of a qualifying drug in the defendant's blood at the time of the alleged offence was the same as the proportion of the qualifying drug in the blood specimen taken from the defendant.
- (2) For the purposes of proceedings for an infringement offence against **section 57A(3), 57B(3), 57C(3), or 57C(4)**, it is to be presumed in the absence of proof to the contrary that a person's oral fluid contains a qualifying drug if the results of 2 oral fluid tests undergone by the person under any of **sections 71A to 71C** indicate use of the drug.
- (3) However, except as provided in **subsection (4)**, the positive results of a first oral fluid test and a second oral fluid test are not admissible in evidence in proceedings for an infringement offence against **section 57A(3), 57B(3), 57C(3), or 57C(4)** if—
- (a) the person who underwent the tests is not advised by an enforcement officer, without delay after the result of the second oral fluid test is ascertained,—
- (i) that the second oral fluid test was positive; and
- (ii) that the positive results could be presumptive evidence that the person has committed an infringement offence against this Act if the person does not request a blood test within 10 minutes; or
- (b) the person who underwent the test—
- (i) advises an enforcement officer, within 10 minutes of being advised of the matters specified in **paragraph (a)**, that the person wishes to undergo a blood test; and
- (ii) complies with section 72(2).
- (4) **Subsection (3)(a)** does not apply if the person who underwent the test fails or refuses to remain at the place where the person underwent the test until the person can be advised of the result of the test.
- (5) The result of an oral fluid test is not admissible in evidence in proceedings for any offence against this Act other than an offence under **section 57A(3), 57B(3), 57C(3), or 57C(4)**.
- (6) If it is proved in proceedings for an offence against section 60 that the defendant failed or refused to comply with section 13 without reasonable cause, that failure or refusal may be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defendant, concerning the defendant's condition at the time of the alleged offence.

**26 Section 79 amended (Circumstances in which certificate not admissible in proceedings)**

Replace section 79(4)(c) to (e) with:

- (c) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain, in the case of a certificate that certified the presence of or a specified proportion of alcohol,—
- (i) in the case of a defendant who (at the time of the commission of the offence) was younger than 20 or held an alcohol interlock licence or a zero alcohol licence, no alcohol; or
  - (ii) in any other case not more than 50 milligrams of alcohol per 100 millilitres of blood; or
- (d) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain, in the case of a certificate that certified the presence of or a specified proportion of alcohol, 20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section 75(5); or
- ~~(e) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain, in the case of a certificate that certified the presence of or a specified proportion of a qualifying drug,—~~
- ~~(i) in the case of a qualifying drug listed in **Schedule 5**, less than the level specified in that schedule for that drug; or~~
  - ~~(ii) in the case of a qualifying drug not listed in **Schedule 5**, no evidence of the use of the qualifying drug.~~
- (e) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain,—
- (i) if a certificate certified that there is evidence of use of a listed qualifying drug, a blood concentration level equal to or less than the tolerance level for the drug; or
  - (ii) if a certificate certified that there is evidence of use of an unlisted qualifying drug, no presence of the qualifying drug.

*Mandatory prohibition from driving for 12-hour period*

**27 New section 94A and cross-heading inserted**

After section 94, insert:

*Mandatory prohibition from driving following 2 positive oral fluid tests*

**94A Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid tests appear positive**

- (1) An enforcement officer must forbid a person to drive a motor vehicle for a 12-hour period if the person has undergone 2 oral fluid tests and it appears to the enforcement officer that the results of both tests are positive.

Proposed amendments to

- (2) The 12-hour period starts immediately after the enforcement officer notifies the person of the prohibition.
- (3) An enforcement officer may arrest without warrant a person who fails to comply with a direction under **subsection (1)** or drives or attempts to drive within the 12-hour period.

*Mandatory suspension of driver licence*

**28 Section 95 amended (Mandatory 28-day suspension of driver licence in certain circumstances)**

- (1) In section 95(1)(a)(i), replace “57A,” with “**57A(1), 57B(1), 57C(1),**”.
- (2) After section 95(1)(a)(i)(B), insert:

- ~~(C) to have a proportion of a qualifying drug in the person’s blood that equals or exceeds the level specified for the qualifying drug in **Schedule 5**:~~
- (C) to have a blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or
- ~~(D) to have a qualifying drug in the person’s blood that is not listed in **Schedule 5** to have an unlisted qualifying drug in the person’s blood after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**;~~

*Impoundment of vehicles*

**29 Section 96 amended (Vehicle seized and impounded for 28 days in certain circumstances)**

- (1) After section 96(1)(d)(i)(B), insert:

- ~~(BA) proportion of a qualifying drug in the person’s blood that equals or exceeds the level specified for the qualifying drug in **Schedule 5**; or~~
- (BA) blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or
- ~~(BB) a qualifying drug in the person’s blood that is not listed in **Schedule 5** unlisted qualifying drug in the person’s blood after the person failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer when required to do so under **section 71F**; or~~

- (2) In section 96(1)(d)(ii), replace “57A,” with “**57A(1), 57B(1), 57C(1),**”.

*Reduction of disqualifications*

**30 Section 99 amended (Court may reduce disqualification)**

After section 99(1)(b)(via), insert:

(viaa) **section 57B(1)**:

(viab) **section 57C(1)**:

*Powers of entry and immobilisation*

**31 Section 119 amended (Powers of entry)**

In section 119(2)(a), replace “section 68 or section 69” with “section 68, 69, or **71A**”.

**32 Section 120 amended (Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer)**

In section 120(1A), replace “section 71A” with “**section 71F**”.

**33 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)**

(1) In section 121(1)(a)(B) and (C), replace “section 71A” with **section 71F**.

(2) After section 121(1)(a)(i)(C), insert:

(D) has failed or refused to permit a blood specimen to be taken when required to do so by an enforcement officer under **section 72(1)(a)**; or

*Regulations*

**34 Section 167 amended (Regulations)**

Before section 167(2)(a), insert:

(aaa) is 75 demerit points in the case of an offence against **section 57B(1) or 57C(1)**:

**35 New sections 167A and to 167B inserted**

After section 167, insert:

**167A ~~Setting or amending level of qualifying drug in blood specimen at or over which person commits offence against section 57A(1), 57B(1), or 57C(1) high-risk blood concentration levels and tolerance blood concentration levels for drug-driving offences~~**

(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister and the Minister of Police, amend **Schedule 5** by doing any 1 or more of the following:

Proposed amendments to

- (a) adding the name of a qualifying drug to **Part 1 of Schedule 5** and specifying a high-risk level for the drug;
  - (b) adding the name of a qualifying drug to **Part 2 of Schedule 5** and specifying a tolerance level for the drug;
  - (c) amending any high-risk level or tolerance level specified in **Schedule 5** for a qualifying drug.
  - ~~(a) adding the name of any qualifying drug and the proportion of the qualifying drug in a person's blood at or over which a person commits an offence against **section 57A(1), 57B(1), or 57C(1)**; or~~
  - ~~(b) altering the specified proportion of a qualifying drug in a person's blood at or over which a person commits an offence against **section 57A(1), 57B(1), or 57C(1)**.~~
- (1A) A high-risk level for a qualifying drug—
- (a) may be specified only if a tolerance level is specified for the drug; and
  - (b) may be the same as the tolerance level for the drug.
- (2) Before making a recommendation under **subsection (1)**, the Ministers must, in respect of each qualifying drug referred to in the proposed order,—
- (a) seek and consider independent advice from independent experts appointed under **section 167B** on—
    - (i) the specific effects of each drug referred to in the proposed order; and
    - (ii) the appropriate high-risk level for each drug referred to in any proposed amendment to **Part 1 of Schedule 5**; and
    - (iii) the appropriate tolerance level for each drug referred to in any proposed amendment to **Part 2 of Schedule 5**; and
    - ~~(i) the specific effects of the drug, including pharmacological, psychoactive, and toxicological effects; and~~
    - ~~(ii) the proportion of the qualifying drug in a person's blood that is likely to impair a person's driving to a similar extent as a proportion of alcohol in the person's blood exceeding 80 milligrams of alcohol per 100 millilitres of blood; and~~
  - (b) ~~have regard to the purpose of aligning the level specified in **Schedule 5** for each qualifying drug as far as practicable with a blood-alcohol limit of 80 milligrams of alcohol per 100 millilitres of blood; and~~
  - (c) publish a notice in the *Gazette* and any other media the Ministers consider appropriate of their intention to recommend the making of the Order in Council; and
  - (d) give interested persons a reasonable time, which must be specified in the notice published under **paragraph (c)**, to make submissions on the proposed order; and



- (e) consult the persons, representative groups, government departments, and Crown entities that the Ministers consider reasonable and appropriate to consult in the circumstances.
- (2A) The Minister may seek and consider independent advice from independent experts appointed under **section 167B** on any other matter the Minister considers appropriate before making a recommendation under **subsection (1)**.
- (3) The Governor-General may, by Order in Council, amend the name or description of any qualifying drug named or described in **Schedule 5**, if the amendment is necessary for the purpose of rendering that name or description consistent with the name or description of the qualifying drug in the Misuse of Drugs Act 1975.
- (4) An Order in Council made under **subsection (1) or (3)** is a legislative instrument and a disallowable instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) The explanatory note of an Order in Council under **subsection (1)** must indicate that—
  - (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
  - (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
  - (c) the stated time is the applicable deadline under section 47C(1)a) or (b) of that Act.

**167B Ministers may appoint independent experts for purposes of section 167A**

- (1) The Minister of Transport, the Minister of Police, and the Science Minister (the **Ministers**) may from time to time appoint 1 or more independent experts to advise the Ministers on matters relating to the setting of levels in **Schedule 5**: setting and amending high-risk blood concentration levels and tolerance blood concentration levels for qualifying drugs under **section 167A**.
- (2) The independent experts appointed under **subsection (1)** must together have appropriate expertise in relevant medical and scientific fields, including pharmacology and toxicology.
- (3) The function of the independent experts is—
  - (a) to carry out medical and scientific evaluations of qualifying drugs; and
  - (b) to advise the Ministers on—
    - (i) the specific effects of qualifying drugs, including the pharmacological, psychoactive, and toxicological effects; and
    - (ii) ~~the proportion of a qualifying drug in a person's blood that is likely to impair a person's driving to a similar extent as a propor-~~

Proposed amendments to

- tion of alcohol in the person's blood at or above 80 milligrams of alcohol per 100 millilitres of blood.
- (ii) the appropriate high-risk levels and tolerance levels for qualifying drugs in accordance with **subsections (4) and (5)**.
- (4) In advising the Ministers on the appropriate high-risk level for a qualifying drug, the independent experts must take into account—
- (a) the specific effects of the qualifying drug and the medical and scientific evaluations of the drug carried out under **subsection (3)(a)**; and
- (b) that the high-risk level specified for a qualifying drug should, as far as practicable, be a blood concentration level that, to the best of the independent experts' knowledge, is likely to impair a person's driving; and
- (c) the high-risk levels specified, at the time of advising the Ministers, in **Schedule 5** for other listed qualifying drugs and, in particular (where possible), for drugs with similar effects.
- (5) In advising the Ministers on the appropriate tolerance level for a qualifying drug, the independent experts must take into account—
- (a) the specific effects of the qualifying drug and the medical and scientific evaluations of the drug carried out under **subsection (3)(a)**; and
- (b) that the tolerance level specified for a qualifying drug should, as far as practicable, be a blood concentration level that, to the best of the independent experts' knowledge,—
- (i) is likely to indicate that a person has recently used the drug; and
- (ii) is unlikely to be exceeded if the person has such a low level of the drug in their blood (whether due to passive exposure or otherwise) that their driving is unlikely to be impaired; and
- (c) for a qualifying drug that is a prescription medicine, the maximum dose of the prescription medicine that is generally prescribed; and
- (d) the tolerance levels specified, at the time of advising the Ministers, in **Part 2 of Schedule 5** for other listed qualifying drugs and, in particular (where possible), for drugs with similar effects.

**36 New section 168D and cross-heading inserted**

After section 168C, insert:

*Gazette notices*

**168D Gazette notices approving oral fluid tests and oral fluid testing devices**

- (1) The Minister of Police may, by notice in the *Gazette*, approve—
- (a) a kind of device that may be used as an oral fluid testing device for the purposes of testing oral fluid for the presence of the qualifying drugs specified in the notice:

- (b) the manner in which an oral fluid test may be carried out by means of an oral fluid testing device.
- (2) Before giving a notice in the *Gazette* under **subsection (1)**, the Minister of Police must—
  - (a) consult with the Minister of Transport and the Science Minister; and
  - (b) have regard to the accuracy of the device; and
  - (c) be satisfied that any device proposed to be approved under **subsection (1)(a)** and used in a manner proposed to be approved under **subsection (1)(b)** will return a positive result only if the device detects a presence of a qualifying drug at a level that indicates recent use of a qualifying drug specified in the notice.
- (2A) A notice or replacement notice given under **subsection (1)** for the purposes of approving a kind of device or a test—
  - (a) must specify, for each qualifying drug tested for, the concentration level of the qualifying drug in the person’s oral fluid at or above which the result of the test will appear positive for that qualifying drug; and
  - (b) may—
    - (i) define an approved device as a device that bears or is associated by its manufacturer with such trade name or number or other expression, or any combination of those things, as may be specified in the notice;
    - (ii) provide for a test, or part of a test, to be carried out in accordance with instructions displayed or printed on or by a specified kind of device.
- (3) A notice or replacement notice given by the Minister of Police for any purpose specified in **subsection (1)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and may be amended from time to time, or revoked or replaced, by the responsible Minister in the same manner.
- ~~(4) A notice or replacement notice under **subsection (1)** that is given by the Minister of Police in the *Gazette* for the purposes of approving a kind of device or a test may—~~
  - ~~(a) define an approved device as a device that bears or is associated by its manufacturer with such trade name or number or other expression, or any combination of those things, as may be specified in the notice;~~
  - ~~(b) provide for a test, or part of a test, to be carried out in accordance with instructions displayed or printed on or by a specified kind of device.~~
- (5) In the absence of proof to the contrary, a device is to be treated as bearing or being associated with a particular trade name or number or other expression if that name or number or other expression—

Proposed amendments to

- (a) appears on the device, whether on a label or otherwise, or is shown on a display panel on the device; or
- (b) is printed out by the device on a card or on paper; or
- (c) appears on printed matter that—
  - (i) accompanies the device; and
  - (ii) is associated with the device or is intended by the manufacturer of the device to be associated with the device; and
  - (iii) is issued by or on behalf of the manufacturer.

*Analysing oral fluid samples for statistical or research purposes*

**37 Section 209 amended (Taking of blood specimens for statistical or research purposes)**

In section 209, replace “saliva” with “oral fluid” in each place.

**38 Section 209A amended (Analysing blood specimens for statistical or research purposes related to use of drugs or alcohol)**

- (1) In the heading to section 209A, after “Analysing”, insert “oral fluid or”.
- (2) Replace section 209A(1) with:
  - (1) A person may, for statistical or research purposes related to the use of drugs or alcohol, analyse or re-analyse in an approved laboratory—
    - (a) an oral fluid sample taken from a person under any of **sections 71A to 71C**;
    - (b) a blood specimen from a person taken under section 72 or 73.
- (3) In section 209A(3), after “No analysis of”, insert “an oral fluid sample or”.
- (4) Replace section 209A(4) with:
  - (4) An oral fluid sample or a blood specimen analysed or re-analysed under **subsection (1)** must be treated in a manner that does not identify the person from whom the oral fluid sample or blood specimen is taken.
- (5) Nothing in this section limits the purposes for which an oral fluid sample or a blood specimen may be analysed or re-analysed under this Act.

*Transitional, savings, and related provisions*

**39 Schedule 1 amended**

In Schedule 1, after Part 1, insert the **Part 2** set out in **Schedule 1** of this Act.

*Level of qualifying drugs at and over which person commits offence*  
*Blood concentration levels for offences relating to drug-driving*

**40 New Schedule 5 inserted**

After Schedule 4, insert the **Schedule 5** set out in **Schedule 2** of this Act.

**Part 2**  
**Related and consequential amendments**

Subpart 1—Amendments to Acts

*Amendment to Legislation Act 2012*

**41 Amendment to Legislation Act 2012**

- (1) This section amends the Legislation Act 2012.
- (2) In Schedule 2, insert in its appropriate alphabetical order:

Land Transport Act 1998

**167A(1)**

*Amendment to Sentencing Act 2002*

**42 Amendment to Sentencing Act 2002**

- (1) This section amends the Sentencing Act 2002.
- (2) In section 129(1)(a), replace “57A(1)” with “**57A(1), 57B(1), 57C(1),**”.

Subpart 2—Amendments to Land Transport (Offences and Penalties)  
Regulations 1999

**43 Amendments to Land Transport (Offences and Penalties) Regulations 1999**

- (1) This section amends the Land Transport (Offences and Penalties) Regulations 1999.
- (2) In Schedule 1, after the item relating to section 57(2A) of the Land Transport Act 1998, insert:

<b>57A(2)</b>	Driving or attempting to drive with blood containing <u>evidence of use of 1 qualifying drug</u> <del>evidence of the use of a qualifying drug below the level specified in <b>Schedule 5</b> of the Act</del>	500	—	200	—
<b>57A(3)</b>	Driving or attempting to drive with 2 oral fluid test results indicating use of <del>a</del> <u>1</u> qualifying drug	500	—	200	—

**Proposed amendments to  
Land Transport (Drug Driving) Amendment Bill**

<b>57B(2)</b>	Driving or attempting to drive with blood containing evidence of use of <u>2 or more qualifying drugs more than 1 qualifying drug below the level specified in <b>Schedule 5</b></u> of the Act for each drug	1,000	—	400	—
<b>57B(3)</b>	Driving or attempting to drive with oral fluid test results indicating use of <u>2 or more qualifying drugs more than 1 qualifying drug</u>	1,000	—	400	—
<b>57C(2)</b>	Driving or attempting to drive with blood containing alcohol and evidence of use of <u>1 qualifying drug below specified blood-alcohol limits and evidence of use of a qualifying drug below thresholds specified in <b>Schedule 5</b></u> or where drug not listed in <b>Schedule 5</b>	1,000	—	400	—
<b>57C(3)</b>	Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with oral fluid indicating use of <u>a 1</u> qualifying drug	1,000	—	400	—
<b>57C(4)</b>	Driving or attempting to drive with breath containing alcohol below specified alcohol limits and oral fluid test results indicating use of <u>a 1</u> qualifying drug	1,000	—	400	—

(3) In Schedule 2, after the item relating to section 57AA(1) or (2) of the Land Transport Act 1998, insert:

<b>57A(2)</b>	Driving or attempting to drive with blood containing <u>evidence of use of 1 qualifying drug</u> <del>evidence of the use of a qualifying drug below the level specified in <b>Schedule 5</b></del> of the Act	50
<b>57A(3)</b>	Driving or attempting to drive with 2 oral fluid test results indicating use of <u>a 1</u> qualifying drug	50
<b>57B(2)</b>	Driving or attempting to drive with blood containing evidence of use of <u>2 or more qualifying drugs more than 1 qualifying drug below the level specified in <b>Schedule 5</b></u> of the Act for each drug	75
<b>57B(3)</b>	Driving or attempting to drive with oral fluid test results indicating use of <u>2 or more qualifying drugs more than 1 qualifying drug</u>	75

**Proposed amendments to  
Land Transport (Drug Driving) Amendment Bill**

Part 2 cl 43

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<b>57C(2)</b>	Driving or attempting to drive with blood containing alcohol <u>and evidence of use of 1 qualifying drug below specified blood-alcohol limits and evidence of use of a qualifying drug below thresholds specified in <b>Schedule 5</b> or where drug not listed in <b>Schedule 5</b></u>	75
<b>57C(3)</b>	Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with oral fluid test results indicating use of a <u>1</u> qualifying drug	75
<b>57C(4)</b>	Driving or attempting to drive with breath containing alcohol below specified alcohol limits and oral fluid test results indicating use of a <u>1</u> qualifying drug	75

**Schedule 1**  
**New Part 2 inserted into Schedule 1**

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**Part 2**  
**Provisions relating to Land Transport (Drug Driving) Amendment**  
**Act 2020**

**11 Conviction for offence against equivalent provisions of former enactment to be treated as relevant convictions for purposes of section 57D(4)**

For the purposes of **section 57D**, a conviction for an offence against a provision of the Transport Act 1962 that corresponds to an offence specified in **section 57D(4)** is to be treated as a conviction for an offence specified in that subsection.



**Schedule 2**  
**New Schedule 5 inserted**

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<b>Schedule 5</b>	
<b>Level of <del>qualifying drugs at and over which person commits offence</del> against <del>section 57A(1), 57B(1), or 57C(1)</del> <u>Blood concentration levels for offences related to drug-driving</u></b>	
	<b>ss 57A, 57B, 57C, 61, 62, 79, 95, 96</b>
<b>Qualifying drug</b>	<b>Level of <del>qualifying drugs at and over which person commits offence</del> against <del>section 57A(1), 57B(1), or 57C(1)</del></b>
No levels have been set as at the date on which this schedule was inserted into this Act by <b>section 38</b> of the Land Transport (Drug Driving) Amendment Act <b>2020</b> .	
<b>Part 1</b>	
<b><u>High-risk blood concentration levels for drug-driving offences</u></b>	
<b>Qualifying drug</b>	<b><u>High-risk level (ng/ml)</u></b>
<u>Alprazolam</u>	<u>50</u>
<u>Amphetamine</u>	<u>100</u>
<u>Buprenorphine</u>	<u>1</u>
<u>Clonazepam</u>	<u>50</u>
<u>Cocaine</u>	<u>20</u>
<u>Codeine</u>	<u>200</u>
<u>Diazepam</u>	<u>200</u>
<u>Dihydrocodeine</u>	<u>200</u>
<u>Fentanyl</u>	<u>0.5</u>
<u>GHB</u>	<u>50,000</u>
<u>Ketamine</u>	<u>50</u>
<u>Lorazepam</u>	<u>30</u>
<u>MDMA</u>	<u>50</u>
<u>Methadone</u>	<u>200</u>
<u>Methamphetamine</u>	<u>50</u>
<u>Midazolam</u>	<u>30</u>
<u>Morphine</u>	<u>20</u>
<u>Nitrazepam</u>	<u>50</u>
<u>Oxazepam</u>	<u>800</u>
<u>Oxycodone</u>	<u>50</u>
<u>Temazepam</u>	<u>800</u>
<u>THC (cannabis)</u>	<u>3</u>
<u>Tramadol</u>	<u>250</u>
<u>Triazolam</u>	<u>4</u>

<b><u>Qualifying drug</u></b>	<b><u>High-risk level (ng/ml)</u></b>
<u>Zopiclone</u>	<u>50</u>

**Part 2**

**Tolerance blood concentration levels for drug-driving offences**

<b><u>Qualifying drug</u></b>	<b><u>Tolerance level (ng/ml)</u></b>
<u>Alprazolam</u>	<u>20</u>
<u>Amphetamine</u>	<u>20</u>
<u>Buprenorphine</u>	<u>1</u>
<u>Clonazepam</u>	<u>20</u>
<u>Cocaine</u>	<u>5</u>
<u>Codeine</u>	<u>50</u>
<u>Diazepam</u>	<u>100</u>
<u>Dihydrocodeine</u>	<u>50</u>
<u>Fentanyl</u>	<u>0.5</u>
<u>GHB</u>	<u>10,000</u>
<u>Ketamine</u>	<u>10</u>
<u>Lorazepam</u>	<u>10</u>
<u>MDMA</u>	<u>10</u>
<u>Methadone</u>	<u>50</u>
<u>Methamphetamine</u>	<u>10</u>
<u>Midazolam</u>	<u>10</u>
<u>Morphine</u>	<u>10</u>
<u>Nitrazepam</u>	<u>20</u>
<u>Oxazepam</u>	<u>200</u>
<u>Oxycodone</u>	<u>20</u>
<u>Temazepam</u>	<u>200</u>
<u>THC (cannabis)</u>	<u>1</u>
<u>Tramadol</u>	<u>100</u>
<u>Triazolam</u>	<u>4</u>
<u>Zopiclone</u>	<u>20</u>