

In Confidence

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

Chair, Cabinet Economic Development Committee

APPROVAL FOR AN ENHANCED DRUG DRIVER TESTING REGIME IN NEW ZEALAND

Proposal

1. This paper seeks Cabinet's agreement to introduce a new compulsory roadside oral fluid drug testing scheme in New Zealand.

Executive Summary

2. In 2018, 95 people were killed in crashes where a driver had consumed impairing drugs before driving¹.
3. Our current approach is not effective at deterring drug driving². Only 26 percent of New Zealanders think they will be caught drug driving versus 60 percent for drink driving³. To address this, the Government has committed to an action under the *Road to Zero* road safety strategy to strengthen the detection and deterrence of drug-impaired driving.
4. We propose that a compulsory roadside oral fluid drug testing scheme be introduced in New Zealand. This will provide for highly visible, high volume enforcement with certain and swift sanctions – the critical elements required for deterrence.
5. In developing the proposals, we have taken into account feedback received from the public consultation on drug driving measures earlier this year⁴. The majority of submitters supported the introduction of oral fluid testing and a 'zero-tolerance', presence-based approach to roadside drug testing.
6. The key aspects of the proposed scheme are:
 - 6.1. a compulsory random oral fluid testing regime, under which two positive (failed) oral fluid tests showing the presence of drugs leads to an infringement offence (with an option to elect an evidential blood test)
 - 6.2. retention of the current 'compulsory impairment test' (CIT), with some restrictions on police officers switching between the CIT and the proposed oral fluid testing processes
 - 6.3. limits for the presence of drugs in blood to be prescribed in legislation, based on advice from an independent panel of experts

¹ Drivers in 'detractable road crashes' whose blood sample was subjected to a full drugs screen analysis by ESR. The term 'detractable road crashes' excludes accidents the proposed policy could not deter because they occurred due to medical events, suicide or off-road incidents.

² In this document "drug driving" means driving while impaired by illicit, recreational or prescription drugs.

³ Starkey, N., and Charlton, S., *The prevalence and impairment effects of drugged driving in New Zealand*, University of Waikato, (2017).

⁴ Ministry of Transport, *Discussion Document: Enhanced Drug Impaired Driver Testing* (May 2019).

- 6.4. graduated sanctions, including infringement and criminal penalties for drug driving offences, based on exceeding the limits prescribed in legislation
 - 6.5. a harm minimisation approach to drug driving, providing both 'opt-in' and compulsory health referrals.
7. Based on an analysis of the elevated crash risk of drugs and the prevalence of their use by drivers in New Zealand, the drugs or drug classes that are proposed for roadside oral fluid testing are THC (the psycho-active ingredient in cannabis), methamphetamine, benzodiazepines (sedatives), MDMA (ecstasy), opiates (e.g. morphine) and cocaine. Oral fluid testing devices cannot currently test for synthetic drugs.

Background

Addressing drug driving is necessary to reduce road trauma and make our roads safer

- 8. In 2018, there were 377 road deaths on the road network. This was up from 253 in 2013. Thousands more people received serious injuries. This harm has a permanent and profound impact on New Zealand communities.
- 9. New Zealand's road death rate is now 7.8 per 100,000 people, compared to leading jurisdictions with rates between 2 and 4 per 100,000. Figures from 2017 show that New Zealand is in the bottom quarter of OECD countries when it comes to the number of road fatalities per capita. It is clear that a new approach is needed, with evidenced-based interventions across all aspects of the land transport system.
- 10. To reverse the upward trend in road deaths, the Government has put safety at the forefront of all decision-making on land transport. The Government Policy Statement on land transport 2018 (GPS), which sets out the Government's priorities for the land transport system over the next 10 years, elevates safety to one of two key funding priorities.
- 11. The Government has also committed to the development of a new road safety strategy, *Road to Zero*. The strategy is underpinned by a vision of New Zealand where no one is killed or seriously injured in road crashes and includes a target of a 40 percent reduction in deaths and serious injuries by 2030. The initial action plan for the strategy includes strengthening the detection and deterrence of drug driving.

Evidence indicates that many illicit, recreational and prescription drugs can impair driving

- 12. There is a large body of international research on the impacts of drugs on driving ability⁵. Overall, international studies show that many drugs can slow reaction time, increase risk taking and cause fatigue. When combined with alcohol or other drugs, the negative effects can be even larger. Methamphetamine has been found to be the most risky drug to use before driving and is the drug found with an increasing rate of prevalence compared to other drugs in fatal crash victims⁶.

⁵ The World Health Organisation's 2015 review of 66 different studies found that using drugs while driving was associated with an increase in the risk of crash involvement, reporting an increased crash risk for 11 different drug classes or drugs. A more recent (2017) literature review by the European research project SafetyCube of over 80 papers on drugs and driving performance found that a number of the most used legal and illegal drugs have a negative impact on road safety. They increase crash risk, injury severity and fatal crash rate, and they reduce the general ability to drive. When combined with alcohol or other drugs, the negative effects are even larger.

⁶ Data from ESR for the first half of 2019 shows a 50 percent increase in methamphetamine the in blood samples of deceased drivers.

13. We note that while research shows that drugs have the potential to impair driving, we cannot say with certainty what degree of impairment is caused by levels of a particular drug. In contrast to alcohol, there is not a clear linear relationship between dosages of drugs, when they are taken, and impairment.
14. However, a number of case-control studies in Europe and North America have examined the relationship between the consumption of impairing drugs and crash risk⁷. Table 1 illustrates the increased risk of drug driving compared to driving without having consumed drugs.

Table 1: Risk of death and serious injury while driving

Drug	Relative risk	Risk level
Cannabis	1-3	Slightly increased risk
Cocaine Benzodiazepines Opioids	2-10	Medium increased risk
Amphetamines Combination of drugs	5-30	Highly increased risk
Alcohol > 1.2 g/L	20-200	Extremely increased risk

15. Research on the impairing effects of cannabis is mixed, particularly at the margins, with some research suggesting it does not increase crash risk, and other research suggesting it substantially increases crash risk. However, based on systematic reviews of the literature, the current consensus of international experts is that cannabis multiplies crash risk by about 1.5 to 2.5⁸.
16. Over 1500 different drugs are prescribed in New Zealand and over 200 of these come with the warning 'do not drive or operate machinery if affected, may cause drowsiness' and/or 'restrict or avoid alcohol'. Research undertaken for the Waka Kotahi NZ Transport Agency's (Transport Agency) Substance Impaired Driving Project found that 25 percent of all prescriptions issued in New Zealand are for medication that can impair driving.
17. However, nearly 65 percent of drivers are unaware that it is illegal to drive while impaired by medication⁹. For the period from January 2014 to May 2018, approximately 13 percent of

⁷ Schulze, H., Schumacer, M., Urmeew, R., Auerbach, K., Alvarez, J., Bernhoft., I., Zlender, B. (2012). *Driving under the influence of drugs, alcohol and medicines in Europe: Findings from the DRUID project*. European Monitoring Centre for Drugs and Drug Addiction.

⁸ Asbridge M, Hayden JA, Cartwright J. *Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis* (2012) and Li MC, Brady JE, DiMaggio CJ, Lusardi AR, Tzong KY, Li G. *Marijuana use and motor vehicle crashes* (2012).

⁹ NZ Transport Agency (2015). For NZTA's Substance Impaired Driving Project. *Memo: Analysis of summary data from the pharmaceutical collection year to July 2014*.

deceased drivers were found to have prescription drugs in their blood that can have a severe influence on driving¹⁰.

Drivers in New Zealand are using drugs that impair driving

18. In New Zealand, the Institute of Environmental Science and Research (ESR) carries out toxicological analysis of blood samples submitted by the Police, a pathologist or the coroner.
19. ESR’s analysis of the blood samples of drivers killed in crashes between January 2014 and May 2018, where drugs analysis was requested by a pathologist¹¹, found that the drivers had used the following drugs¹²:
 - 29 percent had used alcohol¹³
 - 27 percent had used cannabis
 - 10 percent had used methamphetamine
 - 15 percent had used other drugs¹⁴.
20. Over the same period, ESR’s analysis of the blood samples of drivers who had been stopped by Police and determined to be impaired by drugs, show that 59 percent used cannabis and 41 percent used methamphetamine. Of the drivers caught drink driving in New Zealand who submit a blood sample for laboratory analysis, over a quarter also test positive for recent cannabis use.
21. The Transport Agency’s Crash Analysis System (CAS) records the number of people killed from crashes each year where a driver has consumed impairing drugs or alcohol. The ‘involvement’ of drugs or alcohol in a crash does not mean that the drugs or alcohol caused the crash but it does mean it may have been a contributing factor. Table 2 below illustrates CAS data for road deaths involving drugs or alcohol from 2014 to 2018.

Table 2: Road deaths involving drugs or alcohol

Year	Deaths involving drugs	Deaths involving alcohol	
		<i>Above legal limits or refused test.</i>	<i>Below legal limits</i>
2018	95	80	43
2017	88	74	75
2016	61	67	69
2015	27	66	56
2014	18	48	41

¹⁰ Poulsen, H., *Drug use by New Zealand Drivers* (2018) ESR.

¹¹ In this period, 845 samples from 1000 deceased drivers were submitted for analysis. Ninety percent (743) were subject to a full drugs screen.

¹² Drivers may have used more than one of the identified drugs.

¹³ Reported where drivers have blood alcohol levels greater than 10 milligrams per 100 millilitres of blood. The legal blood alcohol limit for drivers over 20 years of age is 50 mgs per 100 millilitres of blood.

¹⁴ Most common among ‘other drugs’ are medicinal drugs such as codeine and tramadol and sedatives such as zopiclone, clonazepam and diazepam.

22. The data shows that in 2014, 18 people were killed in crashes where a driver had consumed impairing drugs before driving. In 2018, 95 people were killed. This compares to 123 people who were killed in crashes in 2018 where a driver had consumed alcohol¹⁵.
23. This reported increase from 2015 to 2018 may be partly due to a change in Police policy in mid-2015 to increase the number of samples subject to drugs analysis. However, the data nevertheless shows an increase since 2015 of fatalities involving drivers who have consumed drugs before driving.

Drug driver detection and enforcement is not as effective as it could be

24. Our current approach to drug driving enforcement is not effective at deterring drug driving. Only 26 percent of New Zealanders think they will be caught drug driving versus 60 percent for drink driving¹⁶.
25. The current approach is based on two elements – establishing that a driver is impaired and cannot drive safely and that the driver has qualifying drugs¹⁷ present in their blood. Impairment is assessed through the CIT, which is a behavioural test, undertaken by a specially trained police officer. It comprises eye, walk and turn, and one-leg-stand assessments. A driver who fails a CIT is required to undertake an evidential blood test.
26. Serious criminal penalties result from a conviction for drug driving. For a first and second offence, a drugged driver could receive a prison term of up to three months or a fine of up to \$4,500, and a mandatory disqualification from driving of six months or more. Police also have the power to forbid a person to drive for 12 hours, if a driver's performance on a CIT is unsatisfactory. This is to allow the driver sufficient time to recover from impairment.
27. There are a number of limitations with the current CIT process. For example, a police officer must have 'good cause to suspect' a driver has consumed a drug or drugs before driving. This may be determined from external cues, such as erratic or poor driving, or the driver's behaviour once stopped. The 'good cause to suspect' threshold ensures that drivers who are not impaired are not subjected to a CIT. However, this also means that there are likely to be a high number of drug drivers who are not tested because there are no observable signs of impairment at the time of driving.
28. Police are also frequently unable to require drivers to undergo a CIT because the drivers are injured or in a state of shock or emotional distress following a crash.
29. In addition, the number of drug tests undertaken each year is too low to deter drug driving. Police do not have a record of the total number of CITs undertaken but confirm that 473 CIT blood specimens were submitted for analysis in 2017/18. In comparison, around 1.75 million alcohol breath tests are carried out each year. The low number of CITs limits the opportunity to achieve deterrence, meaning that the perceived and actual risk of detection of drug driving is minimal.

¹⁵ These figures vary from the figures presented in the Discussion Document, *Enhanced Drug Impaired Driver Testing*, released for public consultation in May 2019. The figures have been refined and updated to exclude accidents the proposed policy could not deter because they occurred due to medical events, suicide or off-road incidents.

¹⁶ Starkey (note 3).

¹⁷ These are drugs categorised under Schedule 1, 2, and parts of Schedule 3 of the Misuse of Drugs Act 1975, as well as prescription medicines defined in section 2 of the Land Transport Act 1998

Submitters to the public consultation supported the introduction of oral fluid testing

30. On 12 September 2018, Cabinet agreed to publicly consult on potential enhancements to New Zealand's current drug driving regime [CAB-18-MIN-0453 refers]. On 15 February 2019, Cabinet approved the release of the discussion document, *Enhanced Drug Driver Testing*, for public consultation [CAB-19-MIN-0033 refers]. Public consultation took place over six weeks in May and June 2019.
31. The overarching message from submitters was that they wanted the Government to take action to reduce the deaths and serious injuries that result from drug-impaired driving. The majority of submitters supported the introduction of oral fluid testing.
32. A majority also supported a 'zero-tolerance', presence-based approach to roadside drug testing, mainly because they identified that an alternative to the current approach was needed. Submitters were not concerned about a possible detention at the roadside for three to five minutes to administer oral fluid testing, noting that it was a necessary inconvenience in order to save lives.

Proposed oral fluid testing process

We propose to introduce compulsory roadside oral fluid testing to complement the existing CIT scheme

33. We propose that a roadside oral fluid drug testing scheme be introduced in New Zealand. The primary objective of the proposal is to deter New Zealanders from driving after they have consumed impairing drugs. It is not intended to be a mechanism to tackle illicit drug use.
34. In developing the proposal, we have taken into account feedback received from the public consultation and have balanced the following principles and considerations:
 - 34.1. achieving maximum deterrence and detection of drug driving (to achieve the greatest road safety benefit)
 - 34.2. consistency with the Bill of Rights Act 1990 and Te Tiriti o Waitangi
 - 34.3. operational deliverability for Police and other affected agencies
 - 34.4. cost effectiveness
 - 34.5. alignment, to the extent possible, with well-established drink driving measures
 - 34.6. a harm minimisation approach to drug driving.
35. The key aspects of the proposed scheme are summarised in Table 3 below, and discussed in more detail in subsequent sections of this paper. A diagram setting out the proposed testing process is attached as Appendix One.

Table 3: Summary of key features of the proposed enhanced drug driver testing process

Summary of the key features of the proposed enhanced drug driver testing process
<ul style="list-style-type: none"> • A presence-based random oral fluid testing regime, comprised of: <ul style="list-style-type: none"> ○ an infringement offence for two positive (failed) oral fluid tests for the presence of drugs ○ an option to elect an evidential blood test after two failed oral fluid tests • Retention of the compulsory impairment test (CIT), with: <ul style="list-style-type: none"> ○ 'good cause to suspect' as the testing threshold ○ a failed CIT plus a blood test for evidential purposes ○ some restrictions on switching between the CIT and oral fluid testing pathways • Low-level tolerance thresholds to be applied to the detection of drugs in blood, to avoid penalising drivers who have: <ul style="list-style-type: none"> ○ accidental or passive exposure to drugs ○ low residual levels of a drug in their blood due to previous use but have not recently used drugs ○ consumed standard prescription doses of some medicines • Limits to be specified in legislation for a criminal penalty threshold for illicit, recreational and prescription drugs in blood that are equivalent to a blood alcohol level (BAC) of Either 50mg/100ml OR 80mg/100ml (the Committee to consider split recommendations from Ministers) • Graduated sanctions for drug-driving offences: <ul style="list-style-type: none"> ○ infringement penalty for failing two oral fluid tests (no blood analysis) ○ infringement penalty for drug levels in blood <u>below</u> an equivalent BAC of Either 50mg/100ml OR 80mg/100ml ○ criminal penalty for drug levels in blood <u>equal to or above</u> an equivalent BAC of Either 50mg/100ml OR 80mg/100ml ○ higher infringement and criminal penalties in cases where a driver is determined to have consumed alcohol and drugs or a combination of drugs • An independent expert medical science panel to provide advice to Government about: <ul style="list-style-type: none"> ○ the low-level tolerance thresholds to be applied to the detection of drugs in blood ○ legal limits for drugs in blood, equivalent to BAC levels of Either 50mg/100ml OR 80mg/100ml ○ the detection 'cut-off' thresholds to be applied to oral fluid testing devices • A medical defence for drivers who drive in accordance with the prescriptions • A harm minimisation approach to drug driving <ul style="list-style-type: none"> ○ information about drug-related health services to be provided with infringement notices ○ compulsory health referrals for recidivist drug drivers at sentencing

The proposed testing would be administered at the roadside and complement the CIT approach

36. The proposed oral fluid testing scheme would enable an enforcement officer to stop any driver of a motor vehicle and administer an oral fluid test without having good cause to suspect the driver has consumed drugs. This is consistent with the approach to drink driving enforcement in New Zealand, as well as drink and drug driving enforcement regimes in Australia.
37. Police will maintain operational flexibility to deliver oral fluid testing through high visibility checkpoints and/or through mobile vehicle stops and will have the discretion to commence oral fluid testing after completing breath alcohol testing. The nature of any operational delivery will be dependent on various factors, such as targeting to risk, the availability of equipment and the number of trained staff.

38. As oral fluid testing devices can currently only detect a limited number of drugs, it is important that we retain the existing CIT process. This will enable police officers to identify drivers who are impaired from other drugs that cannot be detected by oral fluid testing devices, such as synthetic cannabis. However, as discussed in more detail in paragraphs 49 to 51, we propose that police officers have the ability to switch between the oral fluid testing process and the CIT process in some circumstances.

We propose testing for six drugs under the new oral fluid testing regime

39. We have identified six drugs or drug classes of particular concern regarding drug driving in New Zealand. This is based on analysis of the most commonly used drugs found in drivers' blood samples following fatal accidents and their associated crash risk.
40. Subject to the capacity of the drug testing equipment procured for use, the drugs that we propose are tested for by oral fluid testing are THC (the psycho-active ingredient in cannabis), methamphetamine, benzodiazepines (sedatives), MDMA (ecstasy), opiates (e.g. morphine) and cocaine. An advantage of this mix of illicit drugs and prescription medicines is that it reinforces that the scheme is about addressing road safety risks, not merely dealing with illicit drug use.

Cut-off detection thresholds in oral fluid testing devices

41. Oral fluid testing devices are manufactured with 'cut-off' thresholds for the detection of drugs. The thresholds vary from device to device. The purpose of the thresholds is to reduce the risk of false-positive results by ensuring there is a sufficient amount of a drug present in oral fluid to accurately determine a result. The thresholds also avoids the risk penalising drivers who have:
- 41.1. accidental or passive exposure to drugs
 - 41.2. low residual levels of a drug that are unlikely to impair driving in their blood due to previous but not recent use
 - 41.3. consumed doses of some prescription or over the counter medicines that are unlikely to impair driving.
42. Before procuring oral fluid testing devices and determining the appropriate cut-off thresholds to be incorporated in the devices, we propose that the Minister of Police be required to consult with the Minister of Transport and the Minister of Research, Science and Innovation, and take into account advice from manufacturers and an independent expert panel (further information about the independent expert panel is provided in paragraphs 60 to 62 below).
43. The Minister of Police will approve the oral fluid screening devices to be used in New Zealand by notice in the *New Zealand Gazette* but will not publish details about the 'cut-off' thresholds in the devices.

Drivers who fail two consecutive oral fluid tests will incur an infringement penalty

44. We propose that drivers who consecutively fail two oral fluid tests incur an infringement penalty. We recommend that the infringement penalty for failing two oral fluid tests aligns with the drink driving infringement penalty, currently a \$200 fee, 50 demerits, a 12-hour suspension from driving but no criminal record. This approach is intended to deter drug driving, without imposing criminal penalties on drivers whose level of impairment has not been assessed through the CIT process or by a blood test.

45. Under the proposal, a driver who passes the first oral fluid test (or a second test after failing a first) would usually be free to go after the test is completed. The exception would be where a driver is required by a police officer to undergo a CIT because, during the oral fluid testing process, the officer has formed good cause to suspect the driver has consumed drugs before driving.
46. Unlike adult drink driving infringement offences, we propose that drivers who fail two oral fluid tests be given the right to elect an evidential blood test. This is primarily intended to provide an option for drivers on prescription medications to establish a medical defence. However, it would also give drivers an option to challenge the test result – for example, in the small proportion of cases where there may be false-positive test results¹⁸.
47. We propose that drivers pay the fee for electing a blood test (currently set at \$668.94) if the driver's blood sample confirms the presence of drugs. However, we recommend that payment of the fee is deferred until the result of the test is known. This is because the fee may act as a barrier to drivers seeking access to justice. The fee would be waived if a driver's blood sample did not show the presence of drugs, or if the drugs were legitimately prescribed (see paragraphs 71 to 73 regarding the medical defence).
48. Drivers who elect to undertake an evidential blood test would be subject to both infringement and criminal penalties, depending on the levels of drugs in their blood sample. This risk will be explained to drivers who are considering electing to provide an evidential blood sample so they understand that their penalty could escalate from an infringement to a criminal one, based on the results of the blood test.

Switching between the CIT and oral fluid testing pathways will be restricted in some circumstances

49. Police officers will be able to switch from the oral fluid testing process to the CIT process if:
 - 49.1. a driver has passed the first oral fluid test, but the police officer has good cause to suspect the driver has consumed drugs that the device may not be able to test for
 - 49.2. a driver has failed the first oral fluid test and passed the second oral fluid test, but the officer has good cause to suspect a driver has consumed drugs.
50. Police officers will not be able switch to the oral fluid testing process after they have commenced the CIT process. This is because drivers who have been subjected to the more stringent and lengthy CIT process, and been determined not to be impaired, should not be further detained for the purposes of oral fluid testing.
51. This approach maintains the integrity of the two testing processes and addresses concerns about perceived fairness. It is also simpler for police officers to administer but still allows an opportunity for officers to act if they form good cause to suspect a driver has consumed drugs.

Limits to be specified for analysis of blood samples

52. Under the current CIT regime, drivers who fail CITs are required to provide an evidential blood sample for laboratory analysis. Under the proposed infringement scheme, drivers who have failed two oral fluid tests may elect to provide an evidential blood sample.
53. We propose that the drugs in blood samples from these two groups of drivers are assessed against blood concentration limits so that drivers can be issued with an infringement or criminal penalty in a way that reflects their level of impairment. We propose establishing the

¹⁸ The Ministry's cost-benefit analysis assumes false-positive results at a rate of five percent.

limits at a level that aligns with the drink driving measure of impairment equivalent to a BAC of **Either** 50mg/100ml **OR** 80mg/100ml (to be determined by this Committee).

54. Drivers will be subject to an infringement penalty if laboratory analysis shows that the level of drugs in their blood is lower than the limit specified for a criminal penalty and above a low-level tolerance threshold (refer paragraph 58 below). A criminal penalty will apply where the drug level is equal to or exceeds the limit. This paper provides two options for the Committee's consideration:

Option One – Hon Stuart Nash

54.1. A limit for criminal penalties set at a level equivalent to a BAC of 50mg/100ml.

Option Two – Hon Julie Anne Genter

54.2. A limit for criminal penalties set at a level equivalent to a BAC of 80mg/100ml.

55. Under Option One, the threshold for a criminal penalty would be set at the level of the current drink driving infringement penalty. This would send a strong message that drug driving significantly increases road safety risk and is not tolerated. While it would establish a lower threshold for criminal penalties for drivers impaired by illicit drugs or medicines than for alcohol, this approach would recognise that the initial standard for BAC levels has shifted over time as the evidence base has developed, and that the current BAC standard is not necessarily the most appropriate model for comparison.
56. Under Option Two, the threshold for a criminal penalty would be set at the level of the current drink driving criminal penalty. This would align the penalty schemes for drink driving and drug driving and ensure all impairing substances are treated the same under the law.
57. We propose that the limits that establish offences for drugs are specified in the Land Transport Act 1998 (LTA).

Low level 'tolerance' thresholds to be applied to the detection of drugs in blood by ESR

58. We propose to establish low-level tolerance thresholds to be applied to the detection of drugs in blood by ESR when undertaking laboratory analysis of evidential blood samples. The purpose of the thresholds is to avoid penalising drivers who have:
- 58.1. accidental or passive exposure to drugs
- 58.2. low residual levels of a drug that are unlikely to impair driving in their blood due to previous but not recent use
- 58.3. consumed doses of some prescription or over the counter medicines that are unlikely to impair driving.
59. We propose that the low-level thresholds are set by the Minister of Police after consulting with the Minister of Transport and the Minister of Research, Science and Innovation, taking into account advice from the independent expert panel (discussed below).

An independent expert panel will provide advice on legal limits and tolerance thresholds

60. We propose that an independent expert panel of medical and science professionals is established for a set term to provide initial advice to Government about the limits to be

specified for drugs, the low-level tolerance thresholds to be applied to the detection of drugs by ESR, and the cut-off thresholds to be included in oral fluid testing devices.

61. The panel will be appointed by the Associate Minister of Transport, the Minister of Police and the Minister of Research, Science and Innovation in accordance with the Cabinet Fees Framework for advisory bodies.
62. In the United Kingdom, Canada, the United States and Norway, similar independent panels have been established to assess the available scientific research and recommend drug concentration thresholds in blood for criminal penalties, or low-level detection thresholds that avoid the risk of penalising drivers who are not impaired.

Drivers who exceed limits may incur infringement or criminal penalties

63. We propose the following penalties for drivers who exceed prescribed limits:
 - 63.1. an *infringement offence* for driving or attempting to drive a motor vehicle on a road with a specified drug in blood below an equivalent BAC of **Either** 50mg/100ml **OR** 80mg/100ml - a \$200 infringement fee, 50 demerit points and a 12-hour suspension from driving
 - 63.2. a *criminal offence* for driving or attempting to drive with a specified drug in blood at or above an equivalent BAC level of **Either** 50mg/100ml **OR** 80mg/100ml - a prison term of up to three months or a fine of up to \$4,500, and a mandatory disqualification from driving of six months or more.
64. The Ministry of Justice will be consulted during the development of drafting instructions for the proposed offences.

Ministers will consider stronger penalties for driving after consuming combinations of alcohol and drugs

65. International research shows that driving after consuming combinations of drugs, or drugs and alcohol can increase crash risk by 20 times more than for a driver who has not consumed drugs or alcohol¹⁹.
66. To reflect this increased risk we propose to consider creating higher penalties for drivers that test positive for a combination of impairing drugs and alcohol, including higher infringement penalties and criminal penalties based on the level of alcohol that is present in the driver's blood. These penalties will be determined when legislation is agreed by Cabinet. The Ministry of Justice will be consulted during the development of drafting instructions for the proposed offences.
67. Drivers with prescriptions, who have taken drugs in accordance with their prescriptions and are eligible for a medical defence (see paragraphs 71 to 73 below) will not be subject to penalties for combined drug and alcohol use but will remain liable for any qualifying drink driving offences.

¹⁹ Schulze, H., Schumacher, M., Urmeew, R., Auerbach, K., Alvarez, J., Bernhoft., I., Zlender, B. (2012). *Driving under the influence of drugs, alcohol and medicines in Europe: Findings from the DRUID project*. European Monitoring Centre for Drugs and Drug Addiction.

Ministers will also consider stronger penalties for driving after consuming combinations of drugs

68. We also recommend that there are higher penalties for driving after consuming a combination of drugs than for a single drug, to reflect the increased risk of combined drug use. We propose that the structure of this offence is established in consultation with the Ministry of Justice to be determined when legislation is agreed by Cabinet.
69. To support establishing criminal offences, and ensure that no driver receives a criminal penalty without blood analysis, police officers will be authorised to require a blood sample from drivers who have consumed combinations of drugs and/or alcohol. The existing offence for failing to permit a blood specimen to be taken will be extended to these drivers²⁰.

Repeated offences for drug driving

70. We propose separate offences with additional penalties for third and subsequent convictions for drug impaired driving designed to target repeat offenders in the same way that the LTA currently imposes heavier penalties for repeated impaired driving offences (alcohol or otherwise). Similarly, section 65AD of the LTA and section 129 of the Sentencing Act will apply to drivers convicted of repeat drug driving offences, as is currently the case with repeat drink drivers.

Medical defence

71. Section 64 of the LTA provides a medical defence for drivers who fail a CIT but have consumed drugs in accordance with a valid prescription. The purpose of the medical defence is to avoid discouraging drivers from taking prescription medicines.
72. We propose that a medical defence should only be available to drivers who have provided a blood sample through an evidential blood test. Blood analysis can confirm the presence of any drugs prescribed (or not prescribed), including the specific amount present in a driver's blood. Without a blood sample identifying the prescription drugs and establishing drug levels, it would be very difficult for a driver to prove that they had taken medication in accordance with their prescription.
73. We recognise that there is a risk that some drivers may drive while impaired by legitimately prescribed medication and may seek to rely on a medical defence as justification for this behaviour. This risk can be mitigated if prescriptions are dispensed with correct information about the impairing effects of drugs and carry appropriate warnings not to drive, however, we recognise that this will require greater investment in the education of health practitioners who dispense medicines. We propose that the Ministry of Transport works collaboratively with the Ministry of Health and the Transport Agency to facilitate this and report back to Cabinet if regulatory options are required.

Harm minimisation approach to drug driving

74. The Government has committed to treating drug use as a health issue and to not criminalise drug use (where appropriate). We propose that information about the availability of drug-related health services is incorporated with infringement notices issued to drug drivers, to prompt them to initiate self-referrals and seek help to manage their drug use if needed.
75. We also propose compulsory referrals to drug education or rehabilitation programmes for second and subsequent criminal offences. Compulsory referrals, issued by a court, will require drivers to attend an assessment centre for a drug and alcohol assessment, which may

²⁰ Section 60 of the LTA

lead to a further referral for treatment. Ministry of Transport officials are working with the Ministry of Health to understand and address any capacity constraints that may impact the ability of drivers to complete these programmes, and to evaluate their efficacy.

Te Tiriti o Waitangi

76. New measures to address drug impaired driving could have disproportionate impacts for Māori men and women. Cannabis is the drug that drivers in New Zealand use the most after alcohol. The Ministry of Health's Cannabis Use 2012/13 New Zealand Health Survey²¹ found that Māori were 2.2 times more likely to report using cannabis in the last 12 months than non-Māori. The survey found that Māori were 1.2 times more likely to have driven under the influence of cannabis in the last 12 months than non-Māori.
77. Māori are significantly over-represented at all stages of the criminal justice system and tend to experience disproportionately more of the risk factors and vulnerabilities leading to offending and entry into the system. In 2016, Māori received 42% of all drug convictions and 42% of low-level convictions, despite making up only 15% of the population.
78. These factors have informed the development of the proposed infringement offence scheme, which mitigates the risk of Māori men and women receiving criminal penalties for drug-impaired driving. However, there remains the potential for unpaid fees to escalate drivers into the criminal justice system.
79. We support enhanced use of New Zealand's existing Therapeutic Courts and Alcohol and Other Drug Treatment Courts, to target responses around treatment, monitoring and mentoring to Māori men and women who receive criminal penalties.
80. We note that Police are currently undertaking a programme of work to manage the potential for unconscious bias in police practices.

Implementation of oral fluid testing for drugs

Number and delivery of tests

81. A regime designed to create a deterrence effect requires a large number of tests. The proposed oral fluid testing regime can deliver a large number of tests cost effectively. We propose that the scheme is phased in over a three-year period, reaching 66,000 oral fluid tests per year. We propose that 33,000 oral fluid tests are conducted in the first year, increasing to 50,000 tests in the second year and 66,000 tests in third and subsequent years.
82. The staggered rollout of testing will allow Police to phase in the new testing scheme and make adjustments as necessary. The Police will determine the most efficient and effective method of delivery for targeting drug driving risk, allowing the method to adapt to address new risks as they develop.

Consultation

83. The following departments were consulted during the development of this paper: NZ Police, the Transport Agency, the Ministries of Justice, Health and Social Development, the Department of Corrections, ACC, the Treasury, Te Puni Kōkiri and WorkSafe New Zealand. The Department of the Prime Minister and Cabinet was also informed.

²¹ www.health.govt.nz/publication/cannabis-use-2012-13-new-zealand-health-survey.

Financial Implications

84. The proposed oral fluid testing regime will result in costs for the Crown. The majority of the costs fall to the Police, for administering the regime, including purchasing drug screening devices and taking and analysing evidential blood samples.
85. The additional costs to the Crown were estimated as part of the Ministry's cost-benefit analysis (CBA). The increased costs for Police are \$26.3 million. There are also increased costs for the Department of Corrections (\$3.2 million) for administering sentences, the Ministry of Justice (\$1.1 million) for fees and fines processing and collection) and the Transport Agency (\$1.8 million).
86. Table 4 below outlines the estimates of total additional costs for the first ten years of the oral fluid drug testing regime based on Police testing 66,000 drivers per year. This is roughly the number of tests conducted in Queensland, Australia, which has a similar driving population to New Zealand. The sensitivity analysis reflects the range of costs that might be expected, based on the assumptions built into the CBA.

Table 4: Potential additional costs for introducing oral fluid drug testing (GST exclusive) under the proposed option

Cost Benefit Analysis Results (2020-2029)		Sensitivity Analysis	
Benefits (\$m - present value)	\$415	Benefits (\$m - present value)	\$239 - \$778
<i>Fatalities prevented</i>	65	<i>Fatalities prevented</i>	37 - 123
<i>DSI crashes prevented</i>	431	<i>DSI crashes prevented</i>	248 - 813
Meth crash reduction	\$175.3	Meth crash reduction	\$57 - \$434
Cannabis crash reduction	\$85.2	Cannabis crash reduction	\$38 - \$167
Sedative crash reduction	\$71.6	Sedative crash reduction	\$22 - \$159
Ecstasy crash reduction	\$36.0	Ecstasy crash reduction	\$11 - \$81
Opiate crash reduction	\$30.9	Opiate crash reduction	\$11 - \$66
Cocaine crash reduction	\$15.5	Cocaine crash reduction	\$6 - \$33
Costs (\$m - present value)	\$34	Costs (\$m - present value)	\$22 - \$51
<i>Infringements issued</i>	23,446	<i>Infringements issued</i>	11,261 - 39,796
<i>Criminal prosecutions</i>	965	<i>Criminal prosecutions</i>	371 - 1,862
Police enforcement (including blood tests)	\$26.3	Police enforcement	\$17.5 - \$40.0
Corrections costs	\$3.2	Corrections costs	\$1.2 - \$6.3
Transport Agency systems, licensing, promotion	\$1.8	Transport Agency systems, licensing and promotion	\$1.6 - \$2.0
Innocent driver inconvenience	\$1.2	Innocent driver inconvenience	\$0.7 - \$2.1
Justice costs	\$1.1	Justice costs	\$0.5 - \$1.9
Net present value (NPV)	\$381	Net present value (NPV)	\$206 - \$741
Benefit cost ratio (BCR)	12.36	Benefit cost ratio (BCR)	6.8 - 24.3

87. The final cost of the scheme will depend on the detail of the statutory regime eventually enacted by Parliament and the results of the procurement processes undertaken by the Police to obtain oral fluid testing devices.
88. Drug driving and drink driving enforcement costs are currently met from the National Land Transport Fund (NLTF) under the Road Safety Partnership Programme of the National Land Transport Programme. Subject to confirmation by Cabinet, the next GPS will include funding

for the new roadside drug testing regime as part of the Government's increased safety investment proposed for the delivery of *Road to Zero*. We do not expect to seek additional Budget funding for the Police costs of the scheme during the three-year term of the next GPS if full funding is secured.

89. The proposed costs for the Transport Agency include promotion and education costs, licensing costs and one-off system change costs. These costs will be met from the GPS funding allocated to *Road to Zero*. The Transport Agency will also incur costs for administering the demerit points system and managing licence suspensions and reinstatements. The Transport Agency has stated that there would not necessarily be a cost impact from drivers incurring demerit points from the infringement offence. However, it states that there may be cost impacts if the new offence led to significantly more people being suspended, due to drivers having additional demerit points added to their records. The cost of administering the demerit point system (and suspensions) is funded through the driver licence reinstatement fee drivers pay after being suspended.
90. We propose that the Transport Agency, in conjunction with the Ministry, review the driver licence reinstatement fee for drivers to ensure the fee is sufficient to cover the increased volume of licence suspensions.
91. Additional costs to the Department of Corrections, the Ministry of Health, the Ministry of Justice and the Transport Agency may require funding from Budget 2021.
92. The CBA does not model costs for the Ministry of Health associated with compulsory or opt-in health referrals. Work is ongoing to understand the demand for these services and the model under which they will be delivered. In 2019, the Government boosted DHB funding for mental health and addiction services by \$213 million. Specifically \$44 million has been allocated to improve alcohol and drug residential services and \$14m to improve support for those with mild to moderate needs.

Legislative Implications

93. The LTA will need to be amended to introduce the drug testing proposal agreed by Cabinet. Consequential amendments will also be needed to the Land Transport (Offences and Penalties) Regulations 1999 to specify the infringement fee and demerit points for the new infringement offence. Limits for drug concentrations in blood will be specified in a schedule to the LTA.
94. An Order in Council will be needed to approve the specified drugs for the oral fluid testing process. The Minister of Police will also need to approve the oral fluid screening devices by notice in the *New Zealand Gazette*.
95. We propose that Cabinet authorise the Associate Minister of Transport, in consultation with the Minister of Police, to make decisions in relation to any minor, technical, procedural, transitional and consequential matters that arise during the drafting of legislative amendments for the purpose of giving effect to these recommendations.
96. Subject to Cabinet's agreement to the proposals in this paper, the Land Transport (Drug Driving) Amendment Bill will be included in the 2020 Legislation Programme, with a priority 4 – to be referred to a select committee in the year.

Impact Analysis

97. The Regulatory Impact Analysis requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached. The Regulatory Impact Analysis Team at the Ministry of Transport has reviewed the RIS prepared and considers that the RIS partially meets the quality assurance criteria.
98. The RIA QA panel recognises the limitations of the available evidence base, and for that reason, strongly recommends that before implementation, baseline evidence of drug driving should be established, including through undertaking a random roadside testing survey against which the efficacy of this policy can be monitored in future reviews.

Human Rights

99. Introducing a random oral fluid testing regime is likely to impact several rights affirmed and protected by the New Zealand Bill of Rights Act (BORA) – in particular 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)).
100. Taking a sample of bodily fluid, would constitute a search for the purposes of section 21. Detaining drivers at the roadside to determine whether they have consumed drugs will constitute a detention for the purposes of section 22. Section 25(c) may be engaged depending on the construction of any offences for a breach of drug driving legislation, for example, depending on whom the burden of proof is placed in a criminal prosecution.
101. In May 2018, the Attorney-General found that a Member's Bill seeking to introduce random roadside oral fluid testing of drivers in New Zealand was inconsistent with sections 21, 22 and 25(c) of the Bill of Rights Act²², and the inconsistencies could not be justified under the Act.
102. Parliament can decide to legislate in a manner inconsistent with the Bill of Rights Act, if it considers a matter to be an issue of public concern. For example, when compulsory breath testing for alcohol was introduced, the Government decided that the resulting limitations on driver's rights and freedoms were justified in order to address the harm of drink driving.
103. The Attorney-General's report on the Member's Bill provides some guidance about how to mitigate limitations on the rights affirmed. This guidance has been taken into account in developing this paper, for example, by introducing drug concentration limits that can be compared to alcohol impairment levels.
104. The proposal includes a number of mitigations that reduce the BORA impacts of random oral fluid testing. These include:
 - 104.1. the proposed oral fluid testing process includes the procedural safeguard of two oral fluid tests, which establishes a reasonable basis for establishing liability at an infringement level and reduces the probability of false-positives
 - 104.2. the initial sanction for failing two oral fluid tests is an infringement fee, not a criminal sanction, and drivers have the option of electing to provide an evidential blood sample if they wish to use a medical defence or dispute the results of oral fluid tests

²² www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/section-7-reports

104.3. the availability of a non-criminal penalty for failing two oral fluid tests reduces the incentive to refuse tests, and therefore the incidence of drivers having to mount a defence for refusing to be tested

104.4. the proposal to issue an infringement penalty following two failed oral fluid tests reduces reliance on the more invasive blood test.

Gender Implications

105. The Ministry of Transport has historically conducted an annual 'Public Attitudes to Road Safety' survey. In 2016 (the most recent year the survey was conducted), over twice as many males (2.7 percent) who responded to the survey said they had driven while affected by 'other drugs' with or without alcohol, compared with females (1.2 percent). This suggests that that a greater percentage of males than females would be affected by the proposal.

Disability Perspective

106. There are no disability implications arising directly from this paper.

Publicity

107. We intend to issue a media statement on the proposal if Cabinet agrees to the recommendations in this paper.

108. We also intend to proactively release this paper (and the accompanying RIS and CBA) 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.

109. A communications plan will be developed by the Ministry, in consultation with the Transport Agency and Police, to ensure the public is aware of the changes and the reasons for them.

Recommendations

The Minister of Police and the Associate Minister of Transport recommend that the Committee:

Proposed roadside oral fluid testing process

1. **note** that evidence demonstrates that drivers in New Zealand are using impairing drugs and driving and in 2018, 95 people were killed in crashes where a driver had consumed impairing drugs before driving
2. **note** that the current compulsory impairment test for drug driving is not able to be conducted in sufficient numbers to deter drug driving and surveys show that only 26 percent of New Zealanders think they will be caught drug driving versus 60 percent for drink driving
3. **note** that the Government has committed to an action under the *Road to Zero* road safety strategy to strengthen the deterrence and detection of drug-impaired driving
4. **note** that Cabinet agreed to publicly consult on policy options to enhance New Zealand's current drug-driving regime [CAB-18-MIN-0453 refers] and approved the release of the discussion document, *Enhanced Drug Driver Testing*, for public consultation [CAB-19-MIN-0033 refers]
5. **note** that a majority of submitters to the public consultation on enhanced drug driver testing supported the introduction of random roadside oral fluid testing

6. **agree** to introduce a compulsory random roadside oral fluid testing scheme in New Zealand under which a police officer can stop any driver of a motor vehicle and administer an oral fluid test without cause to suspect a driver has consumed drugs, consistent with the approach to drink driving enforcement
7. **note** that the new oral fluid drug testing process will operate alongside and complement the existing compulsory impairment test process, which needs to be retained because oral fluid testing devices can only detect a limited range of drugs
8. **note** that, based on analysis of the elevated crash risk of drugs and the prevalence of their use by New Zealand drivers, the drugs or drug classes that will be tested for as part of the oral fluid testing process are THC (the psycho-active ingredient in cannabis), methamphetamine, benzodiazepines (sedatives), MDMA (ecstasy), opiates (e.g. morphine) and cocaine

Cut-off detection thresholds in oral fluid testing devices

9. **note** that oral fluid testing devices are manufactured with 'cut-off' thresholds for the detection of drugs to reduce the risk of false-positive results by ensuring there is a sufficient amount of a drug present in oral fluid to accurately determine a result and to avoid penalising drivers for:
 - 9.1. accidental or passive exposure to drugs
 - 9.2. low residual levels of a drug that are unlikely to impair driving in their blood due to previous but not recent use
 - 9.3. consumed doses of some prescription or over the counter medicines that are unlikely to impair driving
10. **agree** that, before procuring oral fluid testing devices, including determining the appropriate cut-off thresholds to be incorporated in the devices, the Minister of Police be required to consult with the Minister of Transport and the Minister of Research, Science and Innovation, and take into account advice from an independent expert panel (refer recommendations 23 to 24 below)
11. **agree** that the Minister of Police will notify the oral fluid screening devices to be used in New Zealand by notice in the New Zealand Gazette but will not publish details about the cut-off thresholds in the devices

Drivers who fail two consecutive oral fluid tests will incur an infringement penalty

12. **agree** to create an infringement offence for producing two positive (failed) oral fluid tests after driving or attempting to drive a motor vehicle on a road
13. **agree** to align the infringement penalty for failing two oral fluid tests with the drink driving infringement penalty, currently a \$200 fee, 50 demerits, a 12-hour suspension from driving but no criminal record
14. **agree** that drivers who fail two oral fluid tests be given the right to elect an evidential blood test but the fee for the test be deferred until the result of the test is known
15. **agree** that the fee for electing a blood test be waived if a driver's blood sample does not show the presence of drugs or if the drugs are legitimately prescribed
16. **note** that drivers who elect to undertake an evidential blood test will be subject to both infringement and criminal penalties, depending on the levels of drugs in their blood sample

Switching between the CIT and oral fluid testing processes will be restricted

17. **agree** that an enforcement officer cannot switch to the oral fluid testing process after they have commenced the compulsory impairment test process
18. **agree** that an enforcement officer can only switch to the compulsory impairment test process after the oral fluid testing process has commenced if:
 - i. a driver has passed the first oral fluid test, but the enforcement officer has good cause to suspect a driver has consumed drugs that the device may not be able to test for
 - ii. a driver has failed the first oral fluid test and passed the second oral fluid test, but the officer has good cause to suspect a driver has consumed drugs
19. **agree** that a police officer can require drivers who refuse to undertake oral fluid tests, or whose oral fluid tests show the presence of a combination of drugs and/or alcohol, to undertake an evidential blood test
20. **agree** that it will be an offence to refuse to permit a blood sample to be taken and the penalty for refusing is aligned with the existing penalty under section 60 of the Land Transport Act 1998

Limits to be specified for blood analysis

21. **agree** to specify a limit for criminal penalties based on drug concentrations in blood that align with drink driving measures of impairment under one of the two following options:

Option One – Hon Stuart Nash

- 21.1. a limit equivalent to a blood-alcohol limit of 50mg/100ml – the level of the current drink driving infringement penalty

Option Two – Hon Julie Anne Genter

- 21.2. a limit equivalent to a blood-alcohol limit of 80mg/100ml - the level of the current drink driving criminal penalty

Low-level 'tolerance' thresholds to be applied to the detection of drugs in blood

22. **agree** to specify low-level tolerance thresholds to be applied to the detection of drugs in blood by the Institute of Environmental Science and Research, to avoid penalising drivers who have:
 - 22.1 accidental or passive exposure to drugs
 - 22.2 low residual levels of a drug that are unlikely to impair driving in their blood due to previous but not recent use
 - 22.3 consumed doses of some prescription or over the counter medicines that are unlikely to impair driving

Establish an independent expert panel

23. **agree** to commission an independent panel of medical science experts to provide advice to Government about the limits to be specified for drugs in legislation, the low-level tolerance thresholds to be applied to the detection of drugs in blood by the Institute of Environmental Science and Research, and the cut-off thresholds to be included in oral fluid testing devices

24. **note** that the independent panel of medical science experts will be appointed by the Associate Minister of Transport, the Minister of Police and the Minister of Research, Science and Innovation in accordance with the Cabinet Fees Framework for advisory bodies

Penalties for exceeding legal limits

25. **agree**, subject to Cabinet's agreement on a specified limit in accordance with recommendation 21 above, to create the following offences and penalties for drivers who fail an evidential blood test:
- i. an infringement offence for driving or attempting to drive a motor vehicle on a road with drugs in blood below an equivalent blood alcohol level of **Either** 50mg/100ml **OR** 80mg/100ml - a \$200 fee, 50 demerits, a 12-hour suspension from driving but no criminal record
 - ii. a criminal offence for driving or attempting to drive a motor vehicle on a road with drugs in blood at or above an equivalent blood alcohol level of **Either** 50mg/100ml **OR** 80mg/100ml - a prison term of up to 3 months or a fine of up to \$4,500, and a mandatory disqualification from driving of 6 months or more

Penalties for driving after consuming combinations of alcohol and/or drugs

26. **note** that research shows that driving after consuming combinations of drugs, or drugs and alcohol can increase crash risk by 20 times or more
27. **note** that we intend to consider developing higher penalties for drivers that test positive for a combination of impairing drugs and alcohol, including higher infringement penalties and criminal penalties, based on the level of alcohol that is present in the driver's blood
28. **note** we intend to consider developing higher penalties for driving after consuming a combination of drugs
29. **note** that, to support establishing any criminal offences arising from recommendations 27 and 28 above, and ensure that no driver receives a criminal penalty without having blood analysis, police officers will be authorised to require a blood sample from the drivers, and the existing offence for refusing to permit a blood specimen to be taken will be extended to these drivers
30. **note** that the Ministry of Justice will be consulted during the development of drafting instructions for the offences proposed in this paper
31. **note** that drivers with prescriptions, who have taken drugs in accordance with their prescriptions and are eligible for a medical defence will not be subject to penalties for combined drug and alcohol use but will remain liable for any qualifying drink driving offences
32. **agree** to create additional penalties for third and subsequent convictions for drug impaired driving under the proposed scheme aligned with current offences and penalties for drink and drug driving

Medical defence

33. **note** that section 64 of the Land Transport Act 1998 provides a medical defence for drivers who fail a CIT test but have consumed drugs in accordance with a valid prescription
34. **agree** that a medical defence should only be available to drivers who have undertaken an evidential blood test, either by election or as required by a police officer

35. **note** that the Ministry of Transport will collaborate with the Ministry of Health to investigate options to ensure prescriptions are dispensed with correct information about the impairing effects of prescribed drugs, to avoid drivers being required to use the medical defence, and will report back to Cabinet if regulatory options are required

Harm minimisation approach to drug-impaired driving

36. **agree** to require Police to issue information about the availability of drug-related health services with infringement notices provided to drug drivers
37. **agree** that courts issue a compulsory health referral to a drug education or rehabilitation programme for second and subsequent criminal offences

Te Tiriti o Waitangi

38. **note** that new measures to address drug impaired driving could have disproportionate impacts for Māori men and women who experience more of the risk factors and vulnerabilities leading to offending and entry into the criminal justice system
39. **note** that these risk factors informed the development of the proposed infringement offence scheme, which mitigates the risk of Māori men and women receiving criminal penalties for drug-impaired driving
40. **note** that Police are currently undertaking a programme of work to manage the potential for unconscious bias in police practices

Financial and operational implications

26. **agree** to implement the new oral fluid drug testing regime delivering 33,000 drug tests in the first year, rising to 50,000 tests in the second year, and 66,000 tests in the third and subsequent years
27. **note** the Ministry of Transport's cost-benefit analysis predicts harm saving from the proposed scheme at \$415 million over ten years, in a range of \$239 million to \$778 million, which equates to 65 lives, in a range of 37 to 123 lives
28. **note** that the costs to Police of implementing the proposed scheme will be met from the National Land Transport Fund under the Road Safety Partnership Programme of the National Land Transport Programme
29. **note** that subject to confirmation by Cabinet, the next Government Policy on land transport (GPS) will include funding for the new roadside drug testing regime as part of the Government's increased safety investment proposed for the delivery of the *Road to Zero* road safety strategy
30. **note** that additional Budget funding from Cabinet for the Police costs of the scheme will not be required during the three-year term of the GPS
31. **note** that the Ministers of Transport and Police will approve any variation to the Road Safety Partnership Programme to accommodate the proposed scheme
- 23 **note** the proposed scheme will have cost implications for the Waka Kotahi NZ Transport Agency, the Ministry of Justice and the Department of Corrections, which may require funding from Budget 2021

32. **direct** the Waka Kotahi NZ Transport Agency, in conjunction with the Ministry of Transport, to review the driver licence reinstatement fee that applies for drivers after being suspended, to ensure the fee is sufficient to cover the increased volume of licence suspensions from the proposed scheme
33. **note** that in 2019, the Government boosted DHB funding for mental health and addiction services by \$213 million with \$44 million allocated to improve alcohol and drug residential services and \$14m to improve support for those with mild to moderate needs
34. **note** that the Ministry of Transport will work with the Ministry of Health to model the financial impacts of the potential increase in demand for health-related services arising from the introduction of enhanced drug driving measures and will report to Cabinet if there are further funding implications

Legislative implications

41. **note** that the Land Transport Act 1998 will be amended to introduce the drug testing proposal agreed to by Cabinet
42. **note** that consequential amendments will also be needed to the Land Transport (Offences and Penalties) Regulations 1999 to specify the infringement fee and demerit points for the new infringement offence
43. **note** that limits for drug concentrations in blood that establish offences will be specified in the Land Transport Act 1998
44. **note** that the drugs to be tested for by the oral fluid testing process will be specified by Order in Council and that the Minister of Police will approve the oral fluid screening devices to be used in New Zealand by Notice in the *New Zealand Gazette*
45. **invite** the Associate Minister of Transport and the Minister of Police to issue drafting instructions to the Parliamentary Counsel Office to give effect to the changes to legislation required to give effect to these decisions
46. **authorise** the Associate Minister of Transport, in consultation with the Minister of Police, to make decisions in relation to any minor, technical, procedural, transitional or consequential matters that arise during the drafting of legislative amendments for the purpose of giving effect to these recommendations
47. **note** that subject to Cabinet's agreement to the proposals in this paper, the Land Transport (Drug Driving) Amendment Bill will be included in the 2020 Legislation Programme, with a priority 4 – to be referred to a select committee in the year

Publicity and proactive release

48. **note** that we intend issue a media statement on the proposal if Cabinet agrees to the recommendations in this paper
49. **note** this paper, along with the Ministry of Transport's Regulatory Impact Analysis and cost-benefit analysis will be proactively released

Authorised for lodgement

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

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

Appendix One: Diagram of proposed oral fluid testing process

Appendix One: Summary of proposed enhanced drug-driver testing process

