



5 April 2023

OC230294

Hon Kiri Allan

Action required by:

Associate Minister of Transport

Tuesday, 11 April 2023

LEGISLATIVE AMENDMENTS TO ENABLE ROADSIDE ORAL FLUID TESTING

Purpose

This paper provides you with a draft Cabinet paper and accompanying Regulatory Impact Statement seeking agreement to introduce a new compulsory roadside oral fluid testing regime to detect and deter drug driving.

Key points

Agency consultation has been completed, with agencies generally supportive of the proposals

- Agency consultation on the draft Cabinet paper and Regulatory Impact Statement has been completed. We received feedback from New Zealand Police (Police), the Ministry of Justice, Waka Kotahi NZ Transport Agency (Waka Kotahi), WorkSafe, and the Crown Law Office. In summary:
 - WorkSafe confirmed that it is comfortable with the proposals.
 - The Ministry of Justice were generally supportive, noting that a New Zealand Bill of Rights Act 1990 (Bill of Rights Act) vet will be completed on a draft bill if the proposals are approved by Cabinet. The Ministry of Justice was supportive of the proposed approach to oral fluid testing (two positive screening tests on the roadside plus confirmatory laboratory test before an infringement is issued) and the proposed infringement penalty levels. Their support is contingent on the laboratory tests being highly accurate. Police has confirmed that this is the case.
 - The Ministry of Justice also noted that cultural protocols would need to be considered for the collection and storage of oral fluid (which contains DNA) and further exploration of how the scheme will mitigate the risk of systemic bias, particularly toward Māori. These will be important considerations as part of the implementation of the scheme.
 - Waka Kotahi indicated support for the approach outlined in the Cabinet paper, but noted that the preferred option hasn't been fully costed. Costs associated with the proposed approach are likely to be sought from the 2024-27 Road Safety Partnership Programme funded through the National Land Transport Fund. Waka Kotahi noted that there will be various pressures and constraints in the 2024-27 fiscal period, which may impact the availability of funding. This is acknowledged in the Cabinet paper.

- Crown Law s 9(2)(h) indicated that consistency of the preferred option with the Bill of Rights Act will be undertaken when a bill to implement the proposed regime is available.

Police has raised possible further amendments to the regime

- Police was largely supportive of the preferred option. However, Police has proposed further changes to the regime that would see more oral fluid samples being sent for confirmatory laboratory testing. Under their proposed approach, if a driver tests positive on the first screening test, but negative on the second screening test, an oral fluid sample would be sent for laboratory testing. The driver would not be stood down for 12 hours. If the confirmatory test was positive, the driver would subsequently be issued an infringement notice. The regime proposed in the Cabinet paper requires two positive oral fluid screening tests before a sample is sent to the laboratory.
- While we can see some potential merit in this approach, as it was only discussed with us at a meeting with Police on 4 April 2023, we have not had the opportunity to work through the possible implications and engage with other agencies (particularly the Ministry of Justice and Crown Law). We can provide further advice to you on this option, but this would result in a delay in getting the papers to Cabinet for approval.
- Police also requested further clarification in legislation as to what drivers must undergo an oral fluid test and the introduction of an offence for refusing to provide an oral fluid sample. In our view, the legislation already adequately provides for these matters, and they will be carried over into the proposed new regime. The Act clearly states that a police officer can require any driver of a motor vehicle on a road, or person who a police officer suspects has committed a driving offence, or any driver of a car involved in an accident to undergo an oral fluid test. These cover all the drivers Police are interested in testing. For drivers who refuse to undergo an oral fluid test, the Act requires them to undergo a blood test. Refusing a blood test is already an offence.

Ministerial consultation is the next step

- Your office advised that we are aiming for the 3 May 2023 meeting of the Cabinet Economic Development Committee (DEV). Subject to your approval, we propose that the attached papers are distributed for Ministerial consultation during the two weeks following Easter, with feedback sought by 21 April 2023. This allows any feedback to be considered on 24 and 26 April (25 April is ANZAC Day holiday) before the papers are lodged with the Cabinet Office:

Milestone	Date
Ministerial consultation	11 – 21 April 2023
Revised papers provided to your office	26 April 2023
Lodge for DEV	27 April 2023
DEV	3 May 2023
Cabinet	8 May 2023

Drafting instructions issued	After date of Cabinet approval
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- In parallel with the Ministerial consultation process, we will work with our Regulatory Impact Analysis panel on the quality assurance process for the Regulatory Impact Statement (RIS). This is likely to result in some slight reframing of the RIS. We will provide a final version of the RIS for submission to Cabinet Office.

Recommendations

We recommend you:

- agree** to undertake Ministerial consultation on the draft Cabinet paper and Regulatory Impact Statement between 11 – 21 April 2023, and Yes / No
- provide** feedback to officials on the draft Cabinet paper and Regulatory Impact Statement in time for the final versions to be lodged for consideration by the Cabinet Economic Development Committee on 3 May 2023; OR
- seek** further advice from officials on the proposed alternative approach to oral fluid testing proposed by Police (noting this would delay Cabinet approval of these papers). Yes / No



Helen White
Manager, Mobility and Safety, Ministry of Transport
 5 / 04 / 2023

Hon Kiri Allan
Associate Minister of Transport
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- Minister's office to complete:**
- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Seen by Minister | <input type="checkbox"/> Not seen by Minister |
| <input type="checkbox"/> Overtaken by events | |

Comment

Contacts

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