



Cabinet Economic Development Committee

Minute of Decision

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Legislative Amendments to Enable Oral Fluid Testing to Deter Drug Driving

Portfolio Associate Transport

On 10 May 2023, the Cabinet Economic Development Committee:

A new random roadside drug testing regime cannot be implemented as intended

- 1 **noted** that new provisions introduced into the Land Transport Act 1998 (the Act) from 11 March 2023 included a new roadside oral fluid testing regime intended to detect and deter drug driving;
- 2 **noted** that a procurement process confirmed that there is no oral fluid testing device currently available that meets the legislative approval requirements;

Remove current regime and introduce a new regime

- 3 **noted** that a new oral fluid testing regime is required to address issues identified through the recent procurement process noted in paragraph 2 above;
- 4 **agreed** to replace the current oral fluid testing regime in the Act with a new regime that uses oral fluid testing devices as screening devices, with evidential laboratory testing of oral fluid samples for specified qualifying drug(s) required before infringement notices are issued;
- 5 **noted** that before approving an oral fluid testing device under the existing regime in the Act, the Minister of Police must:
 - 5.1 consult the Minister of Transport and the Minister of Research, Science and Innovation;
 - 5.2 have regard to the accuracy of the device;
 - 5.3 be satisfied that the device will return a positive result only if the device detects the presence of a qualifying drug at a level that indicates recent use;
- 6 **agreed** that under the new roadside screening regime, the approval criteria for an oral fluid device aligns broadly with the outline in paragraph 5 above, with the following changes:
 - 6.1 the Minister of Police will be required to have regard to the accuracy of the device, but will no longer need to be satisfied that the device will only return a positive result if the device detects the presence of a qualifying drug;

- 6.2 devices can be approved if they detect classes or families of drugs that individual qualifying drugs are members of;
- 6.3 the device will need to have a cut-off threshold that is indicative of recent drug use;
- 7 **noted** that the Minister of Police will be required by the Act to separately approve any oral fluid screening test device and the evidential laboratory testing process through a notice published in the Gazette;
- 8 **noted** that the New Zealand Police will report annually to the Minister of Police on the accuracy of any oral fluid screening test device approved by Gazette notice;

Offences and enforcement action for drug drivers

- 9 **agreed** to create new infringement offences for drivers where the evidential laboratory test detects the presence of a specified qualifying drug/s at or above a threshold that is indicative of recent use;
- 10 **agreed** to create new combined offences (where blood or breath contains alcohol, and an evidential laboratory test establishes the presence one or more specified qualifying drugs at or above a threshold that is indicative of recent use), aligned to those in the Act;
- 11 **agreed** that:
- 11.1 the specified qualifying drugs to be tested in the laboratory will be set out in a notice issued by the Minister of Police that approves the evidential laboratory test;
- 11.2 the specified drugs will be from the list of 25 qualifying drugs in Schedule 5 of the Act;
- 12 **agreed** to align the penalties for the new offences referred to in paragraphs 9 and 10 above with the penalties for comparable offences in the Act;
- 13 **agreed** that, aligned with the current regime, drivers who receive two positive oral fluid tests for specified qualifying drug/s or a family of drugs will be forbidden to drive for 12 hours;
- 14 **agreed** to create an infringement offence for a driver who refuses to undertake an oral fluid test, punishable by:
- 14.1 an infringement fee of \$400;
- 14.2 75 demerit points; and
- 14.3 being prohibited from driving for 12 hours;
- 15 **agreed** to amend the Land Transport Act 1998 to include the necessary enforcement and evidential provisions to implement the new oral fluid screening regime, aligned with existing provisions in the Act where possible;
- 16 **noted** that procedures for dealing with oral fluid specimens will be set out in regulations made under the Land Transport Act 1998;
- 17 **noted** that the new oral fluid screening regime will operate alongside the existing compulsory impairment test process, which needs to be retained as oral fluid testing devices can only detect a limited range of specified qualifying drugs;

Financial costs and implementation

18 **noted** that:

18.1 the costs of implementing the new oral fluid screening regime will be met through the National Land Transport Fund;'

18.2 Police will require an estimated 12-month lead-in time after the legislation is passed before implementing the regime;

Legislative implications

19 **noted** that the Associate Minister of Transport intends to seek approval to include the Land Transport (Drug Driving) Amendment Bill (No 2) on the 2023 Legislation Programme with a category 4 priority (to be referred to select committee before the 2023 general election);

20 **invited** the Associate Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the changes in legislation required to give effect to the above paragraphs;

21 **authorised** the Associate Minister of Transport, in consultation with the Ministers of Police and Justice, 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 the above paragraphs.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Rino Tikkatene
Hon Dr Deborah Russell
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Officials Committee for DEV
Ministry of Transport
Ministry of Justice
New Zealand Police