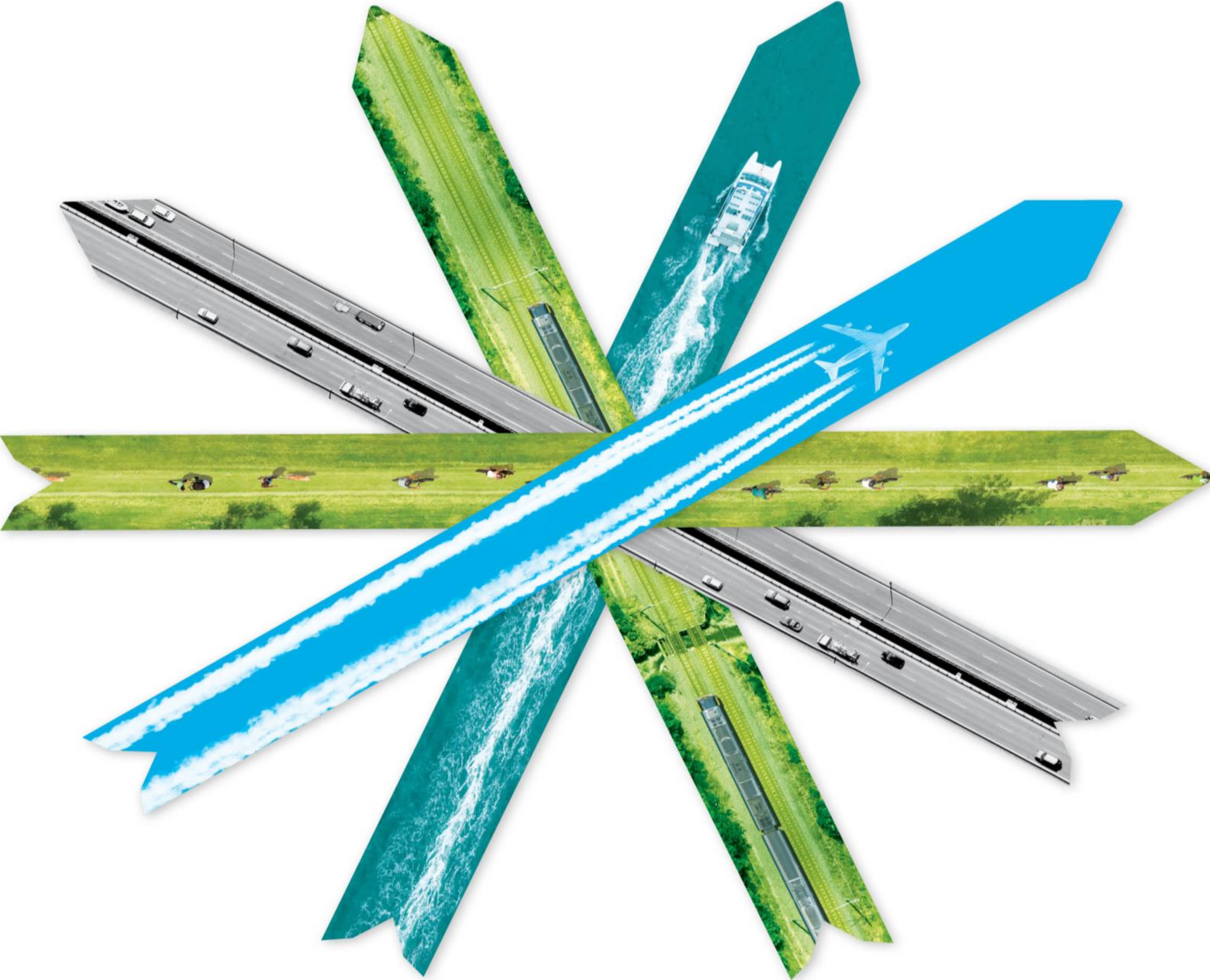
Summary of Submissions Enhanced Drug-impaired Driver Testing

September 2019

Ministry of Transport
TE MANATŪ WAKA

Enabling New Zealanders to flourish



New Zealand Government

INTRODUCTION

The Ministry of Transport, in consultation with the New Zealand Police and the NZ transport Agency are working to develop regulatory options to enhance New Zealand's detection and enforcement regime for drug-impaired driving. Public consultation on possible approaches to addressing drug-impaired driving took place in May and June 2019, with the release of the discussion document *Enhanced Drug-Impaired Driver Testing* (the Discussion Document).

The Discussion Document sought feedback on the following broad questions:

- How can we better detect drug drivers and deter drug driving?
- In what circumstances should drivers be tested for drugs?
- How do we decide which drugs to test for?
- What evidence is required to establish a drug driving offence?
- How should we deal with people caught drug driving?

To facilitate responses on these issues, the Discussion Document asked 17 specific questions. The questions are included as an Appendix to this Summary of Submissions.

The Summary of Submissions provides a record of the prominent themes from submissions. It also summarises the responses of the individual submitters and organisations that responded to the Discussion Document.

Many submitters acknowledged the complex and multifaceted nature of the issues presented in the Discussion Document. Submitters approached this in different ways. Some submitters addressed the questions in the Discussion Document in considerable detail. Others responded at a high level. Submissions ranged in length from one sentence to 35 pages.

BREAKDOWN OF SUBMISSIONS RECEIVED

In total, 88 submissions were received from the public consultation as follows:

- 60 were from individuals
- 4 were from local government
- 6 were from health sector organisations and health professionals
- 2 were from Māori health advocates
- 7 were from drug advocacy/interest groups
- 3 were from motor vehicle industry organisations
- 4 were from unions or organisations representing employees
- 1 was from a researcher/academic
- 1 was from a drug testing equipment manufacturer

HIGH LEVEL SUMMARY OF KEY THEMES

A number of key themes emerged from the consultation and these are summarised below. The overarching message is that New Zealanders want the Government to take urgent action to reduce the deaths and serious injuries that result from drug-impaired driving.

1. There is support for the introduction of oral fluid testing

The large majority of submissions support the introduction of roadside oral fluid testing in New Zealand. Submissions from individuals overwhelmingly favour introducing roadside oral fluid testing. A majority of the organisations that submitted also support oral fluid testing, though for some, support is conditional on oral fluid testing being a component of an impairment-based regime and not a presence-based one (discussed further in section 3 below).

The minority of submitters opposed to oral fluid testing base their opposition around one of two concerns: oral fluid testing devices are not sufficiently accurate; or oral fluid testing would be an element of a random drug testing regime, which they also oppose. This minority opposition was evident across the spectrum of submitters but was more prominent in health sector organisations and groups advocating for cannabis reform.

Very few submitters expressed any concern about the predicted 3 to 5 minutes it would take to complete an oral fluid screening test. Most submitters that addressed this point argued it was a minor inconvenience in order to save lives.

A number of submitters noted the development of new drug testing technologies, such as fingerprint analysis and pupillometry, but generally agreed that they are not ready for current use. They commented that it will be important to ensure that drug driving legislation is flexible enough to accommodate new technologies as they become available.

2. The Compulsory Impairment Test should be used more often

Almost all submitters support the continued use of the current Compulsory Impairment Test (CIT). A common theme in submissions was that CITs need to be conducted more frequently. This was important to submitters because it enables the detection of drug drivers that cannot be identified with oral fluid devices and will increase the overall detection of drug driving. The prevalence of very strong synthetic drugs that are not detectable by current devices was identified as a significant concern.

A number of submitters suggested lowering the threshold of ‘good cause to suspect’ so that Police can conduct more CITs. Two submitters suggested establishing a clear legal definition of ‘good cause to suspect’, to provide general guidance and confidence to Police.

3. Most submitters favour a zero-tolerance, presence-based approach

The majority of submitters favour a zero-tolerance, presence-based approach to drug testing. Under this approach, an offence is committed if a person is determined to have a drug in their system while driving, regardless of whether they are impaired. Submissions from individuals favoured this approach by a ratio above 3 to 1. The majority of other submitters also favour a presence-based approach. The main reason offered in support of the approach is that it will provide maximum general deterrence by eliminating the need to prove impairment with a CIT test, meaning that more drivers can be tested.

The minority of submitters who favour an impairment-based approach have concerns about the accuracy of testing equipment, or fundamentally object to drivers being determined to have committed an offence when they have consumed drugs (potentially many hours before driving) but may not be impaired. A further concern identified is the potential for a presence-based approach to

disproportionately affect disadvantaged groups, such as Māori, who are more frequent users of cannabis.

Supporters of an impairment-based approach span the spectrum of submitters. In particular, an impairment-based approach is favoured by the majority of health sector organisations and health professionals, Māori health advocates, groups advocating for drug reform and unions.

A significant minority of submitters have reservations about whether a presence-based approach should apply to prescription drugs.

A small number of submissions argue that, in actuality, there is no such thing as a zero-tolerance approach. This is because, to reduce the risk of false positives, oral fluid testing devices will be calibrated with 'cut-off' levels below which impairing drugs may be present but will not be 'identified' by the device.

4. Support for random drug testing of drivers is mixed

The majority of submissions argue in favour of random drug testing of drivers on the ground that it is the most effective way to deter drug driving. More than half of the individuals that submitted to the consultation support random testing and a significant number of the remaining half support random testing in combination with other approaches such as targeted testing following a traffic incident or a driving offence. Submitters that support random testing advise that they regard it as a reasonable and proportionate response to the harm of drug driving.

However, other submitters are divided about random testing. The majority of submissions from local government support random testing but the majority of submissions from health organisations oppose it. Opposition from the health sector is generally based around concerns about the accuracy of devices or an assumption that random testing would be used under a presence-based regime, which they also oppose. Other organisations that submitted to the consultation are relatively evenly divided for and against random testing.

A small number of submitters support random oral fluid testing as a screening tool to identify candidates for a subsequent CIT under an impairment-based regime.

5. Legal limits could be explored in the future

Submitters are divided about the implementation of legal limits for drugs. Those in favour reference jurisdictions, such as Canada, Norway and the United Kingdom that have introduced legal or *per se* limits for various illicit and prescription drugs. Some of these submitters consider that limits could be used to approximate impairment, for example by using the 'cut-off' levels on oral fluid testing devices. A small number of submitters proposed that a limit could be established for a safe level of THC, but proposals vary widely from a limit of 2 ng/ml to 6 ng/ml.

A number of submissions note that legal limits could be used to address concerns about drivers being unfairly penalised for taking medicines in accordance with a prescription.

However, most submitters that discuss legal limits have concerns about whether the evidence base for the impairing effects of different drugs, and drugs in combination, is advanced enough to support setting levels that are reasonable and not arbitrary.

6. Prescription drugs and the medical defence

Most submitters that discuss options related to prescription drugs argue that people who are impaired by illicit or prescription drugs should be treated the same, as they both present a road safety risk. However, the majority of those submitters had reservations about penalising drivers, under a presence-based approach, if they had taken medicines at prescribed levels and were not impaired.

Most submitters supported a medical defence, provided a driver had taken medicines in accordance with a prescription that did not include a warning not to drive, or where the driver had not been warned of the impairing effect of the drugs they were taking. The need for doctors and chemists to provide patients with more comprehensive information about the impairing effects of their medication was a common theme in submissions.

7. Establishing that an offence has been committed

Fewer submissions addressed questions about the process for establishing an offence than other issues canvassed in the Discussion Document. This is partly because submitters that do not support oral fluid testing under a presence-based regime did not fully engage in discussion on the related process points. However, of those that did, the large majority of submitters support a requirement for a second oral fluid test following a failed first test, followed by the taking of a blood sample for evidential purposes. This is because a second oral fluid test mitigates the risk of oral fluid devices producing initial false positives.

Blood is preferred for evidentiary purposes. However, a small number of submitters proposed adopting Australian models under which, following a failed oral fluid screening test, a larger sample of oral fluid is collected for evidential analysis.

8. A multifaceted approach to penalties is required

Most submitters support a penalty structure that aligns, to the extent possible, with drink driving penalties. In practice, this means an infringement offence regime for drivers who are determined to have consumed drugs via an oral fluid test but are not found to be impaired by a CIT process, and criminal sanctions for drivers who are determined to be impaired.

Health sector organisations, Māori health advocates and the councils who submitted to the consultation recommend health-based, non-enforcement options for first time or low-level offending. Almost every submission that discusses penalty options acknowledges the need to support drug drivers with access to some form of drug education and rehabilitation, counselling or mental health support.

A wide range of alternative penalty options was suggested for convictions based on impairment, repeat offending, or cases where people have been harmed or property has been damaged. These include loss of licence, impoundment or destruction of vehicles and equity-based fines based on personal income or asset holdings. A number of submitters support a rising scale of penalties for reoffending or higher drug concentrations of drugs in evidentiary samples.

9. Disproportionate impacts for Māori

Submitters that considered the Māori perspective noted that Māori experience disproportionate harm from drug abuse, drug offending and imprisonment. They strongly advocate for a health-based non-punitive approach to drug driving offences. Māori health advocates favour an impairment-based approach to drug driving over a presence-based one.

Submitters with a Māori perspective, also highlight the importance of acknowledging that DNA is considered taonga by Māori, which has impacts for the collection, storage and return of genetic material.

10. Raising public awareness about the risks of drug driving is critical

Submitters universally acknowledge the importance of raising public awareness about the danger of drug-impaired driving. Many submitters identify this as the most crucial element of any package of initiatives, noting that it has the greatest potential to ‘reach’ and educate drivers about risks.

THEMES BY SUBMITTER TYPE

This section of the Summary of Submissions briefly summarises key points made by the individuals and organisations that made submissions to the public consultation.

Individuals

Sixty submissions were received from individuals. The general tone of the submissions is that the Government needs to do more to address drug driving and should proceed with urgency. A number of submissions were made by people who had lost loved ones in crashes where drugs were identified as a factor. These submissions were received with great sympathy.

The submissions from individuals overwhelmingly favour the introduction of roadside oral fluid testing. Almost all of the submissions that address the issue in detail are clear that, despite the inconvenience and invasiveness of oral fluid testing, its introduction is a reasonable and proportionate response to the harm of drug driving. Beyond this, however, there are mixed views about a number of aspects of drug-impaired driving policy.

Individual submitters are divided about the circumstances in which oral fluid testing should take place. The majority of submitters favour 'random' testing along the lines of the current alcohol testing regime. However, a significant minority of submitters support: either targeted testing following a traffic incident or a driving offence; or testing under the current 'good cause to suspect' criterion. A small group of submitters supports all three approaches in tandem.

Submitters also express mixed views about whether prescription drugs should be treated differently to illicit drugs and whether there should be a medical defence related to prescription drugs. Submitters are divided about whether there should be legal limits for illicit and/or prescription drugs. A small number of submitters propose a legal limit for cannabis, citing its current approved use as a medicinal drug and its potential to become a legal recreational drug in the future.

Regarding penalties, individual submitters indicate strong support for an infringement offence where presence of a drug is determined but impairment is not established. A wide range of penalty options is suggested for impairment convictions, repeat offending, or cases where people are harmed or property is damaged. These include loss of licence, impoundment or destruction of vehicles and equity-based fines based on personal income or asset holdings and a rising scale of penalties for reoffending or higher drug concentrations in evidentiary samples

Support for access to drug education and rehabilitation programmes is universal among this group of submitters. A need for improved education about the impairing effects of prescription drugs and better labelling of drug containers is also a common theme in submissions.

Local government

Local Government New Zealand (LGNZ) and three councils submitted to the consultation. All four submitters note the complex nature of the issues associated with the detection and enforcement of drug-impaired driving but argue that it needs an urgent and up-scaled response from government. Three of the four submitters favour random drug testing aligned with the current New Zealand model for breath alcohol testing.

LGNZ

LGNZ acknowledges that there is a complex picture emerging about the way particular drugs or combinations of drugs impair driving and increase crash risk and that complexity means that there are no simple solutions to expanding New Zealand's current drug driver testing regime. With that proviso,

LGNZ supports a roadside drug screening methodology that aligns with testing methods for alcohol impairment.

LGNZ submits that drug use is predominantly a health issue and supports early interventions by government to prevent addiction behaviours that lead to drug abuse. LGNZ supports investment into further research and piloting of drug testing methodology supported by promotional campaigns aimed at removing drug-impaired drivers from New Zealand roads.

Councils

Taranaki District Council (TDC), Waikato Regional Council (WRC) and Northland Regional Council (NRC) also support alignment of drug testing of drivers with breath alcohol testing, noting that Bill of Rights Act obstacles were overcome in relation to the latter despite similar impacts on rights and freedoms. The councils acknowledge that drug use is a health issue that needs to be tackled from many angles and that non-enforcement and differential options for penalties should be considered.

NRC supports legal limits for THC similar to the Canadian model, which has limits for alcohol, THC, and combinations of alcohol and THC. NRC and WRC submit that there may be a case for legal limits for prescription drugs, provided the limits are set at levels that address potential impairment issues. WRC recommends greater use of the CIT by Police.

Health sector organisations and health professionals

Submissions were received from two health sector organisations, three medical professionals and one alcohol and drug counsellor. A consistent theme from these submitters is support for the current CIT process and enhancements to it. In this group, there is some strong opposition to the introduction of random testing, concerns about disproportionate impacts for disadvantaged groups and doubts about the application of general deterrence theory to drug driving.

Nelson Marlborough District Health Board

Nelson Marlborough District Health Board (NMDHB) supports enhanced resourcing and use of the CIT combined with oral fluid testing with 'good cause to suspect', or following a traffic incident or a driving offence. NMBHB notes concerns about the accuracy of drug testing devices and submits that under a random testing regime, false positives would require drivers to undergo a further confirmatory test when they have committed no offence. This would be an unreasonable burden on drivers who are no threat to road safety.

NMDHB's submission highlights that drug use is a health issue with potential for disproportionate impacts for people with vulnerable mental health, people on lower incomes and Māori. The DHB supports a whole-of-system preventative approach to drug-impaired driving using education and public awareness campaigns.

Regarding improving warnings about the impairing impacts of prescription drugs, the French three-tiered colour coding system is recommended. NMDHB supports retaining the medical defence. It recommends extending the reach of the Therapeutic Courts and Alcohol and other Drug Treatment Courts across New Zealand.

Regional Public Health

Regional Public Health (RPH) delivers personal health services across the greater Wellington region. RPH does not support oral fluid testing, submitting that the current regime for drug-impaired driver testing should be maintained until drug testing devices becomes more refined. RPH cites weak results for the currently available devices for sensitivity and specificity, potential failures in cold weather, the

time taken to complete tests and high cost. RPH also refutes the application of the general theory of deterrence to younger drivers, who it argues are inclined to make irrational decisions.

RPH does not support legal limits (which it considers are arbitrary and not backed by scientific consensus) but does support a medical defence for prescription drugs.

RPH submits that, to achieve better deterrence, money and resourcing may be better spent raising awareness that driving using drugs, or prescription medication, presents a serious risk to drivers and others. Regarding penalties, in addition to an infringement/criminal regime, an equity model under which drivers are punished based on personal income or asset holding is suggested for consideration.

Health professionals

Three medical professionals and one drug and alcohol counsellor made individual submissions to the public consultation. All submitted that more needs to be done to address drug driving but there was no consensus on the preferred approach.

One medical professional supported targeted random drug testing with legal limits for prescription drugs and cannabis, if the latter is legalised following the referendum in 2020.

Another medical professional submitted that there is insufficient evidence of a correlation between consumption of cannabis and impairment to justify presence-based random drug testing for THC.

The third medical professional, an emergency medicine specialist, questioned the reported success of oral fluid testing in Australia and submitted that, in New Zealand, increasing the frequency of CITs should be given the highest priority. A theme from this submitter was that there is a group of drug driving offenders who will offend or reoffend regardless of general deterrence measures. Another prominent theme was concern about the increasing prevalence and impairing effects of prescription drugs and synthetic drugs and the inability of oral fluid devices to detect these.

A submission from a drug and alcohol counsellor also supported extending the use of the CIT, including by lowering the threshold of 'good cause to suspect'. This submitter argued that a presence-based approach was morally corrupt and punitive and would cause greater harm by introducing drug users to the criminal justice system. The submitter strongly supported enhanced education programmes and a health-based approach to offending.

Māori health advocates

Two submissions from groups advocating for Māori health note the specific challenges facing Māori who experience disproportionate harm through drug abuse and imprisonment rates. They highlight unconscious bias as a concern. Both submitters strongly support greater attention being given to increasing drivers' awareness of the risks of drug-impaired driving, through public health promotion and media advocacy.

Hāpai Te Hauora Māori Public Health

Hāpai Te Hauora (Hāpai) is a national and regional public health entity. It supports Māori communities and whānau to play a role in decision-making on matters affecting their health and wellbeing.

Hāpai submits that the focus on testing for drug driving should be on impairment through a CIT process rather than testing for the presence of drugs. Hāpai acknowledges the statistical success of the CIT process but notes concerns about unconscious bias towards Māori on the targeting of testing. To support Police to expand the reach of the CIT, a definition of 'good cause to suspect' is recommended for inclusion in the legal framework for drug driver testing.

Hāpai acknowledges the disproportionate rate of Māori imprisonment and re-offending in New Zealand and that Māori experience disproportionate harm through drug abuse. It advocates for therapeutic, social or health-focused interventions and that greater attention be given to increasing drivers' awareness of the risks of drug driving through public health promotion, media advocacy, publicity, and social marketing.

Hāpai questions the application of the traditional model of general deterrence to drug driving, arguing that it doesn't account for wider contextual factors that influence individuals' decision making such as social context, and attitudinal and behavioural influences. Hāpai also questions whether, given the time taken to complete oral fluid tests, enough testing could be undertaken to produce a general deterrence effect.

Hāpai also highlights the importance of acknowledging that genetic material is considered biological whakapapa in Te Ao Māori - DNA is a taonga and therefore should be protected under the rights guaranteed in article 2 of the Māori text of the Treaty of Waitangi. This has impacts for the collection, storage and return of genetic material.

Te Rūnanga o Ngāti Whātua: Māori Public Health Unit

Te Rūnanga o Ngāti Whātua is the authorised representative body for issues affecting Ngāti Whātua, an iwi with tribal boundaries reaching from South Auckland to Whangarei and Waipoua. Ngāti Whātua supports drug use being reframed as a health issue, taking into account broader social determinants that affect Māori, such as income, housing, employment and education.

Noting potential disproportionate impacts for Māori, the Runanga advocates for education and advertising to lead a culture shift away from drug driving, coupled with therapeutic, social and health-based interventions for offending.

Ngāti Whātua supports the continued use of the CIT, while expressing concern about its subjective nature and the risk of unconscious bias. It conditionally supports the introduction of oral fluid testing, but only once devices are able to achieve greater accuracy and only if they are used in circumstances when there is 'good cause to suspect'.

Drug advocacy/interest groups

Seven non-government advocacy or interest groups submitted to the consultation. The majority of submitters in this group support continued or enhanced use of the CIT process. Support for the introduction of oral fluid testing is mixed based on whether the submitter favours an impairment- versus presence-based approach to drug driving.

NZ Drug Foundation

The NZ Drug Foundation is a charitable trust that promotes healthy approaches to alcohol and other drugs for all New Zealanders.

In its submission, the Foundation cites New Zealand's National Drug Policy, which requires a proportionate response to minimise drug-related harm. The Foundation argues that a driver who is not impaired, even if a substance is detected in their body, does not represent a risk to road safety and should not be punished for driving.

The Foundation notes that science has not found reliable threshold levels for the presence of substances in the body that can give a reasonable assurance of impairment. Conversely, the opposite case is also a concern - drivers who are impaired may not be caught by the current testing methods.

The Foundation supports addressing drug-impaired driving by expanding the current CIT process. It does not consider that the oral fluid testing devices currently available are accurate enough for use.

The Foundation proposes that the Government addresses all kinds of driving impairment - from alcohol or other substances, or from other causes such as fatigue or hunger - in a single strategy. The strategy should facilitate enhanced use of the CIT, include a focus on investigating, or designing, new technologies to test for impairment, promote education targeted at drivers, medical practitioners and pharmacists, and provide improved transport pathways for people on medication or with substance use issues.

The Foundation argues that, even if oral fluid testing devices were a reliable option, the time constraints associated with their use (3 to 5 minutes per test) suggest screening for alcohol should be a higher priority, especially as the risk and share of injuries is higher for alcohol.

Candor Network

The Candor Network is a not-for-profit volunteer organisation focused on road safety and the rights of victims. Candor submits that regular high-profile drug testing in New Zealand is urgent, particularly in light of the potential legalisation of cannabis.

Candor supports a multifaceted approach to drug driver testing that includes the current CIT process (subject to additional training for Police) and a combination of random, 'on suspicion' and post-crash oral fluid testing, delivered in a targeted way to achieve maximum detection and deterrence of high-risk offenders. The submission also proposes a lowering of the 'good cause to suspect' threshold, which could be achieved by legislating a definition of 'drug-impaired driving'.

Candor argues that the ability to set cut-off levels for oral fluid testing devices means that devices can be calibrated to detect drugs at levels where impairment can be inferred. The organisation favours a risk-based threshold for THC of 2 ng/ml (in the absence of alcohol) but zero-tolerance for other drugs. The submission supports continuation of the medical defence for prescription drugs, except where misuse is demonstrated.

In terms of penalties, Candor supports dual infringement and criminal penalties aligned with those for drink driving. It also recommends consideration of flexible sentencing options, including equity- based sanctions where fines are linked to salaries and escalate according to drug concentration levels.

NORML

NORML is a non-profit incorporated society promoting the legalisation of the responsible use of cannabis. NORML supports an impairment-based drug testing regime based on enhanced use of the CIT, supported by more training for Police officers and 'dash cams' in police vehicles to provide evidence in court.

NORML also supports the development of non-invasive technology-based solutions to measure impairment, such as phone apps, that can be used by Police and drivers to self-test. NORML submits that oral fluid testing devices are expensive, unreliable, do not detect drugs highly indicated in impairment such as synthetic cannabinoids or opiates and are impractical for use at checkpoints.

NORML notes that cannabis can be consumed legally in New Zealand for medicinal purposes and there is the potential for legalisation of personal use following the referendum in 2020. NORML recommends the legal limit of 6ng/ml of THC that has been adopted in Colorado in the United States.

ACADS

ACADS is community-based organisation operating in Ashburton established to reduce alcohol and drug-related harm. ACADS experience in Ashburton is that drink driving is its primary concern, as there are high rates of recidivism. ACADS supports greater use of the CIT for detecting impaired drivers, noting that it provides a 'real' indicator of impairment for a cohort of drivers who are convinced they can adapt to drive safely when drunk or drugged. ACADS submits that drivers who test positive for

impairment from alcohol or drugs should be referred to a Driving While Impaired (DWI) programme before sentencing, so that judges can take into account their participation and progress.

#make it legal

The Make it Legal Aotearoa New Zealand Trust (MiL) supports drug law reform research and education. MiL submits that the current method of impairment testing is outdated, subjective, and inadequate. It recommends collaborating with other jurisdictions to develop low-cost, device-based, reaction testing methods for impairment, such as a phone app.

MiL does not support roadside drug screening for the presence of drugs but would support random testing if it was based on a technology approach to detect impairment. MIL does not support a medical defence for drivers that may be impaired.

Brake

Brake is a national road safety charity that works to prevent road deaths and injuries and support people bereaved and injured in crashes across New Zealand. Brake's submission notes the international research and evidence of the impairing effects of illicit and prescription drugs. It also notes the limitations of the CIT and the low deterrence effect that can be achieved.

Brake supports the continued use of the CIT but recommends introducing roadside oral fluid testing with presence-based offences that remove the need to determine impairment. It also supports low legal limits for illicit drugs and limits for prescription medication. Brake recommends a scaled approach to penalties for first second and third offences coupled with referrals to health services to address underlying issues.

AKILLA

AKILLA Drowsy Driving Educational Campaign aims to educate drivers about drowsy driving. It strongly supports the introduction of 'international best practice' oral fluid testing. In particular, it notes the increased risks of driving after consuming alcohol and drugs. AKILLA recommends a zero-tolerance presence-based approach to drug testing that recognises the contribution of drugs and alcohol to driver fatigue.

AKILLA recommends adopting the drug driver testing model of New South Wales, Australia of mobile drug testing (MBT) alongside random breath testing (RBT) for alcohol. MBT is a presence-based screening system under which an initial positive oral fluid screening test is followed by the taking of an evidentiary oral fluid sample.

Motor vehicle industry organisations

Motor vehicle industry organisations have mixed views about the role of random oral fluid testing. They collectively acknowledge that effectively addressing drug driving will require a package of government initiatives. Data collection, in order to build an evidence base about the prevalence of drug driving is identified as a a priority.

Automobile Association

The Automobile Association (AA) is a leading advocate for NZ motorists with over 1.7 million members. The AA submits that the Government needs to send a much stronger message to drivers that if they drive impaired by drugs they risk being caught.

AA supports the introduction of oral fluid testing (using the devices deployed in Australia) under an initial targeted approach aimed at drivers that have been stopped for a traffic offence or at checkpoint, or where the driver has been involved in a crash.

AA prefers a model under which impaired driving is targeted so that, where possible, a failed oral fluid test is followed by a CIT. Where this is not possible, AA recommends penalties are restricted to infringement notices and fines. AA supports a sliding scale of penalties that become more severe for repeat offenders.

AA submits that to effectively address drug driving a package of initiatives is needed. In addition to new ways of testing for drug impaired driving, the package needs to include public awareness campaigns, improvements in the medical information provided with prescriptions, access to rehabilitation for drug driving offenders, and more consistent and comprehensive data collection about the prevalence of drug use and the incidence of drug driving. A significant financial investment by Government is needed to support this package.

Road Transport Forum New Zealand

The Road Transport Forum (RTF) is made up of several regional trucking associations for which the Forum provides national representation. RTF supports a model of roadside drug testing that incorporates a more advanced CIT process combined with a new generation oral fluid test. It provisionally supports a presence-based zero-tolerance approach, subject to analysis of how this would be applied in practice.

RTF does not support legal limits for drugs until there is established reliable evidence on which to base thresholds. RTF supports a penalty regime that aligns with the current model for drink drive offending.

Motorcycle Safety Advisory Council

The Motorcycle Safety Advisory Council (MSAC) was established by the Minister for ACC in 2011 to recommend how the Motorcycle Safety Levy should be spent, to improve motorcycle safety on New Zealand roads.

MSAC supports roadside drug testing for impairment based on ‘good cause to suspect’ but is open to a zero-tolerance approach for drugs and alcohol in the future.

MSAC notes that current drug driving education and publicity campaigns focus on car users. It recommends investment in campaigns targeting motorcycle users, who are the most at-risk motorists. The submission also notes that motorcyclists are tested for alcohol and drugs less than other motor vehicle users, which reduces the deterrence effect for this group. MSAC advises that there is a need for research into the prevalence of drug use amongst motorcyclists as there is currently a very limited evidence base.

Unions and organisations advocating for employees

Employee advocacy groups have diverging views about whether drug testing should be presence- or impairment-based. They agree that education must be a key element of any package of reforms and that a flexible penalty structure is needed. There is qualified support for legal limits for some drugs.

Council of Trade unions

The Council of Trade Unions (CTU) notes that the objective of their submission is to ensure consistency between the Government’s approach to road safety and workplace health and safety. CTU

acknowledges that calculated roadside drug testing could be useful for deterrence of drug driving but submits in favour of an impairment-based approach, retaining the good cause to suspect threshold.

CTU endorses education and rehabilitation over criminalisation of drug drivers, noting that Police, iwi, unions, the health fraternity and community groups need to work together to support these approaches.

CTU expresses concerns about the accuracy of oral fluid drug testing devices and the lack of education about the impairing effects of prescriptions drugs. CTU offers qualified support for a legal limit for cannabis, particularly if legalisation is the result of the referendum in 2020.

Police Association

The Association supports a zero-tolerance random roadside oral fluid drug testing similar to that used in Australian jurisdictions, noting that, among other things, this will alleviate the Police time and cost that is tied up in court cases with argument about whether a police officer had good cause to suspect.

To address the presence versus impairment issue, the Association suggests a threshold approach for drugs, similar to the approach taken for alcohol. Under this approach, testing devices would be calibrated to a 'legal zero' that is not an 'absolute zero', for example, a reading of 'x' nanograms of THC on an oral fluid testing device could be calibrated to read as zero. The Association argues that limits would be more simple from an enforcement perspective.

The Association notes evidence that random screening is the most effective for achieving an increased general deterrence effect but acknowledges the high cost of roadside drug screening devices, laboratory testing costs and increased costs for Police for time and training.

The Association supports legal limits for prescription drugs. It favours an increasing scale of penalties under which drivers with drugs detected at low levels are subject to an infringement offence. The Association noted that it is mindful of, and supports a health-based focus to drug use and addiction, but stresses that drug driving should continue to be considered a crime due to the risk of injuring or killing others.

Hospitality NZ

Hospitality NZ (HNZ) submits on behalf of 3,000 hospitality businesses in support of high visibility 'anywhere, any time' random roadside oral fluid testing, similar to Australian models. HNZ argues that drug testing should be mandatory when breath alcohol testing is undertaken.

HNZ notes that the CIT has deficiencies, due to the subjective judgements that must be made by Police, but argues in favour of increased use of the CIT to ensure drivers who have used drugs that are not detected by oral fluid devices are still identified and sanctioned.

HNZ supports a zero-tolerance approach to prescription drugs but would support legal limits if there were advances in research on the impairing effects of relevant drugs. It does not support a medical defence for prescription drugs.

New Zealand Nurses Organisation

The New Zealand Nurses Organisation (NZNO) is a nursing association and union that represents nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters.

NZNO acknowledges the complexity of the issues raised in the Discussion Document. It notes concerns about the limitations of drug testing technology but acknowledges that effective deterrence requires visibility, which favours oral fluid testing. NZNO supports roadside drug testing with 'good cause to suspect' and expanded use of the CIT.

NZNO's submission stresses the importance of good policing - a Police force focussed on mitigating the disproportionate impact of drug testing for Māori due to unconscious bias or institutional racism. NZNO advocates a health approach to drug driving offences through referral to drug education programmes, mental health services or counselling. The organisation also notes the important role of health practitioners (especially nurses, doctors, and pharmacists) in educating patients and raising awareness about prescription medicines that impair driving.

Researchers/academics

One academic from Victoria University of Wellington submitted to the public consultation. The submitter does not support random or presence-based testing, on the basis that presence does not indicate impairment and random testing may target vulnerable and marginalised populations. The submitter argues that drivers should only be tested for drugs if they are suspected of being impaired.

The submission notes the potential harm of impairment from prescription drugs and considers the possibility of legal limits but determines that research and technology are not yet sufficiently advanced for limits to be fairly imposed.

The submitter supports a medical defence for drivers who have consumed prescription drugs in limited circumstances, for example, where the driver is impaired but had not been warned by a doctor, or labels on their medication, about the impairing effects of the drugs they are taking.

Drug testing device manufacturers

Sober Check is a New Zealand wholesaler of certified drug and alcohol test kits. Sober Check submits in support of roadside drug testing by fingerprint analysis, which is used in drug rehabilitation clinics and drug courts in the United States, coroners in the United Kingdom and in some European states at border crossings.

NEXT STEPS

The Summary of Submissions is being released to enable interested persons to follow the Government's progress as it considers legislative options for addressing drug-impaired driving with full knowledge of the themes from the engagement process.

We are grateful to the individuals and organisations that provided a submission to the public consultation, especially those who have lost loved ones in crashes where drugs have been a factor. We acknowledge the input of everyone who contributed to this process.

The Government will take into account this Summary of Submissions and policy advice from officials as it considers legislative options for enhancements to New Zealand's current drug-impaired driving regime.

APPENDIX ONE: QUESTIONS IN THE DISCUSSION DOCUMENT

QUESTION 1: Do you think that roadside drug screening is a good option for deterring drug driving and detecting drug drivers? Are there other options not mentioned in this Discussion Document?

QUESTION 2: Do you support oral fluid screening for roadside drug testing of drivers? Are there other options not mentioned in this Discussion Document that could be considered?

QUESTION 3: Is it reasonable to delay drivers by 3 to 5 minutes to administer a roadside drug screening test, in order to detect drug drivers and remove them from the road?

QUESTION 4: Is a presence-based, zero-tolerance approach to drug driving, where presence of a drug is sufficient for an offence, appropriate for New Zealand?

QUESTION 5: Should there be legal limits for some drugs?

QUESTION 6: If roadside drug screening was introduced, which of the following three approaches do you prefer?

- Testing under the current 'good cause to suspect' criterion
- Targeted testing following an incident or a driving offence
- Random roadside drug screening, along the lines of the current breath alcohol testing model.
- Other

QUESTION 7: If random drug screening was introduced, do you think it is a reasonable and proportionate response to the harm of drug driving? Are there circumstances in which it would be more or less reasonable?

QUESTION 8: What criteria should be used to determine if a drug is included, or excluded, from drug screening?

QUESTION 9: What regulatory process should be used to specify the drugs that are identified for screening?

QUESTION 10: Should illicit and prescription drugs be treated differently?

QUESTION 11: Should there be a medical defence for drivers who have taken prescription drugs in accordance with a prescription from a medical professional?

QUESTION 12: If oral fluid testing was introduced in New Zealand, do you think there should be a requirement for a second drug screening test following a failed first test? Do you prefer another option for screening drivers?

QUESTION 13: Do you think that drug driving offences should be confirmed with an evidentiary blood test? If not, what evidence should be required to establish an offence of drug driving?

QUESTION 14: Do you think an infringement offence (an instant fine and demerit points) or a criminal penalty (mandatory licence qualification, fines and possible imprisonment) is appropriate for the offence of drug driving?

QUESTION 15: Is there any other penalty or action in response to the offence of drug driving that you think should be considered?

QUESTION 16: Do you think it is reasonable to penalise drivers who have used drugs, but may not be impaired?

QUESTION 17: Do you have anything else you would like to say about drug-driving in New Zealand?