Enhanced Drug Impaired Driver Testing

Submission to the Ministry of Transport.

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Contact

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 52,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse*.

EXECUTIVE SUMMARY

The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to make a submission to the Ministry of Transport on the discussion document 'Enhanced Drug Impaired Driver Testing' and acknowledges the complexity of the issues raised.

NZNO has consulted its members and staff in the preparation of this submission. As the largest professional health workforce voice, NZNO aims to represent the main issues and concerns of nurses.

1. NZNO recommends that further consideration is given to:
    a. The limitations of existing point-of-use drug testing[1]. At present, there are no legal limits for drugs, no limits based on type of drug, and no roadside test sufficiently accurate to determine type and level of a drug.
    b. The importance of good policing:
        i) A police force skilled in compulsory impairment assessment of drivers

ii) A police force focussed on mitigating the disproportionate impact of random stopping and drug testing for Māori (especially rangatahi) due to well documented unconscious bias/institutional racism in the NZ Police force[2,3,4,5]

c. A health approach to drug driving offences through referral to drug education programmes, mental health services or counselling.

d. Health practitioners (especially nurses, doctors, and pharmacists) who are responsible for the education of patients about prescription medicines that impair driving, and their role in raising public awareness.

DISCUSSION

The limitations of existing point-of-use drug testing

2. At present, drivers may be stopped by Police if there is 'good cause' to believe a driver is impaired. A breath test for alcohol may follow and/or a compulsory impairment test (CIT). If indicated, an evidentiary blood sample is obtained for toxicological analysis (i.e. to measure alcohol, illicit and prescription drugs if present). Prosecution may follow if the blood test detects drugs.
3. The problem with existing point-of-use drug tests is that, like toxicological analysis, they measure the presence of substances, and do not measure impairment. Positive findings from at point-of-use test must still be followed up by laboratory testing.[1]
4. Unless a zero tolerance approach is implemented (notwithstanding the problems with false positives and false negatives), the above 'good cause' process has to continue.
5. Note that *reliable and rapid* testing mechanisms for roadside screening (e.g. saliva or breath tests) for illicit and prescription drugs are still under development.
6. We are concerned that the right to arbitrarily detain a person for 3-5 minutes for testing without 'good cause to suspect' driver

impairment unjustifiably limits rights affirmed by the Bill of Rights Act.

7. Notwithstanding the fact that roadside tests are not yet sufficiently accurate to determine type and level of a drug, we do agree that effective deterrence requires visibility. Oral fluid testing could piggy-back on existing random compulsory breath testing *provided* officers have 'good cause to suspect' that the driver is affected by drugs, *and* a driver's breathalyser test is below the legal limit for alcohol. An evidentiary blood test would still be required.

Disproportionate impact on Māori

8. We are concerned about the disproportionate impact of any new measures on Māori. Young Māori are more frequently stopped by Police while driving for no obvious reason.[2-5] The Human Rights Commission[5] describe "both formal and informal profiling by Police, thereby increasing Māori arrest rates and entry into the justice system as offenders" (p. 36).
9. We are concerned that increasing Police powers will lead to more liberal application of the 'good cause to suspect' criteria to Māori drivers than to drivers of other ethnicities, and unnecessarily detain Māori drivers for testing.
10. Police need to develop strategies to mitigate unconscious bias/institutional racism in the NZ Police force and steer away from opportunities to target Māori drivers through random drug testing.
11. We consider non-criminal penalty options as highly desirable for low-level drug-impaired driving offences and an important means to keep young Māori out of prison.
12. NZNO supports the overall objective of the National Drug Policy 2015 - 2020 which is to address the *health* needs of individuals who harm themselves and others through illicit drug use and support all opportunities for referral to drug education programmes, mental health services or counselling.

Prescription medicines

13. NZNO agrees that despite clear warning instructions on prescriptions, patients who are prescribed drugs that cause drowsiness are often unaware that they may be unsafe to drive or that it is an offence to drive while impaired by medication.
14. Nurses, along with doctors and pharmacists, have an important role in advising patients about their medications, raising awareness about the consequences of driving while impaired, and reiterating warnings about interactions with alcohol.
15. Patients too, have the right to be fully informed about the risks and side effects of treatment and to receive information in a way they can understand.[6]

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?

Until such time as *reliable and rapid* roadside tests have been developed, roadside drug screening is not any more useful than the current process of screening for alcohol. Roadside drug screening is a time-consuming and expensive process and unreasonably detains drivers if it is done without good cause. Furthermore, it is unreasonable to expect a driver to submit to oral-fluid testing without good cause.

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?

Oral fluid screening indicates only the presence of certain drugs, not levels, or impairment. Until scientifically proven evidence that associates drug levels in blood with impairment (as there is with alcohol), a zero limit for all drugs will be necessary.

A law change would be needed to detain a driver and compel them to submit an oral fluid sample for testing without good cause to suspect they are impaired.

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?

It is not reasonable to detain a person for any length of time for drug testing without good cause to suspect the driver is impaired.

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?

Without empirical evidence it cannot be assumed that a driver who tests positive is impaired. For example, if a person attends a relative using medicinal cannabis in a perfectly legal manner and is later tested, will they show the presence of cannabis and will they therefore be impaired?

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

Does a “legal limit” mean that such drugs will therefore be “legalised” as their use is obviously approved to a certain degree. However, without strict quality control of drugs in this country, the dosage and concentrations will vary wildly. There is no ‘measure’ like there is for a standard drink to allow an estimate of the possibility of impairment.

With the exception for those under 20 years of age, there is no ‘zero tolerance’ for alcohol which causes more harm than most drugs. If there are to be limits for illicit drugs, there must be limits for prescribed drugs. Drivers on prescription drugs that cause impairment whilst driving should be subject to suspension of their drivers licence for the duration of their prescription.

QUESTION 6: If roadside drug screening was introduced, which of the three approaches discussed above 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.

Are there other approaches that should be considered?

Except following a road traffic accident, there should be no drug testing of drivers without good cause. Even after a road accident, there should be at least 'good cause' to require a drug test as there is insufficient legislation surrounding most drugs and no evidence of what level might cause impairment. Prescribed drugs and their effects need to be considered as well as illicit drugs.

As mentioned, we are seriously concerned that 'good cause' has already led to inappropriate targeting of rangatahi and led to a disproportionate entry of Māori into the justice system.

At present, there are no legal limits for drugs, no limits based on type of drug, and no roadside test sufficiently accurate to determine type and level of a drug. Further considerations for health practitioners concern the responsibility for provision of information to patients prescribed a medication that can impair driving. A patient could complain to the Health and Disability Commissioner following an accident as a prescription impaired driver if they believed they were ill-informed about their medication.

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?

We reiterate that roadside tests are not yet sufficiently accurate to determine type and level of a drug. However, we do agree that effective deterrence requires visibility. If there is good cause to suspect a driver is impaired following alcohol testing, we cautiously support drug roadside testing.

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

Roadside drug screening should only occur when accurate 'beyond reasonable doubt' tests are available following extensive trialling.

Prescription drugs that cause impairment are as important as illicit drugs. When a patient is prescribed a drug that causes impairment, the driver's licence should be suspended for the duration of the prescription.

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

Medsafe regulate medicines for sale in New Zealand and should be consulted in this instance.

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

Prescription drugs should be treated the same as illicit drugs.

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

Drivers prescribed drugs that cause impairment are responsible for their actions. Consideration may be given at sentencing if they claim they were not aware their medication could impair their ability to drive safely.

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?

If a driver fails an oral fluid test *and* is assessed as impaired, an evidential blood test is the next appropriate step.

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?

See answer to question 12.

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?

This proposal is not supported because these types of fines/demerits can only be issued at the roadside and roadside testing is currently inaccurate and time consuming.

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

Diversion to a health intervention programme.

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

There is no justification for penalising drivers who are not exhibiting signs of impairment.

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

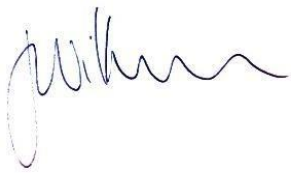
We do not support the use of most illicit drugs. However, some, such as cannabis, have been shown to have medical benefits. If these are legalised in future, then the laws and testing parameters will have to change in response. However, many drugs, both prescription and otherwise can cause impairment, as can alcohol. We allow great latitude in the punishment of drivers who abuse alcohol. However drugs have a different stigma attached to them. It does not matter whether a drug is illicit or prescription, if it causes impairment, then driving is equally dangerous. Until we have legislated for the use of prescription drugs and suspended drivers undergoing legal impairment, we cannot morally impose this penalty on drivers who are using drugs illicitly.

Statistics show that Māori or those of Pacific descent or appearance are more likely to be targeted by the Police and they are disproportionally represented in prison. We need to avoid the possibility that this group is further targeted through random drug testing.

CONCLUSION

16. In conclusion:

- Good cause to suspect impairment is the only reason at-point-of-use drug testing can reasonably be employed
- Police officers need training to increase awareness of unconscious bias in current approaches to policing
- More Police officers need training in compulsory impairment testing techniques
- Oral drug testing is expensive and adds little to existing processes for establishing that a driver is impaired
- Nurses and other health practitioners can help raise awareness about driver impairment and risks arising from certain prescription medications.



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