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Tēnā koe

## **Land Transport (Drug Driving) Amendment Bill**

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Land Transport (Drug Driving) Amendment Bill.

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand, representing 51,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment matters. NZNO embraces Te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes of all people of Aotearoa New Zealand through influencing health, employment, and social policy development.

Furthermore, we share the intent of the Ministry of Health's definition of equity which equally applies to NZNO work across professional, industrial and member activities.

NZNO has consulted its members and staff in the preparation of this submission.

We acknowledge the intent of the Land Transport (Drug Driving) Amendment Bill to deliver a random roadside oral fluid drug testing regime that sits alongside the compulsory impairment test (CIT) approach to drug driving.

Police under this initiative, will be able to stop the driver of a motor vehicle and administer an oral fluid test without cause to suspect a driver has consumed drugs. We note that the Bill proposes that drivers who fail two consecutive oral fluid tests would incur an infringement penalty. Furthermore, drivers who fail two consecutive oral fluid tests can elect to undertake an evidential blood test and would be subject to both infringement and criminal penalties, depending on the levels of drugs in their blood.

Criminal limits equivalent to a blood alcohol concentration (BAC) of 80mg/100mg will be established for the most prevalent drugs used by New Zealand drivers, subject to the available evidence and advice of an Expert Panel. These substances will include THC, methamphetamine, MDMA, benzodiazepines, opiates, and cocaine.

We note that available research on drug driving in New Zealand and its contribution to road traffic accidents is lacking as are proven activities to deter drug driving.

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While NZNO supports the Bill's objectives, we note that they may not have the planned effect. We share concerns with others in the sector that the Bill, as it stands, has some failings. In particular, the science supporting roadside oral fluid testing because of its inability to detect impairment limits for many drugs. Although they can detect the presence or absence of a small number of common drugs, they do not detect impairment and correlate poorly with actual blood concentrations.

Confounding matters is that unlike with alcohol, there may not be a clear relationship between dosages of many drugs, time from when they are taken, and impairment. Under the Bill, individuals could receive infringements for drug driving despite not being impaired.

We are concerned about the disproportionate impact of any new measure on Māori and the potential to exacerbate inequities for Māori in the criminal justice system. It is important that the Bill acknowledges its responsibility for recognising the principles of te Tiriti o Waitangi and its obligation to Māori by ensuring equity and active protection being upheld through the implementation of the Bill.

While infringement level offences are the first tier of sanctions, several pathways under the Bill could lead to criminal offences. Given the time needed to conduct roadside oral fluid testing it is difficult to envisage random drug testing checkpoints at roadblocks where all drivers are stopped and tested (as with alcohol breath testing). It is more likely that Police will stop and drug test individually selected drivers, making it highly probable that Māori will be excessively targeted under this Bill. We hope this Bill, along with the current debate regarding racial profiling does not perpetuate the burden and over reliance on our Māori Police workforce and Māori providers to solely fix the over representation of Māori in drug driving offences.

There is a risk that unconscious bias could lead to disproportionately more Māori men and women being detained for drug testing. It is also possible that positive oral fluid testing could be used by police to undertake further actions under the Misuse of Drugs Act such as vehicle searches for drugs. While, many psychoactive substances can impair driving, oral fluid testing devices will only test for the most prevalent drugs or drug classes in New Zealand. A possible unintended consequence of the proposed Bill could be to encourage individuals who use cannabis to switch to more harmful substances such as synthetic cannabinoids to evade detection by roadside oral drug testing.

Numerous prescription medicines can impair driving. We support campaigns to help clinicians inform patients about how medications and other drugs can affect driving, we seek clarification on whether there may be liability implications for clinicians that prescribe such medicines where a patient is found to have failed an evidential blood test for drug-impaired driving.

NZNO welcomes evidence-informed measures to deter drug driving in New Zealand. We consider the current Bill may go some way towards this objective. Ideally, roadside drug testing should be able to detect impairment from all drugs. As the science to support oral roadside drug testing continues to advance, it is important to ensure that measures such as those proposed in the Bill do not unduly infringe on individual rights, exacerbate inequities in the criminal justice system or drive more dangerous patterns of drug use.

The Bill does not address the current COVID-19 pandemic. What contingencies are in place to ensure the health and safety of Police when drivers are stopped and tested for the presence of

drugs? Will Police be trained in the use of personal protective equipment (PPE) and will sufficient PPE be available?

We have also provided recommendations that we hope you will consider.

### **Recommendations**

- The Bill needs to be reoriented so that it supports a proactive health-based approach. Interventions for drug driving should occur earlier on, perhaps even starting at a person's very first infraction under the legislation.
- A tiered approach could be used whereby alternatives to fines such as the option to attend an education and/or counselling session or to undertake community service could be offered for a first infraction.
- Consideration for non-criminal penalty options for low-level drug-impaired driving offences and an important means to keep young Māori out of prison.
- Drivers should be encouraged to enter a health referral pathway to discourage recidivism and provide support to those struggling with substance issues.
- Invest in increasing the kaupapa Māori health workforce to deliver health and addictions programmes with kaupapa Māori health outcomes or drug treatment programmes which focus on Te Ao Māori, education programmes and Kaumātua support.
- Encourage Police to develop strategies that mitigate unconscious bias / institutional racism within the Police workforce and steer away from opportunities to target Māori drivers through random drug testing.
- Provide additional education and training for Police in compulsory impairment testing techniques
- Random testing checkpoints could be prioritised over Police stopping drivers to test them, as a means of reducing the risk of racial bias.
- Increase public awareness of the harms of drug driving, the proposed process of oral fluid drug testing and the penalties that they will incur.
- Encourage clinicians to raise awareness about driver impairment and risks arising from prescription medications.
- Build in a review period, monitor resourcing, and undertake an evaluation of the processes and outcomes.
- Put funding towards new methods of detecting impairment and ensure there is capacity in the Bill to respond to changes in impairment testing technology.

Thank you for the opportunity to participate in the consultation process

Nāku noa nā



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