# Land Transport (Drug Driving) Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

## Commentary

### Recommendation

The Transport and Infrastructure Committee has examined the Land Transport (Drug Driving) Amendment Bill and recommends by majority that it be passed. We also recommend all amendments by majority.

### About the bill as introduced

The Land Transport (Drug Driving) Amendment Act 2022 was intended to enable the New Zealand Police to test drivers for certain drugs using oral fluid screening devices at the roadside. However, the testing regime could not be implemented because no devices met the legislative requirements for approved use.

This bill would amend the Land Transport Act 1998 to:

- introduce new criteria for approving oral fluid screening devices that better reflect their limitations
- provide for the use of approved oral fluid screening devices to conduct screening tests at the roadside
- require oral fluid to be tested in a laboratory after a positive test is returned at the roadside, and before an infringement notice can be issued
- require an independent review of the bill's amendments.

#### Overview of the oral fluid testing regime proposed by the bill as introduced

The oral fluid testing regime is intended to increase detection and deterrence of drug-driving, and ultimately reduce the number of deaths and serious injuries caused by drug-drivers. We note that in 2023, there were 64 fatalities where the presence of drugs was detected in the driver. A further 32 drivers were found to have both drugs and alcohol in their system.

The 2022 amendments gave the Police the power to stop any driver of a motor vehicle and administer an oral fluid test without cause to suspect a driver has consumed drugs. The bill would retain this power. Police officers would be able to use an oral fluid screening device to randomly test drivers at the roadside for the presence of specified qualifying drugs (or a family of drugs). A driver would usually be free to go if their first or second oral fluid test did not return a positive result.

Drivers who failed the first oral fluid screening test would be required to undergo a second. An oral fluid sample would also be sent for laboratory analysis. Drivers who received two positive test results at the roadside would be prohibited from driving for 12 hours. However, an infringement notice would only be issued if a laboratory test gave a positive result. The penalties for drug driving under this regime are either:

- a $200 infringement fee and 50 demerit points for one listed qualifying drug; or
- a $400 infringement fee and 75 demerit points for two or more listed qualifying drugs.

The 12-hour prohibition on driving is intended to address the immediate road safety risk posed by the driver. It would not usually involve the seizure of a driver's vehicle keys. However, section 121 of the Act does allow an officer to seize a driver's keys where, for example, they believe on reasonable grounds that the driver is incapable of having proper control of a vehicle. If a driver does not comply with the driving prohibition, the enforcement officer could arrest the driver under section 94A(3) of the Act.

Drivers could be issued an infringement notice at the roadside if they:

- refused to undergo an oral fluid screening test
- refused to provide an oral fluid sample, if required
- refused or failed to accompany an officer or remain in a place when required to do so for the purpose of an oral fluid test.

The penalty for these offences is a $400 infringement fee and 75 demerit points.

*Role for the Minister of Police*

The Minister of Police would be responsible for approving oral fluid screening devices for use. The Minister would specify by notice which drugs a device would be authorised to screen for and the positive screening threshold to be used by the device. (A positive screening threshold is the concentration level of a drug in oral fluid at or above which a device will return a positive result.) The Minister would also specify by notice which drugs would be tested for in the laboratory, and the threshold for a positive result, which must be at a level that indicates recent drug use. The drugs that the Minister could specify for laboratory testing must be from the 25 qualifying drugs listed in Schedule 5 of the Act.

*Deployment strategy for the testing regime*

We asked for information about how the testing regime would be deployed should the bill pass, including the randomness of the testing. The Police emphasised that they are

still to determine a deployment strategy for the oral fluid testing regime. However, they advised us that they would:

- apply an evidence and risk-based approach as part of the range of detection and deterrence tools available to them
- screen drivers in locations and at times of the day where deployment would have the greatest impact on road safety (both deterrence and detection)
- consider whether there is a high number of drug-related death or serious injury crashes associated with a location
- consider deploying oral fluid screening alongside alcohol checkpoints. (We were advised that it would be unlikely that the Police would test every driver that is alcohol breath screened because of the longer time required for oral fluid screening.)

Advisers also explained that they describe the proposed testing regime as "random" because Police officers would not be required to have any grounds to suspect drug consumption before requiring a person to undergo a screening test. They acknowledged testing may be undertaken using a more strategic approach (such as by considering the factors listed above).

## Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We had some queries related to:

- the potential for disproportionate effects on certain population groups
- the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990
- personal information and privacy
- delegated legislation-making powers.

We discuss some of these topics in this commentary.

## Report of the Attorney-General under the New Zealand Bill of Rights Act

On 29 July 2024, the Attorney-General presented a report on the bill to the House of Representatives under section 7 of the New Zealand Bill of Rights Act 1990 (NZBORA) and Standing Order 269(1).

Section 7 requires the Attorney-General to bring to the House's attention any provision that appears to be inconsistent with any of the rights and freedoms contained in NZBORA. Under Standing Order 269(1), the Attorney-General must indicate the provision to the House and how it appears to be inconsistent with NZBORA.

The Attorney-General concluded that the bill as introduced appears to be inconsistent with section 21 (right to be secure against unreasonable search and seizure) and section 22 (right not to be arbitrarily detained). We discuss these in turn.

### Freedom from unreasonable search and seizure

The Attorney-General found that undergoing oral fluid screening tests and the taking of an oral fluid sample constitute a search and seizure. Although she found that deterring drug-driving is a sufficiently compelling rationale for the use of some search and seizure powers, she concluded that the intrusion on privacy is not proportionate to the public interest objective.

The Attorney-General wrote that "the more invasive the procedure the greater the expectation of privacy." She concluded that "the intrusion on an individual's privacy that arises from the taking of a bodily sample for the first oral fluid screening test appears disproportionate where there is no basis to suspect the individual driving is under the influence of an impairing drug."

The Attorney-General found the safeguards proposed by the bill insufficient. She wrote that requiring a laboratory analysis of oral fluid before someone could be charged with an infringement offence "does not mitigate the intrusion on an individual's privacy at the time of the roadside screening tests".

### Right not to be arbitrarily detained

The Attorney-General found that compulsory roadside screening constitutes being detained. She concluded that: "On balance, I consider that there is a real risk of arbitrary detention where an initial oral fluid screening test takes in excess of 15 minutes or where an individual is unable to provide a sufficient oral fluid sample and instead must provide a blood specimen. I also consider the error rate of oral testing devices could lead to prolonged detention of individuals on the basis of inaccurate screening. The bill provides inadequate safeguards in these situations."

The Attorney-General wrote that "if the Bill required an enforcement officer to have reason to suspect that a person had consumed drugs or was impaired prior to carrying out an oral fluid screening test or a blood test, then the temporary detention imposed while the test is carried out may be less likely to give rise to an inconsistency with the right to be free from arbitrary detention."

*Possible time limit for detainment to administer the first oral fluid screening test*

We considered whether the legislation should specify a maximum time period for enforcement officers to administer the first oral fluid screening test. Departmental officials advised against specifying a time limit in legislation, citing a range of factors that could influence the time it takes to complete the oral fluid screening process, including:

- how long the devices take to return a result
- how cooperative a driver is
- the ability of drivers to produce adequate oral fluid samples.

They also noted that no maximum period is specified in the Act in relation to alcohol testing. They consider that specifying a maximum period in legislation would be out of step with most provisions in the Act relating to enforcement activities. (The

exception is section 114 which sets a 15-minute limit for an enforcement officer to establish the identity of a driver if the requirement to remain stopped is for that purpose only.)

Officials advised us that it is not the intention to detain drivers for long periods of time. The purpose of the oral fluid screening regime is to improve the detection and deterrence of drug-driving. The quicker the tests can be performed, the more tests the Police will be able to administer. Furthermore, officials said that specifying a timeframe in legislation may incentivise drivers to prolong the process in order to avoid undergoing a screening test.

The Ministry of Transport advised us that information from Australia suggests that an initial test takes less than 10 minutes, approximately, and a second test can take up to about 40 minutes. It noted that most Australian states use different types of devices for the first and second screening test.

The Police advised us that, based on police information from the State of Victoria, the first oral fluid screening test takes between 2 and 5 minutes to administer. The second test, which is performed using a different device, takes between 10 and 35 minutes.

We believe that additional consideration is needed on whether the bill should include a time limit for which an enforcement officer may require a driver to remain stopped for the first oral fluid screening test, where there is no suspicion that the driver has committed an offence. We ask that the Government give further consideration to this matter as it progresses the bill through further stages in the House.

We record here that we have been unable to satisfactorily resolve this matter ourselves during our consideration of the bill. This was due to time constraints on our committee and because departmental officials did not provide us with a possible maximum time period for enforcement officers to administer the first oral fluid screening test. Officials noted this was due to their concerns about specifying a maximum period as outlined above.

We think that the statutory review process in the bill, our request for the Government to further consider whether the bill should include a time limit for which an enforcement officer may require a driver to remain stopped, and the Police deployment strategy for the oral fluid screening regime respond to the concerns raised by the Attorney-General.

## Proposed amendments

This section covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

### Independent laboratory analysis of an oral fluid sample

Clause 19 of the bill would replace section 71D of the Act and insert new sections 71DA and 71DB. These provisions would enable an enforcement officer to take an oral fluid sample from a driver, if required, to send to an approved laboratory for analysis.

We think drivers should be able to elect to also have an oral fluid sample independently tested. This would align with the blood testing regime, which enables those charged with an offence or issued with an infringement notice to seek private analysis of their blood sample (section 74 of the Act).

Accordingly, we recommend:

- inserting a new requirement for a driver to be notified that if they are issued with an infringement notice they may choose to have an oral fluid sample analysed by a private analyst (clause 16, proposed section 71A(8)(b)(iv))
- amending proposed section 71D to ensure that an oral fluid sample taken for analysis at an approved laboratory is also sufficient for a second, private analysis
- inserting section 71DAB to enable a person issued with an infringement notice to request an independent analysis of their oral fluid
- amending proposed section 71DB to require private analysts to handle, retain, transfer, or dispose of oral fluid samples in accordance with regulations.

It may be unlikely that many drivers would seek independent testing to contest the results of an oral fluid laboratory test because the regime would only result in an infringement offence. Nonetheless, we support it being an option available to drivers.

**Initiating a compulsory impairment test after a positive oral fluid screening test**

The current approach to testing a driver when a Police officer has good cause to suspect the driver has consumed a drug or drugs is the compulsory impairment test. This is a behavioural test where a driver must have an eyesight assessment, walk along a line and turn, and stand on one leg. The test must be undertaken by a trained officer. A driver who fails to satisfactorily complete a compulsory impairment test may be required to undergo an evidential blood test and may be prohibited from driving.

The Act allows for the oral fluid testing regime to operate alongside the compulsory impairment test approach to drug testing. However, there are restrictions on an enforcement officer's ability to switch between the two testing processes:

- An officer cannot switch to the oral fluid testing process once they have started a compulsory impairment test.
- An officer can switch to a compulsory impairment test only if they have good cause to suspect drug use (independent of the result of an oral fluid screening test) and either:
    - a first or second oral fluid test does not produce a positive result
    - a first oral fluid test is positive for more than one drug.

We think enforcement officers should have more flexibility to switch to a compulsory impairment test. We recommend amending clause 21 to allow an enforcement officer to require a driver to undergo a compulsory impairment test regardless of the result of the first oral fluid screening test (or failure of the test to return a result).

We think this flexibility is needed because oral fluid screening devices only screen for certain drugs. They can also produce false negatives. We note that officers would still be required to have good cause to suspect drug use, independent of the result of the oral fluid screening test. This could occur where an officer observes a driver's behaviour (such as their demeanour, speech, ability to follow instructions) while waiting for the result of the oral fluid screening test.

### Approval criteria for oral fluid screening device

Clause 22 would replace section 71G and insert section 71GA. New section 71G sets out the process for the Minister of Police to approve an oral fluid screening device and specify the drugs and concentration levels that the device may test for.

To approve a device for use, the bill as introduced would require the Minister to be satisfied that:

- the positive screening threshold used by the device is indicative of recent use of a qualifying drug (or family of qualifying drugs); and
- the device will return results with a high level of accuracy.

We were advised that there is a risk that commercially available devices may not meet this criteria, primarily because of ambiguity as to what would satisfy a "high level of accuracy", a term not defined in the legislation.

To ensure the testing regime is workable, we recommend amending clause 22 so the Minister needs only to consider certain matters, rather than to be satisfied a device meets the criteria. We recommend requiring the Minister, when approving an oral fluid screening device, to consider:

- the accuracy of the device in light of the requirements for screening oral fluid specified in sections 71A to 71DA; and
- the extent to which the positive screening threshold used by the device for a qualifying drug (or family of drugs) is indicative of recent use of that drug. (Recent drug use is a proxy for impairment under this regime.)

In considering these matters, the Minister should be required to take into account the desirability of detecting and deterring drug use by someone driving a motor vehicle. When considering the extent to which a device's positive screening threshold is indicative of recent drug use, the Minister should also have regard to the Australian/New Zealand Standard AS/NZS 4760:2019 or any substitute for that standard. (This is the relevant standard for specimen collection and the detection and quantification of drugs in oral fluid.)

While we support these amendments to ensure the testing regime works, we note that the legislation is having to be amended because the capability of the oral fluid screening devices is uncertain. We would not expect devices to have been fully procured and purchased before the legislation was finalised, but we would have preferred greater certainty.

We think the statutory review of this bill (required by new Part 9 of Schedule 1 and discussed later in this commentary) should involve an assessment of the matters that must be considered by the Minister when approving devices for use.

### New category of drivers who can be banned from driving for 12 hours

Clause 27 would amend section 94A of the Act to require an officer to forbid a person from driving a motor vehicle for a 12-hour period if the person:

- has undergone 2 oral fluid screening tests, and the results of both tests are positive; or
- fails or refuses to undergo an oral fluid screening test without delay after having been required to do so by an enforcement officer.

For consistency with other infringement offences, we recommend amendments to also require an officer to forbid a person from driving a motor vehicle on the following grounds:

- having undergone an oral fluid screening test under section 71A, 71B, or 71C, a person fails or refuses to remain at the place where they underwent the test until after the result of the test is ascertained
- a person fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 71A, 71B, or 71DA
- having accompanied an enforcement officer to a place when required under section 71A or 71B, a person fails or refuses to remain at that place until they have undergone an oral fluid screening test under section 71A or 71B
- having accompanied an enforcement officer to a place when required under section 71DA, a person fails or refuses to remain at that place until they have provided an oral fluid sample under section 71DA(1).

*Powers in existing sections 71A, 71B, 71C and proposed section 71DA*

We have some concerns about how the powers for an officer to require a driver to accompany them to a place where the driver can take an oral fluid screening test could be used. We want officers to be able to conduct screening tests in a safe location away from the flow of traffic. However, without an oral fluid screening device selected, it is possible to imagine a scenario where these powers could be used to require a motorist to accompany an officer some distance without evidence of impairment. This could occur if the device ultimately selected is large enough that it needs to be based in a police station or mobile unit.

We wish to make clear our expectations that the Police will require drivers to accompany them only when they have good cause to suspect impairment or when the location of the traffic stop is unsafe. Police should not use this power to require drivers to accompany them over any great distance without good cause to suspect drug use.

### Monitoring and evaluation

The bill's Schedule would insert Part 9 into Schedule 1 of the Act. New Part 9 would require the Minister to appoint a reviewer to assess the amendments that would be made by this bill. The reviewer would also be able to assess the amendments made by the Land Transport (Drug Driving) Amendment Act 2022.

In the bill as introduced, clause 29(1) in new Part 9 would require the Minister to appoint a reviewer no earlier than 3 years and no later than 4 years after the commencement of the bill. Clause 29(5) would require the review to be completed within 12 months of the reviewer's appointment. Clause 29(3) would require the review to consider a list of topics. Clause 30 would enable the Governor-General, by Order in Council at the recommendation of the Minister, to require that the review not consider 1 or more of the matters listed in clause 29(3).

We think these provisions should be simplified. We recommend simply requiring the review to be completed within 5 years of the bill's commencement. We also recommend not listing the topics that must be considered by the review. This would avoid the need for clause 30, which the Regulations Review Committee expressed concern about. Clause 30 is a "Henry VIII" provision (allowing executive action, such as secondary legislation, to override an Act of Parliament). These are generally considered undesirable.

Although we do not think they should be specified in legislation, we still think the topics listed in the bill as introduced are generally those that should be considered by the review. As discussed earlier in this commentary, we think the review should also consider the criteria used by the Minister to approve oral fluid screening devices.

## Green Party of Aotearoa New Zealand differing view

The Green Party supports the objective of reducing impaired driving. However, as with the original law this bill amends, we still have serious concerns about whether oral fluid levels of qualifying substances can genuinely and reliably prove impairment, and whether enabling roadside testing will achieve the desired outcome of deterring impaired driving.

While this amendment bill specifies laboratory testing of oral fluid samples before infringements and demerit points are issued, which does improve upon the reliability of the roadside tests, it does not address the fundamental problem of establishing impairment.

The majority of submissions were opposed to the bill as introduced,[1] primarily due to the difficulty of reliably establishing impairment from either oral fluid or blood

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[1] Page 5, paragraph 28 of the departmental report: "85 submitters were opposed to the Bill while 17 submitters supported the Bill. A further 16 submitters supported the intention of the Bill to reduce drug-related harm on New Zealand's roads. However, many of those in support of the Bill, or in support of the intent, had concerns or recommended changes to the Bill."

tests. The Law Society, which recommended that the bill not proceed, quoted the Independent Expert Panel on Drug Driving in its submission:

> The use of oral fluid as a determining feature for immediate sanction raises some significant issues. The Independent Expert Panel on Drug Driving (IEPDD) has documented a number of the issues including the unreliability of drug concentration found in the oral mucosa as related to the blood drug concentration, the pharmacodynamics which significantly alter the amount of drug concentration in oral mucosa, and the link between impairment and blood drug concentration being more widely known and studied than the oral drug concentration. Further, the IEPDD report considers only the situation where confirmatory analysis will be carried out on blood samples, not oral fluids.[2]

The Royal Australasian College of Physicians (RACP) made the case that the oral fluid testing regime will take funding away from more effective programmes to reduce harm from drug use and raised evidence of problems establishing impairment, specifically with cannabis:

> The College is concerned that while oral fluid testing has improved in its reliability over the last decade, recent systematic reviews show that it is still is not expected to achieve 100% specificity in testing for cannabis and there is a significant empirical evidence gap related to the deterrence effectiveness of roadside oral fluid testing in this country.[3]

The New Zealand Drug Foundation cited recent evidence from Australia of drivers who had ingested or inhaled medicinal cannabis and showed no signs of impairment, despite registering blood levels of THC considered "high risk" six hours after taking the medication.[4]

The Attorney-General's section 7 report on the bill still finds that provisions in the bill as introduced constitute fundamental breaches of the Bill of Rights and are not justifiable even by the public good outcomes. It is highly unlikely that amendments to the bill can address these breaches of rights.

Many submitters raised concerns about the likelihood of a disproportionately harmful impact of this regime on Māori and Pasifika people, as communities most targeted by unfair exercises of discretion in policing and ultimately, the ongoing devastating impacts of imprisonment. Whether or not that can be mitigated will be down to police implementation, which we note in other areas of policing is yet to be adequately addressed.

As advocated by many submitters, including the New Zealand Drug Foundation and the RACP, we would prefer to see an evidence-based regime targeting impaired driving, as that is what causes the real risk on our roads.

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2 Paragraph 4.5 of the Law Society's submission on the bill.

3 Page 2 of the Royal Australasian College of Physicians' submission on the bill.

4 Page 6, paragraph 19 of the New Zealand Drug Foundation's submission on the bill.

# Appendix

## Committee process

The Land Transport (Drug Driving) Amendment Bill was referred to our committee on 1 August 2024. The House originally instructed us to report the bill back no later than 5 December 2024. At our request, the Business Committee later extended the deadline to 20 December 2024.

On 1 August 2024, we called for submissions on the bill with a closing date of 26 August. We received and considered written submissions from 123 interested groups and individuals. We heard oral evidence from 14 submitters at hearings held in Wellington and by videoconference.

Advice on the bill was provided by the Ministry of Transport and the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about regulation-making powers in the bill.

During our consideration of this bill, we travelled to the ESR laboratory in Kenepuru. We are grateful for the help provided by Dr Helen Poulsen of ESR in explaining the science underpinning the oral fluid testing regime.

We considered the bill alongside the Attorney-General's report which concluded that some provisions of the bill as introduced are inconsistent with the New Zealand Bill of Rights Act 1990.

## Committee membership

Andy Foster (Chairperson)

Hon Julie Anne Genter

Mariameno Kapa-Kingi

Cameron Luxton

Grant McCallum

Tom Rutherford

Tangi Utikere

Arena Williams

## Related resources

The documents we received as advice and evidence are available on the Parliament website.

# Key to symbols used in reprinted bill

## As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

*Hon Simeon Brown*

# Land Transport (Drug Driving) Amendment Bill

Government Bill

## Contents


| | | Page |
|---|---|---|
| 1 | Title | 4 |
| 2 | Commencement | 4 |
| 3 | Principal Act | 4 |
| | **Part 1**<br>**Amendments to Parts 1 and 2** | |
| | Subpart 1—Amendments to Part 1 (preliminary provisions) | |
| 4 | Section 2 amended (Interpretation) | 4 |
| | Subpart 2—Amendments to Part 2 (primary responsibilities of participants in land transport system) | |
| 5 | Section 11A amended (Persons not to drive or attempt to drive while blood contains evidence of, or oral fluid indicates, use of qualifying drug) | 6 |
| 6 | Section 13 amended (Drivers and other road users to comply with directions of enforcement officers, etc) | 7 |
| | **Part 2**<br>**Amendments to Part 6 (driving offences involving drink or drugs, and penalties and procedures)** | |
| | Subpart 1—Amendments to offences and penalties | |
| 7 | Section 57A amended (Driving with blood that contains evidence of, or oral fluid that indicates, use of 1 qualifying drug) | 7 |
| 8 | Section 57B amended (Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs) | 7 |

9 Section 57C amended (Driving while blood or breath contains alcohol and blood contains evidence of, or oral fluid indicates, use of 1 qualifying drug) 8

10 Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer) 8

11 New section 60A inserted (Failure or refusal to undergo oral fluid screening test or provide oral fluid sample) 9

60A Failure or refusal to undergo oral fluid screening test or provide oral fluid sample 9

Subpart 2—Amendments to defences

12 Section 64 amended (Defences) 10

Subpart 3—Amendment to mandatory disqualification and assessment for repeat offences

13 Section 65 amended (Mandatory disqualification and assessment for repeat offences) 10

Subpart 4—Amendments to blood test fee

14 Section 67 amended (Blood test fee) 10

Subpart 5—Amendment to enforcement procedures for offences involving intoxication

15 Section 68 amended (Who must undergo breath screening test) 10

Subpart 6—Amendments to enforcement procedures for offences involving use of qualifying drugs

16 Section 71A amended (Who must undergo first oral fluid test) 10

17 Section 71B amended (Who must undergo second oral fluid test) 12

18 Section 71C amended (Person must undergo further oral fluid test if either first or second oral fluid test fails to produce result) 12

19 Section 71D replaced (Person has right to elect blood test after 2 positive oral fluid tests) 13

~~71D Laboratory analysis required if first oral fluid screening test produces positive result 13~~

71D Laboratory analysis required if first oral fluid screening test produces positive result 14

71DA Person may be required to provide ~~further~~ oral fluid sample for laboratory analysis 15

71DAB Person may apply to have oral fluid sample analysed by private analyst 16

71DB ~~Requirements applying to analysing and handling oral fluid sample that is subject to laboratory analysis~~Requirements for approved analyst or private analyst in respect of oral fluid sample 17

20 Section 71E amended (Person may be required to accompany enforcement officer to undergo blood test) 17

21 Section 71F amended (Who must undergo compulsory impairment test) 18
22 Section 71G replaced (Approval of oral fluid tests and oral fluid testing devices) 18
71G Minister may approve oral fluid screening devices for use in oral fluid screening tests 18
71GA Minister may specify listed qualifying drugs and concentration level to be tested for by approved ~~laboratory~~ analyst 21
Subpart 7—Amendments to enforcement procedures involving taking of blood specimens
23 Section 72 amended (Who must give blood specimen at places other than hospital or medical centre) 21
24 Section 73A amended (Purposes for which blood specimen taken under section 72 or 73 may be used as evidence) 22
Subpart 8—Amendments to evidential provisions
25 Section 77A amended (Presumptions relating to drug testing) 22
**Part 3**
**Amendments to Parts 7, 9, 11, and 15 and Schedule 1**
Subpart 1—Amendments to Part 7 (disqualification, demerit points, licence suspension, and vehicle impoundment)
26 Cross-heading above section 94A amended 23
27 Section 94A amended (Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid tests are positive) 23
Subpart 2—Amendment to Part 9 (enforcement of responsibilities)
28 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances) 24
Subpart 3—Amendment to Part 11 (land transport secondary legislation)
29 Section 167 amended (Regulations) 24
Subpart 4—Amendment to Part 15 (miscellaneous provisions)
30 Section 209A amended (Analysing oral fluid or blood specimens for statistical or research purposes related to use of drugs or alcohol) 24
Subpart 5—Amendments to Schedule 1
31 Schedule 1 amended 24

**Part 4**
**Related and consequential amendments**

*Amendment to Criminal Procedure Act 2011*

32 Principal Act 24
33 Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998) 24

*Amendments to Land Transport (Offences and Penalties) Regulations 1999*

34 Principal regulations 25
35 Schedule 1 amended 25
36 Schedule 2 amended 26

**Schedule** 28
**New Part 9 inserted into Schedule 1**

**The Parliament of New Zealand enacts as follows:**

### 1 Title

This Act is the Land Transport (Drug Driving) Amendment Act **2024**.

### 2 Commencement

(1) This Act comes into force on a single date set by Order in Council.

(2) If this Act has not come into force ~~on~~ by the first anniversary of Royal assent, it comes into force then.

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### 3 Principal Act

This Act amends the Land Transport Act 1998.

## Part 1
## Amendments to Parts 1 and 2

### Subpart 1—Amendments to Part 1 (preliminary provisions)

### 4 Section 2 amended (Interpretation)

(1) In section 2(1), repeal the following definitions:

(a) **oral fluid test**:

(b) **oral fluid testing device**.

(2) In section 2(1), insert in their appropriate alphabetical order:

**family of qualifying drugs** means a group of qualifying drugs that—

(a) share a substantially similar chemical structure (for example, benzodiazepines and amphetamine); or

(b) have a similar effect, including a pharmacological effect, if consumed, smoked, snorted, or injected by any person, or used in any other manner intended to have a pharmacological effect on the user (for example, opiates)

**oral fluid sample** means a sample of oral fluid taken from a person—

(a) by means of an oral fluid screening test that the person undergoes under any of sections 71A to 71C; or

(b) as ~~a further~~ an oral fluid sample under **section 71DA(1A)**

**oral fluid screening device** means a device of a kind approved by the Minister of Police under **section 71G** for the purpose of screening oral fluid for the presence of ~~1~~ either or both of the following:

(a) 1 or more qualifying drugs specified in a notice made under that section:

(b) 1 or more families of qualifying drugs specified in a notice made under that section

**oral fluid screening test** means a test that is carried out by means of an oral fluid screening device

**positive evidential threshold** has the meaning given in **section 71GA(1)(b)**

**positive screening threshold** has the meaning given in **section 71G(2)(b)**

**relevant standard** has the meaning given in **section 71G(7A)**

**specified family of qualifying drugs** has the meaning given in **section 71G(2)(a)(ii)**

**specified qualifying drug** has the meaning given in **section 71G(2)(a)(i)**

(3) In section 2(1), replace the definition of **approved laboratory** with:

**approved laboratory** means a laboratory approved by the Science Minister, by notice (*see* subsection (6)), for ~~1~~ either or both of the following purposes:

(a) analysing blood specimens taken for the purposes of this Act:

(b) analysing oral fluid samples taken for the purposes of this Act

(4) In section 2(1), definition of **first oral fluid test**,—

(a) replace "**first oral fluid test**" with "**first oral fluid screening test**"; and

(b) replace "oral fluid test" with "oral fluid screening test".

(5) In section 2(1), definition of **positive**, replace paragraph (b) with:

(b) in relation to the result of an oral fluid screening test, means the result of the test indicates ~~1~~ either or both of the following:

(i) that the concentration level of a qualifying drug in the oral fluid of the person who underwent the test equals or exceeds the concen-

tration level specified for that qualifying drug in a notice made under **section 71G**:

(ii) that the concentration level of a family of qualifying drugs in the oral fluid of the person who underwent the test equals or exceeds the concentration level specified for that family of qualifying drugs in a notice made under **section 71G**:

(c) in relation to the result of analysis of a person's oral fluid sample by an approved ~~laboratory~~ analyst, means the result of the analysis ~~contains evidence~~ indicates that the concentration level of a listed qualifying drug in the oral fluid sample equals or exceeds the concentration level specified for that listed qualifying drug in a notice made under **section 71GA**

(6) In section 2(1), definition of **second oral fluid test**,—

(a) replace "**second oral fluid test**" with "**second oral fluid screening test**"; and

(b) replace "oral fluid test" with "oral fluid screening test".

(7) After section 2(1A), insert:

(2) **Subsection (2A)** applies to a reference in this Act to—

(a) the use of a family of qualifying drugs (or a specified family of qualifying drugs) by a person; or

(b) the presence of a family of qualifying drugs (or a specified family of qualifying drugs) in a person's oral fluid; or

(c) the concentration level of a family of qualifying drugs (or a specified family of qualifying drugs) in a person's oral fluid.

(2A) A reference of a kind set out in **subsection (2)** must be read as referring to 1 or more qualifying drugs from the relevant family of qualifying drugs (or specified family of qualifying drugs).

## Subpart 2—Amendments to Part 2 (primary responsibilities of participants in land transport system)

### 5 Section 11A amended (Persons not to drive or attempt to drive while blood contains evidence of, or oral fluid indicates, use of qualifying drug)

(1) Replace the heading to section 11A with "**Persons not to drive or attempt to drive while blood contains evidence of use of qualifying drug or concentration level of qualifying drug in oral fluid equals or exceeds specified concentration level**".

(2) Replace section 11A(1) with:

(1) A person may not drive or attempt to drive a motor vehicle while the person's blood contains evidence of use of a qualifying drug (*see* sections 57A(1) and (2), 57B(1) and (2), and 57C(1) and (2)).

(3) Replace section 11A(3) with:

(3) A person may not drive or attempt to drive a motor vehicle if the concentration level of a listed qualifying drug in the person's oral fluid equals or exceeds the concentration level specified for that listed qualifying drug in a notice made under **section 71GA** (*see* sections **57A(3), 57B(3)**, and 57C(3) and (4)).

### 6 Section 13 amended (Drivers and other road users to comply with directions of enforcement officers, etc)

(1) In section 13(1),—

(a) after "71C,", insert "**71D, 71DA,**"; and

(b) replace "oral fluid tests," with "oral fluid screening tests, laboratory analysis of oral fluid samples,".

(2) In section 13(2), after "71C,", insert "**71D, 71DA,**".

## Part 2
## Amendments to Part 6 (driving offences involving drink or drugs, and penalties and procedures)

### Subpart 1—Amendments to offences and penalties

### 7 Section 57A amended (Driving with blood that contains evidence of, or oral fluid that indicates, use of 1 qualifying drug)

(1) Replace the heading to section 57A with "~~**Driving while blood or oral fluid contains evidence of use of 1 qualifying drug**~~**Driving offence: 1 qualifying drug**".

(2) Replace section 57A(3) and the heading above section 57A(3) with:

*Infringement offence: driving while oral fluid contains evidence of use of 1 listed qualifying drug*

(3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if analysis carried out by an approved ~~laboratory contains evidence~~ analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

### 8 Section 57B amended (Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs)

(1) Replace the heading to section 57B with "~~**Driving while blood or oral fluid contains evidence of use of 2 or more qualifying drugs**~~**Driving offence: 2 or more qualifying drugs**".

(2) Replace section 57B(3) and the heading above section 57B(3) with:

*Infringement offence: driving while oral fluid contains evidence of use of 2 or more listed qualifying drugs*

(3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if analysis carried out by an approved ~~laboratory contains evidence~~ analyst indicates that the person's oral fluid sample is positive for 2 or more listed qualifying drugs.

## 9 Section 57C amended (Driving while blood or breath contains alcohol and blood contains evidence of, or oral fluid indicates, use of 1 qualifying drug)

(1) Replace the heading to section 57C with "~~**Driving while blood or breath contains alcohol and blood or oral fluid contains evidence of use of 1 qualifying drug**~~**Driving offence: alcohol and 1 qualifying drug**".

(2) Replace the heading above section 57C(3) with:

*Infringement offence: driving while blood contains alcohol and oral fluid contains evidence of use of 1 listed qualifying drug*

(3) Replace section 57C(3)(b) with:

(b) analysis carried out by an approved ~~laboratory contains evidence~~ analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

(4) Repeal section 57C(3)(c).

(5) Replace the heading above section 57C(4) with:

*Infringement offence: driving while breath contains alcohol and oral fluid contains evidence of use of 1 listed qualifying drug*

(6) Replace section 57C(4)(b) with:

(b) analysis carried out by an approved ~~laboratory contains evidence~~ analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

(7) Repeal section 57C(4)(c).

## 10 Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)

(1) Before section 59(1), insert:

*Offence: failure or refusal to remain at specified place or to accompany enforcement officer*

(2) In section 59(1)(b) and (c), delete "71A, 71B,".

(3) In section 59(1)(c)(i), delete "an oral fluid test,".

(4) In section 59(1)(d), delete ", an oral fluid test under a requirement under any of sections 71A to 71C,".

(5) After section 59(2), insert:

*Infringement offence: failure or refusal to remain at specified place or to accompany enforcement officer*

(3) A person commits an infringement offence if the person,—

(a) having undergone an oral fluid screening test under any of sections 71A to 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; or

(b) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 71A, 71B, or **71DA**; or

(c) having accompanied an enforcement officer to a place under a requirement under section 71A or 71B, fails or refuses to remain at that place until the person is required to undergo an oral fluid screening test under section 71A or 71B; or

(d) having accompanied an enforcement officer to a place under a requirement under **section 71DA**, fails or refuses to remain at that place until the person is required to provide an oral fluid sample under **section 71DA(1A)**.

**11 New section 60A inserted (Failure or refusal to undergo oral fluid screening test or provide oral fluid sample)**

After section 60, insert:

**60A Failure or refusal to undergo oral fluid screening test or provide oral fluid sample**

(1) A person commits an infringement offence if the person—

(a) fails or refuses to undergo an oral fluid screening test without delay after having been required to do so under any of sections 71A to 71C by an enforcement officer; or

(b) fails or refuses to provide an oral fluid sample after having been required to do so under **section 71DA(1A)** by an enforcement officer.

(2) A person does not fail or refuse to undergo an oral fluid screening test or provide an oral fluid sample only because,—

(a) in the case of an oral fluid screening test, the person is unable to provide an oral fluid sample that is sufficient to carry out the oral fluid screening test; or

~~(b) in the case of an oral fluid sample, the person is unable to provide a sample that is sufficient for the purpose specified in **section 71D(4)**.~~

(b) in the case of an oral fluid sample required under **section 71DA(1A)**, the person is unable to provide a sample that is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act.

## Subpart 2—Amendments to defences

### 12 Section 64 amended (Defences)

(1) In section 64(1AB), delete "the person's oral fluid indicates use of a qualifying drug and".

(2) In section 64(3A)(a), replace "or oral fluid test" with "or oral fluid screening test".

(3) Replace section 64(6) with:

(6) It is no defence to proceedings for an offence against this Act in respect of the proportion of a qualifying drug in a person's blood that there was or may have been an error in the result of an oral fluid screening test undergone by the person.

## Subpart 3—Amendment to mandatory disqualification and assessment for repeat offences

### 13 Section 65 amended (Mandatory disqualification and assessment for repeat offences)

In section 65(3)(b), replace "section 59" with "section 59(1)".

## Subpart 4—Amendments to blood test fee

### 14 Section 67 amended (Blood test fee)

(1) Replace section 67(1)(aa)(i) with:

(i) is required to undergo a blood test under section 72(1)**(e), (f)**, (g), or (h); and

(2) In section 67(1)(aa)(ii), delete "71A(5)(c), 71D(2), or".

## Subpart 5—Amendment to enforcement procedures for offences involving intoxication

### 15 Section 68 amended (Who must undergo breath screening test)

In section 68(6), replace "oral fluid test" with "oral fluid screening test" in each place.

## Subpart 6—Amendments to enforcement procedures for offences involving use of qualifying drugs

### 16 Section 71A amended (Who must undergo first oral fluid test)

(1) In the heading to section 71A, after "**fluid**", insert "**screening**".

(2) In section 71A(1) to (4) and (6), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) In section 71A(2)(a), replace "any such oral fluid test or tests" with "any such test or tests".

(4) Replace section 71A(5) with:

(5) An enforcement officer who requires a person to undergo a first oral fluid screening test under this section must, without delay, advise the person—

~~(a) that the person may be issued with an infringement notice if the person fails or refuses to undergo an oral fluid screening test that is required under this section or section 71B or 71C; and~~

(a) that the person may be issued with an infringement notice if the person—

(i) fails or refuses to undergo an oral fluid screening test that is required under this section or section 71B or 71C; or

(ii) having undergone an oral fluid screening test under this section or section 71B or 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; and

(b) of the infringement fee payable for a breach of **section 59(3)(a)** or **60A(1)(a)**.

(5) Replace section 71A(7)~~ and (8)~~ to (9) with:

(7) An enforcement officer may not require a person who is in a hospital or medical centre as a result of an accident involving a motor vehicle to undergo an oral fluid screening test under this section.

(8) An enforcement officer must, without delay after the result of the first oral fluid screening test is ascertained, advise the person—~~ of the result of the test.~~

(a) of the result of the test; and

(b) if the test produces a positive result, of the following matters:

(i) that an oral fluid sample from the person will be subject to analysis carried out by an approved analyst in accordance with this Act:

(ii) that, if the analysis establishes that the person's oral fluid sample is positive for 1 or more listed qualifying drugs, the person may be issued with an infringement notice:

(iii) the infringement fee payable for a breach of section **57A(3), 57B(3)**, 57C(3), or 57C(4):

(iv) that, if the person is issued with an infringement notice, they may choose to have an oral fluid sample analysed by a private analyst.

(9) However, **subsection (8)(b)** does not apply if—

(a) the person has undergone a first oral fluid screening test; and

(b) the enforcement officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or

(ii) undergo a compulsory impairment test under section 71F.

~~(6) Repeal section 71A(9).~~

### 17 Section 71B amended (Who must undergo second oral fluid test)

(1) In the heading to section 71B, after "**fluid**", insert "**screening**".

(2) Replace section 71B(1) with:

(1) An enforcement officer must require a person to undergo without delay a second oral fluid screening test ~~without delay~~ if—

(a) the person has undergone a first oral fluid screening test; and

(b) the result of the first oral fluid screening test is positive.

~~(1A) However, **subsection (1)** does not apply if, after the person has undergone a first oral fluid screening test, the enforcement officer requires the person to—~~

~~(a) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or~~

~~(b) undergo a compulsory impairment test in the circumstances described in section 71F(5).~~

(1A) However, an enforcement officer must not require a person to undergo a second oral fluid screening test if—

(a) the person has undergone a first oral fluid screening test; and

(b) the officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or

(ii) undergo a compulsory impairment test in the circumstances described in section 71F(5).

(3) In section 71B(2) to (4), replace "oral fluid test" with "oral fluid screening test" in each place.

(4) Replace section 71B(5) with:

(5) An enforcement officer must, without delay after the result of the second oral fluid screening test is ascertained, advise the person of the result of the test.

(5) Repeal section 71B(6).

### 18 Section 71C amended (Person must undergo further oral fluid test if either first or second oral fluid test fails to produce result)

(1) In the heading to section 71C, after "**fluid**", insert "**screening**" in each place.

(2) In section 71C(1) and (2), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) Replace section 71C(3)~~ and (4)~~ to (6) with:

(3) A positive result of a further oral fluid screening test required under subsection (1) must,—

(a) if required following a first oral fluid screening test that failed to produce a result, be treated for all purposes under this Act as the result of the first oral fluid screening test; or

(b) if required following a second oral fluid screening test that failed to produce a result, be treated for all purposes under this Act as the result of the second oral fluid screening test.

(4) A person may be required to undergo only 1 further oral fluid screening test under subsection (1).

(5) An enforcement officer must, without delay after the result of a further oral fluid screening test is ascertained, advise the person of the result of the test.

**19 Section 71D replaced (Person has right to elect blood test after 2 positive oral fluid tests)**

Replace section 71D with:

~~**71D Laboratory analysis required if first oral fluid screening test produces positive result**~~

~~(1) This section applies if—~~

~~(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and~~

~~(b) the test produces a positive result.~~

~~(2) However, this section does not apply if, after the person has undergone a first oral fluid screening test, the enforcement officer requires the person to—~~

~~(a) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or~~

~~(b) undergo a compulsory impairment test in the circumstances described in section 71F(5).~~

~~(3) The enforcement officer must, without delay after the result of the first oral fluid screening test is ascertained, advise the person—~~

~~(a) that an oral fluid sample from the person will be subject to analysis carried out by an approved laboratory in accordance with this Act; and~~

~~(b) that, if the analysis contains evidence that the person's oral fluid sample is positive for 1 or more listed qualifying drugs, the person may be issued with an infringement notice; and~~

~~(c) of the infringement fee payable for a breach of section **57A(3), 57B(3),** 57C(3), or 57C(4).~~

~~(4) The enforcement officer must—~~

~~(a) deliver or post the person's oral fluid sample to an approved laboratory for the laboratory to analyse in accordance with **section 71DB**; and~~

~~(b) during the period in which the officer has custody of the oral fluid sample, handle, retain, transfer, or dispose of the sample in accordance with the applicable procedure prescribed in regulations.~~

~~(5) In this section,—~~

~~**deliver** includes cause to be delivered, whether by courier or otherwise~~

~~**post** includes cause to be posted.~~

**71D Laboratory analysis required if first oral fluid screening test produces positive result**

*Requirements if enforcement officer has obtained sufficient sample*

(1) **Subsection (2)** applies if—

(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and

(b) the test produces a positive result; and

(c) the enforcement officer obtains, from an oral fluid screening test, an oral fluid sample from the person that is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act (a **sufficient sample**).

(2) The enforcement officer must—

(a) deliver or post the person's oral fluid sample to an approved laboratory for its analysis in accordance with **section 71DB**; and

(b) handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.

*Requirements if enforcement officer has not obtained sufficient sample*

(3) **Subsection (4)** applies if—

(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and

(b) the test produces a positive result; but

(c) the enforcement officer has not obtained a sufficient sample.

(4) The enforcement officer must—

(a) apply **section 71DA** to obtain a sufficient sample; and

(b) then apply **subsection (2)**.

(5) However, an enforcement officer must not apply this section if—

(a) the person has undergone a first oral fluid screening test; and

(b) the officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or

(ii) undergo a compulsory impairment test in the circumstances described in section 71F(5).

(6) In this section,—

**deliver** includes cause to be delivered, whether by courier or otherwise

**post** includes cause to be posted.

**71DA Person may be required to provide ~~further~~ oral fluid sample for laboratory analysis**

~~(1) The enforcement officer may require the person to provide a further oral fluid sample for the purpose specified in **section 71D(4)**.~~

(1) This section applies if **section 71D(4)(a)** applies.

(1A) The enforcement officer must—

(a) require the person to provide an oral fluid sample; and

(b) ensure that the oral fluid sample is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act.

(1B) Before obtaining the oral fluid sample, the enforcement officer must, without delay, advise the person of the following matters:

(a) that the person may be issued with an infringement notice if the person fails or refuses to provide an oral fluid sample:

(b) the infringement fee payable for a breach of **section 60A(1)(b)**.

(2) If the enforcement officer requires the person to provide ~~a further~~ an oral fluid sample, the enforcement officer—

(a) may require the person—

(i) to remain in the place where the person most recently underwent an oral fluid screening test to provide the sample; or

(ii) if it is not practicable for the person to provide the sample at ~~the~~ that place ~~where the person underwent an oral fluid screening test~~, to accompany an enforcement officer to a place where it is likely that the person can provide the sample; and

(b) must take the sample in accordance with the applicable procedure prescribed in regulations.

(3) If it is not practicable for the person to provide ~~a further~~ the oral fluid sample at a place to which the person has accompanied the enforcement officer under

**subsection (2)(a)(ii)**, the enforcement officer may require the person to accompany the officer to any other place where it is likely that the person can provide the sample.

(4) A person who is required to provide ~~a further~~ an oral fluid sample must—

(a) accompany an enforcement officer to a place when required to do so under this section:

(b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to provide the sample.

**71DAB Person may apply to have oral fluid sample analysed by private analyst**

(1) This section applies if a person is served with an infringement notice in respect of an infringement offence under section **57A(3), 57B(3)**, 57C(3), or 57C(4).

(2) If the person (or the person's solicitor or counsel) wishes to have the oral fluid sample that resulted in the infringement notice analysed by a private analyst, the person may apply to the Commissioner in accordance with **subsection (5)**.

(3) If the application complies with **subsection (5)**,—

(a) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved laboratory to which the oral fluid sample taken from the person was delivered or posted under **section 71D**; and

(b) that laboratory must send the oral fluid sample by post, personal delivery, or delivery by courier to the private analyst specified in the application.

(4) If the application does not comply with **subsection (5)**, the Commissioner or authorised person may refuse to forward a copy of the application to the approved laboratory.

(5) An application under **subsection (2)** must—

(a) be made in writing to the Commissioner no later than 28 days after the date on which the person is served with an infringement notice in respect of the infringement offence; and

(b) state the full name and address and the occupation of the person and the date of the infringement offence; and

(c) identify the private analyst to whom the oral fluid sample is to be sent and the address of the private analyst.

**71DB ~~Requirements applying to analysing and handling oral fluid sample that is subject to laboratory analysis~~Requirements for approved analyst or private analyst in respect of oral fluid sample**

(1) This section applies to~~ an approved laboratory that receives an oral fluid sample delivered or posted to the laboratory in accordance with **section 71D(4)**~~—

(a) an approved analyst that receives an oral fluid sample delivered or posted to an approved laboratory in accordance with **section 71D(2)**; and

(b) a private analyst that receives an oral fluid sample delivered or posted to the analyst in accordance with **section 71DAB**.

*Requirements for approved analyst analysing and handling oral fluid sample*

(2) The approved ~~laboratory~~ analyst must—

(a) analyse the oral fluid sample for the purpose of testing the sample for the presence of 1 or more listed qualifying drugs specified in each notice made under **section 71GA**; and

(b) establish ~~if~~ whether, for each listed qualifying drug, the concentration level of the drug in the person's oral fluid sample is at or above the concentration level specified in a notice made under **section 71GA**~~.~~; and

(c) handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.

*Requirements for private analyst handling oral fluid sample*

(3) The ~~approved laboratory~~ private analyst must handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.

**20 Section 71E amended (Person may be required to accompany enforcement officer to undergo blood test)**

(1) Replace section 71E(1)(a) with:

~~(a) a person who is unable to provide an oral fluid sample that is sufficient to carry out an oral fluid screening test after having been required to do so by the officer under any of sections 71A to 71C:~~

~~(aa) a person who is unable to provide an oral fluid sample that is sufficient for the purpose specified in **section 71D(4)** after having been required to do so by the officer under **section 71DA**:~~

(a) a person who, after having been required to do so by the officer under any of sections 71A to 71C, is unable to provide an oral fluid sample that is sufficient to carry out an oral fluid screening test:

(aa) a person who, after having been required to do so by the officer under **section 71DA**, is unable to provide an oral fluid sample that is suffi-

cient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act:

(2) In section 71E(1)(b), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) Repeal section 71E(1)(c).

### 21 Section 71F amended (Who must undergo compulsory impairment test)

~~(1) In section 71F(5)(c) and (d), replace "oral fluid test" with "oral fluid screening test".~~

~~(2) Replace section 71F(5)(c)(ii) with:~~

> ~~(ii) produces a positive result that indicates the use of at least 1 of the following:~~
>
> ~~(A) more than 1 qualifying drug:~~
>
> ~~(B) more than 1 family of qualifying drugs:~~
>
> ~~(C) 1 or more qualifying drugs and 1 or more families of qualifying drugs:~~

(2A) Replace section 71F(5)(c) with:

(c) a first oral fluid screening test, regardless of the result of the test (or a failure of the test to produce a result):

(2B) In section 71F(5)(d), replace "oral fluid test" with "oral fluid screening test".

~~(3) In section 71F(6)(a) and (b), replace "oral fluid test" with "oral fluid screening test".~~

~~(4) In section 71F(6)(a), replace "only 1 qualifying drug" with "only 1 qualifying drug or family of qualifying drugs".~~

(5) Replace section 71F(6) with:

(6) An enforcement officer must not exercise the powers in subsections (1) and (2) in relation to a person who has undergone a second oral fluid screening test that produces a positive result.

### 22 Section 71G replaced (Approval of oral fluid tests and oral fluid testing devices)

Replace section 71G with:

#### 71G Minister may approve oral fluid screening devices for use in oral fluid screening tests

(1) The Minister of Police may, by notice, approve a kind of device that may be used as an oral fluid screening device.

*What notice must specify*

(2) The notice must specify—

(a) either or both of the following:

(i) 1 or more qualifying drugs in respect of which the approved device may be used for the purpose of screening oral fluid for the presence of that drug (a **specified qualifying drug**):

(ii) 1 or more families of qualifying drugs in respect of which the approved device may be used for the purpose of screening oral fluid for the presence of that family of drugs (a **specified family of qualifying drugs**); and

(b) for each specified qualifying drug or specified family of qualifying drugs, the concentration level of that specified qualifying drug or specified family of qualifying drugs in the person's oral fluid at or above which the result of the test will appear positive for that qualifying drug or that family of qualifying drugs (the **positive screening threshold**).

*Minister must consult and ~~be satisfied of~~ consider certain matters before making notice*

(3) Before making a notice, the Minister of Police must consult the Minister of Transport and the Science Minister.

~~(4) The Minister of Police may approve a device under **subsection (1)** only if the Minister of Police is satisfied that—~~

~~(a) the positive screening threshold used by the device for a specified qualifying drug or specified family of qualifying drugs is indicative of recent use of that qualifying drug or specified family of qualifying drugs; and~~

~~(b) the device will return results with a high level of accuracy.~~

(4) The Minister of Police may approve a device under **subsection (1)** only if the Minister of Police has considered the following matters:

(a) the accuracy of the device in light of the requirements for screening oral fluid specified in sections 71A to **71DA**:

(b) the extent to which the positive screening threshold used by the device for a specified qualifying drug or specified family of qualifying drugs indicates recent use of that specified qualifying drug or specified family of qualifying drugs.

~~(5) In determining whether a positive screening threshold meets the requirement specified in **subsection (4)(a)**,—~~

~~(a) the Minister of Police must have regard to any relevant New Zealand standard or joint Australian/New Zealand standard; and~~

~~(b) it is sufficient to meet the requirement if the positive screening threshold aligns with the applicable threshold specified in the relevant New Zealand standard or joint Australian/New Zealand standard; and~~

~~(c) if the positive screening threshold does not align with the applicable threshold specified in the relevant standard or if there is no applicable threshold specified in the relevant standard, the Minister of Police may~~

~~nevertheless be satisfied that the requirement is met on the basis of other relevant information.~~

(5) In considering—

(a) the matters specified in **subsection (4)**, the Minister of Police must take into account the desirability of—

(i) detecting a qualifying drug, including a family of qualifying drugs, that has recently been used by the driver of a motor vehicle; and

(ii) deterring a person from driving a motor vehicle if they have recently used a qualifying drug, including a family of qualifying drugs; and

(b) the matter specified in **subsection (4)(b)**, the Minister of Police must also have regard to any relevant standard.

*Defining and identifying device as approved device*

(6) A notice made under **subsection (1)** may define an approved device as a device that bears, or is associated by its manufacturer with, any trade name or number or other expression, or any combination of those things, that may be specified in the notice.

(7) In the absence of proof to the contrary, a device is to be treated as bearing or being associated with a particular trade name or number or other expression if that name or number or other expression—

(a) appears on the device, whether on a label or otherwise, or is shown on a display panel on the device; or

(b) is printed out by the device on a card or on paper; or

(c) appears on printed matter that—

(i) accompanies the device; and

(ii) is associated with the device or is intended by the manufacturer of the device to be associated with the device; and

(iii) is issued by or on behalf of the manufacturer.

(7A) In this section and in **section 71GA**, **relevant standard** means—

(a) Australian/New Zealand Standard AS/NZS 4760:2019 Procedure for specimen collection and the detection and quantification of drugs in oral fluid; or

(b) any Australian/New Zealand Standard or New Zealand Standard substituted for that standard.

(8) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**71GA Minister may specify listed qualifying drugs and concentration level to be tested for by approved ~~laboratory~~ analyst**

(1) The Minister of Police may, by notice, specify—

(a) 1 or more listed qualifying drugs in respect of which an approved ~~laboratory~~ analyst may analyse an oral fluid sample for the purpose of testing the sample for the presence of that drug or those drugs; and

(b) for each listed qualifying drug, the concentration level of the drug in the person's oral fluid at or above which the result of the test will appear positive for that drug (the **positive evidential threshold**).

(2) Before making a notice, the Minister of Police must consult the Minister of Transport and the Science Minister.

(3) The Minister of Police may make a notice only if that Minister is satisfied that the positive evidential threshold proposed to be approved under **subsection (1)(b)** for use by an approved ~~laboratory~~ analyst to test for a listed qualifying drug ~~is indicative of~~ indicates recent use of that listed qualifying drug.

(4) In determining whether a positive evidential threshold meets the requirement specified in **subsection (3)**,—

(a) the Minister of Police must have regard to any relevant ~~New Zealand~~ standard ~~or joint Australian/New Zealand standard~~; and

(b) it is sufficient to meet the requirement if the positive evidential threshold aligns with the applicable threshold specified in the relevant ~~New Zealand~~ standard ~~or joint Australian/New Zealand standard~~; and

(c) if the positive evidential threshold does not align with the applicable threshold specified in the relevant standard or if there is no applicable threshold specified in ~~the~~ any relevant standard, the Minister of Police may nevertheless be satisfied that the requirement is met on the basis of other relevant information.

(5) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

## Subpart 7—Amendments to enforcement procedures involving taking of blood specimens

**23 Section 72 amended (Who must give blood specimen at places other than hospital or medical centre)**

(1) Replace section 72(1)(e) and (f) with:

(e) the person is unable to provide an oral fluid sample that is sufficient to carry out an oral fluid screening test after having been required to do so by an enforcement officer under any of sections 71A to 71C; or

~~(f) the person is unable to provide an oral fluid sample that is sufficient for the purpose specified in **section 71D(4)** after having been required to do so by an enforcement officer under **section 71DA**; or~~

(f) the person is unable, after having been required to do so by an enforcement officer under **section 71DA**, to provide an oral fluid sample that is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act; or

(2) In section 72(1)(g), (1B), and (1C), replace "oral fluid tests" with "oral fluid screening tests".

### 24 Section 73A amended (Purposes for which blood specimen taken under section 72 or 73 may be used as evidence)

Replace section 73A(2) with:

(2) None of the following may be used as evidence of the use of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975:

(a) a positive result of an oral fluid screening test taken under any of sections 71A to 71C:

(b) a positive result of an analysis of an oral fluid sample carried out by an approved ~~laboratory~~ analyst under **section 71DB**:

(c) a blood specimen taken under section 72 or 73.

## Subpart 8—Amendments to evidential provisions

### 25 Section 77A amended (Presumptions relating to drug testing)

(1) Replace section 77A(2) with:

(2) For the purposes of proceedings for an infringement offence against section **57A(3), 57B(3)**, 57C(3), or 57C(4), it is to be conclusively presumed in the absence of proof to the contrary that a person's oral fluid contains a listed qualifying drug if analysis carried out by an approved ~~laboratory~~ analyst indicates that the person's oral fluid sample is positive for the drug.

(2) Repeal section 77A(3) and (4).

(3) In section 77A(5), replace "an oral fluid test" with "analysis of an oral fluid sample carried out by an approved ~~laboratory~~ analyst".

# Part 3
# Amendments to Parts 7, 9, 11, and 15 and Schedule 1

## Subpart 1—Amendments to Part 7 (disqualification, demerit points, licence suspension, and vehicle impoundment)

### 26 Cross-heading above section 94A amended

In the cross-heading above section 94A, replace "*oral fluid tests*" with "*oral fluid screening tests*".

### 27 Section 94A amended (Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid tests are positive)

(1) Replace the heading to section 94A with "**Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid screening tests are positive or person fails or refuses oral fluid screening test**".

(2) Replace section 94A(1) with:

(1) An enforcement officer must forbid a person to drive a motor vehicle for a 12-hour period if the person—

(a) ~~the person~~ has undergone 2 oral fluid screening tests and the results of both tests are positive; or

(b) ~~the person~~ fails or refuses to undergo an oral fluid screening test without delay after having been required to do so under any of sections 71A to 71C by an enforcement officer~~.~~; or

(c) having undergone an oral fluid screening test under any of sections 71A to 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; or

(d) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 71A, 71B, or **71DA**; or

(e) having accompanied an enforcement officer to a place under a requirement under section 71A or 71B, fails or refuses to remain at that place until the person is required to undergo an oral fluid screening test under section 71A or 71B; or

(f) having accompanied an enforcement officer to a place under a requirement under **section 71DA**, fails or refuses to remain at that place until the person is required to provide an oral fluid sample under **section 71DA(1A)**.

### Subpart 2—Amendment to Part 9 (enforcement of responsibilities)

**28 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)**

In section 121(1)(a)(i)(D), replace "section 72(1)(a) or (e)" with "section 72(1)(a), **(e), or (f)**".

### Subpart 3—Amendment to Part 11 (land transport secondary legislation)

**29 Section 167 amended (Regulations)**

After section 167(1)(l), insert:

(la) prescribing, for the purposes of **section 71DA(1A)**, the procedure for taking an oral fluid sample:

(lb) prescribing, for the purposes of **sections 71D~~(4)(b)~~(2)(b) and 71DB(2) and (3)**, the procedure for handling, retaining, transferring, or disposing of an oral fluid sample:

### Subpart 4—Amendment to Part 15 (miscellaneous provisions)

**30 Section 209A amended (Analysing oral fluid or blood specimens for statistical or research purposes related to use of drugs or alcohol)**

In section 209A(1)(a), replace "any of sections 71A to 71C" with "any of sections 71A to 71C and **71DA**".

### Subpart 5—Amendments to Schedule 1

**31 Schedule 1 amended**

(1) In Schedule 1, repeal Part 6.

(2) In Schedule 1,—

(a) insert the Part set out in the **Schedule** of this Act as the last Part; and

(b) make all necessary consequential amendments.

## Part 4
## Related and consequential amendments

*Amendment to Criminal Procedure Act 2011*

**32 Principal Act**

**Section 33** amends the Criminal Procedure Act 2011.

**33 Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998)**

In section 358(1)(f), replace "section 59" with "section 59(1)".

*Amendments to Land Transport (Offences and Penalties) Regulations 1999*

### 34 Principal regulations

**Sections 35 and 36** amend the Land Transport (Offences and Penalties) Regulations 1999.

### 35 Schedule 1 amended

(1) In Schedule 1, item relating to section 57A(3) of the Land Transport Act 1998, replace the item in the second column with:

| | |
|---|---|
| Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 1 listed qualifying drug | |

(2) In Schedule 1, item relating to section 57B(3) of the Land Transport Act 1998, replace the item in the second column with:

| | |
|---|---|
| Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 2 or more listed qualifying drugs | |

(3) In Schedule 1, item relating to section 57C(3) of the Land Transport Act 1998, replace the item in the second column with:

| | |
|---|---|
| Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with result of analysis of oral fluid sample carried out by | |

| | |
|---|---|
| | approved ~~laboratory~~ analyst positive for 1 listed qualifying drug |

(4) In Schedule 1, item relating to section 57C(4) of the Land Transport Act 1998, replace the item in the second column with:

| | |
|---|---|
| | Driving or attempting to drive with breath containing alcohol below specified alcohol limits and result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 1 listed qualifying drug |

(5) In Schedule 1, after the item relating to section 57C(4) of the Land Transport Act 1998, insert:

| | | | | | |
|---|---|---|---|---|---|
| **59(3)** | Failing or refusing to remain at specified place or to accompany enforcement officer without delay | — | — | 400 | — |
| **60A(1)(a)** | Failing or refusing to undergo oral fluid screening test without delay | 1000 | — | 400 | — |
| **60A(1)(b)** | Failing or refusing to provide oral fluid sample | 1000 | — | 400 | — |

## 36 Schedule 2 amended

(1) In Schedule 2, item relating to section 57A(3) of the Land Transport Act 1998, replace the item in the third column with:

| | |
|---|---|
| | Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 1 listed qualifying drug |

(2) In Schedule 2, item relating to section 57B(3) of the Land Transport Act 1998, replace the item in the third column with:

| | | |
|---|---|---|
| Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 2 or more listed qualifying drugs | | |

(3) In Schedule 2, item relating to section 57C(3) of the Land Transport Act 1998, replace the item in the third column with:

| | | |
|---|---|---|
| Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 1 listed qualifying drug | | |

(4) In Schedule 2, item relating to section 57C(4) of the Land Transport Act 1998, replace the item in the third column with:

| | | |
|---|---|---|
| Driving or attempting to drive with breath containing alcohol below specified alcohol limits and with result of analysis of oral fluid sample carried out by approved ~~laboratory~~ analyst positive for 1 listed qualifying drug | | |

(5) In Schedule 2, after the item relating to section 59(1) of the Land Transport Act 1998, insert:

| | | |
|---|---|---|
| **59(3)** | Failing or refusing to remain at specified place or to accompany enforcement officer without delay | 75 |
| **60A(1)(a)** | Failing or refusing to undergo oral fluid screening test without delay | 75 |
| **60A(1)(b)** | Failing or refusing to provide an oral fluid sample | 75 |

# Schedule
# New Part 9 inserted into Schedule 1

s 31(2)

## Part 9
## Provisions relating to Land Transport (Drug Driving) Amendment Act **2024**

### 29 Review of amendments made by Land Transport (Drug Driving) Amendment Act **2024**

~~(1) The Minister must appoint a reviewer to commence a review of the amendments made by the Land Transport (Drug Driving) Amendment Act **2024**—~~

~~(a) no earlier than 3 years after the commencement of that Act; and~~

~~(b) no later than 4 years after the commencement of that Act.~~

(1A) The Minister must appoint a reviewer to review the amendments made by the Land Transport (Drug Driving) Amendment Act **2024**.

~~(2) The Minister must ensure that the reviewer appointed under **subclause (1)** is independent of the—~~

~~(a) New Zealand Police; and~~

~~(b) Ministry of Transport.~~

~~(3) The review commenced under **subclause (1)** must, subject to **clause 30**, consider the following matters:~~

~~(a) the impact of the amendments:~~

~~(b) the reliability of oral fluid screening tests, laboratory analysis of oral fluid samples, and blood tests in assessing a person's impairment:~~

~~(c) whether appropriate thresholds and impairment levels have been set for different drugs:~~

~~(d) whether the amendments have been appropriately implemented by the New Zealand Police and other relevant entities:~~

~~(e) whether the amendments have had a disproportionate impact on Māori and Pasifika people:~~

~~(f) the extent to which, if it can be assessed, the number of people driving while impaired by drugs has changed since the amendments came into force:~~

~~(g) whether—~~

~~(i) further amendments should be considered:~~

~~(ii) any of the amendments should be repealed:~~

~~(h) any other matter that the Minister asks the reviewer to examine:~~

~~(i) any other matter that the reviewer considers relevant.~~

(4) The reviewer may also consider amendments made by the Land Transport (Drug Driving) Amendment Act 2022~~ when undertaking the review commenced under **subclause (1)**~~.

~~(5) The reviewer must provide a report on the review to the Minister within 12 months of the date of the reviewer's appointment under **subclause (1)**.~~

(5) The reviewer must report to the Minister on the review no later than 5 years after the commencement of the Land Transport (Drug Driving) Amendment Act **2024**.

(6) The Minister must, within 60 working days of the day on which the~~ report on the review is provided~~ reviewer reports to the Minister under **subclause (5)**, present to the House of Representatives—

(a) the report; and

(b) a response to the report.

~~**30 Order for review not to consider certain matters**~~

~~(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, require that the review commenced under **clause 29** not consider 1 or more of the matters identified in **clause 29(3)**.~~

~~(2) Before recommending that the Governor-General make an Order in Council under **subclause (1)**, the Minister must present a paper to the House of Representatives explaining why, in the Minister's view, the review should not consider the matters identified in the Order in Council.~~

~~(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).~~

## Legislative history

| | |
|---|---|
| 29 July 2024 | Introduction (Bill 69–1) |
| 1 August 2024 | First reading and referral to Transport and Infrastructure Committee |

Wellington, New Zealand:
Published under the authority of the House of Representatives—2024