

OC241136

22 October 2024

Tēnā koe

I refer to your email dated 25 September 2024, requesting the following under the Official Information Act 1982 (the Act):

*“Can I please request the titles and dates of all briefings, aide memoirs, Cabinet papers and advice in any other form provided to the Minister of Transport and Associate Minister of Transport in August 2024 (not including emails, texts, or instant messages), and also the below briefings under the OIA:*

- *Release of Draft Land Transport (Clean Vehicle Standard) Amendment Regulations to the New Zealand Transport Agency Waka Kotahi*
- *Introducing the Land Transport (Drug Driving) Amendment Bill*
- *Drug and Alcohol Management Plans - Rule Approval*
- *Passenger Safety on Public Transport Buses in New Zealand*
- *Aide Memoire: Meeting with KiwiRail 24 July 2024*
- *Meeting with the Bus and Coach Association, 25 July 2024*
- *Road Policing Investment Programme 2024- 2027*
- *Meeting with Lee Marshall, Chief Executive of the Motor Trade Association*
- *Confirming Funding Arrangements for Recruiting and Retaining Bus Drivers Initiative*
- *First Reading of the Land Transport (Drug Driving) Amendment Bill”*

Most of the titles the Ministry of Transport Te Manatū Waka (the Ministry) provided to the Minister of Transport and Associate Minister of Transport in August 2024 are published on our website. I am therefore refusing this part of your request under section 18(d) of the Act – the information is or will soon be publicly available. Please refer to this link:

[https://www.transport.govt.nz/about-us/what-we-do/briefings-list/SearchForm?Keyword=&TopicID=&DocumentTypeID=142&action\\_results=Search](https://www.transport.govt.nz/about-us/what-we-do/briefings-list/SearchForm?Keyword=&TopicID=&DocumentTypeID=142&action_results=Search)

Advice not captured in our published list is detailed in Annex 1 attached. One title has been withheld from this list as the content is currently being considered and releasing the title would reveal the work being undertaken. In addition, names of people making Official Information Act requests have been withheld to protect their privacy.

The second part of your request asks for ten briefings. I am releasing all ten briefings with some information withheld or refused. The document schedule attached as Annex 2 details how the documents have been treated under the Act. The following sections of the Act have been used:

- |             |   |
|-------------|---|
| 6(c)        | as release would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial   |
| 9(2)(a)     | to protect the privacy of natural persons   |
| 9(2)(b)(ii) | to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information  |
| 9(2)(ba)(i) | to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied |
| 9(2)(f)(iv) | to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials  |
| 9(2)(g)(i)  | to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty   |
| 9(2)(h)     | to maintain legal professional privilege  |
| 9(2)(j)     | to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)  |
| 18(d)       | the information requested is or will soon be publicly available   |

With regard to the information that has been withheld under section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry's website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā



Hilary Penman  
**Manager, Accountability & Correspondence**

## Annex 1: Advice Provided to the Minister of Transport and Associate Minister of Transport in August 2024

Number	Reference	Primary Minister	Date Received	Title of Paper
1	OC240893	Brown	7/8/2024	Proactive Release of June 2024 Weekly Reports
2	OC240830	Brown	7/8/2024	Proactive Release of Information Relating to the Development of the Transport Content of the Draft Second Emissions Reduction Plan
3	OC240572	Brown	7/8/2024	Proactive Release of GPS 2024 Advice and Key Correspondence
4	n/a	Doocey	8/8/2024	Associate Minister of Transport Weekly Report week commencing 5 August 2024
5	OC240834	Brown	8/8/2024	OIA Request from [withheld under 9(2)(a)] for Advice on the Consistency of GPS 2024 with Emissions Budgets and Targets
6	n/a	Brown	9/8/2024	Transport Portfolio Weekly Report as at Wednesday 7 August 2024
7	OC240860	Brown	12/8/2024	OIA Request from [withheld under 9(2)(a)] on Speed Limit Reductions
8	OC240857	Brown	12/8/2024	OIA Request from [withheld under 9(2)(a)] for the May 2024 Briefing about Changes to Budget 2024 (OIA24-304)
9	OC240891	Brown	12/8/2024	OIA Request from [withheld under 9(2)(a)] for Three Briefings from the June 2024 Published Briefing Titles List (OIA24-317)
10	OC240873	Brown	14/8/2024	OIA Request from [withheld under 9(2)(a)] for Information Relating to your February 2024 Meeting with Port Company CEOs (OIA24-314)
11	n/a	Doocey	15/8/2024	Associate Minister of Transport Weekly Report week commencing 12 August 2024
12	n/a	Brown	16/8/2024	Transport Portfolio Weekly Report as at Wednesday 14 August 2024
13	OC240886	Brown	20/8/2024	OIA Request from [withheld under 9(2)(a)] on Advice and Correspondence Regarding the Development of GPS 2024
14	n/a	Doocey	22/8/2024	Associate Minister of Transport Weekly Report week commencing 19 August 2024
15	OC240933	Doocey	23/8/2024	Proactive Release of Papers Relating to Consultation on Reform of the Maritime Design, Construction and Equipment Rule Set

Number	Reference	Primary Minister	Date Received	Title of Paper
16	n/a	Brown	23/8/2024	Transport Portfolio Weekly Report as at Wednesday 21 August 2024
17	OC240930	Brown	23/8/2024	OIA Information Act Request from [withheld under 9(2)(a)] on the Medical Convener's Employment Status
18	OC2400926	Brown	27/8/2024	OIA Request from [withheld under 9(2)(a)] for Information on Transport Expert Advisory Groups (OIA24-325)
19	OC240896	Brown	28/8/2024	Proactive Release of Cabinet Material Relating to Land Transport (Drug Driving) Amendment Bill
20	n/a	Doocey	29/8/2024	Associate Minister of Transport Weekly Report week commencing 26 August 2024
21	OC240941	Brown	29/8/2024	Official Information Act Request from [withheld under 9(2)(a)] Regarding Instructions on the Use of Te Reo Māori (OIA24-329)
22	OC240944	Doocey	29/8/2024	Ministerial OIA Request – [withheld under 9(2)(a)] – Information Including Correspondence Relating to the Milford Opportunities Project
23	OC240943	Brown	29/8/2024	OIA Request from [withheld under 9(2)(a)] on Speed Advice
24	OC240932	Brown	29/8/2024	OIA Request from [withheld under 9(2)(a)] Regarding Core Share
25	n/a	Brown	30/8/2024	Transport Portfolio Weekly Report as at Wednesday 28 August 2024
26	OC240890	Brown	30/8/2024	OIA Request for B24 communications

## Annex 2: Document Schedule

Doc#	Reference	Document	Decision on release
1	OC240707	Release of Draft Land Transport (Clean Vehicle Standard) Amendment Regulations to the New Zealand Transport Agency Waka Kotahi	Released with some information withheld under section 9(2)(a).
2	OC240770	Introducing the Land Transport (Drug Driving) Amendment Bill	Released with some information withheld under sections 9(2)(a), 9(2)(ba)(i), 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(h). Annex 2 is refused under section 18(d) and can be found here: <a href="https://bills.parliament.nz/v/6/2b4a9eb9-9673-43f1-6e83-08dcaf7c7d1e?Tab=sub">https://bills.parliament.nz/v/6/2b4a9eb9-9673-43f1-6e83-08dcaf7c7d1e?Tab=sub</a> The Cabinet paper is refused under section 18(d) and can be found here: <a href="https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm">https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm</a>
3	OC240539	Drug and Alcohol Management Plans - Rule Approval	Released with some information withheld under sections 9(2)(a) and 9(2)(h). Annex 2 is refused under section 18(d) and can be found here: <a href="https://www.aviation.govt.nz/assets/rules/pending-rules/ca-act-2023/Part-099-Initial-Issue.pdf">https://www.aviation.govt.nz/assets/rules/pending-rules/ca-act-2023/Part-099-Initial-Issue.pdf</a>
4	OC240795	Passenger Safety on Public Transport Buses in New Zealand	Released with some information withheld under sections 6(c), 9(2)(a), 9(2)(ba)(i) and 9(2)(f)(iv).
5	OC240841	Aide Memoire: Meeting with KiwiRail 24 July 2024	Released with some information withheld under sections 9(2)(a), 9(2)(b)(ii), 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j).
6	OC240794	Meeting with the Bus and Coach Association, 25 July 2024	Released with some information withheld under sections 9(2)(a), 9(2)(ba)(i) and 9(2)(f)(iv).
7	OC240597	Road Policing Investment Programme 2024-2027	Released with some information withheld under sections 9(2)(a) and 9(2)(f)(iv).
8	OC240825	Meeting with Lee Marshall, Chief Executive of the Motor Trade Association	Released with some information withheld under sections 9(2)(a) and 9(2)(f)(iv).
9	OC240736	Confirming Funding Arrangements for Recruiting and Retaining Bus Drivers Initiative	Released with some information withheld under sections 9(2)(a) and 9(2)(j).
10	OC240854	First Reading of the Land Transport (Drug Driving) Amendment Bill	Released with some information withheld under sections 9(2)(a) and 9(2)(f)(iv). Annex 1 is refused under section 18(d) and can be found here: <a href="http://nzlii.austlii.edu.au/nz/legis/bill_ls/otsrotltda_bls821/">http://nzlii.austlii.edu.au/nz/legis/bill_ls/otsrotltda_bls821/</a>

3 July 2024

OC240707

**Hon Simeon Brown**  
**Minister of Transport**

**Action required by:**  
Wednesday, 10 July 2024

## **RELEASE OF DRAFT LAND TRANSPORT (CLEAN VEHICLE STANDARD) AMENDMENT REGULATIONS TO THE NEW ZEALAND TRANSPORT AGENCY WAKA KOTAHI**

### **Purpose**

To seek your approval to share the Land Transport (Clean Vehicle Standard) Amendment Regulations (the Regulations) with the New Zealand Transport Agency Waka Kotahi, noting that the sharing is in confidence and subject to legal professional privilege.

### **Key points**

- The Ministry is preparing to issue instructions for the Regulations, pending consideration of the outcomes of the Clean Vehicle Standard Review by Cabinet on 8 July 2024.
- The Minister responsible for draft Government legislation must approve its release outside the Crown in all circumstances. The Attorney-General must also approve the release of draft Government legislation outside the Crown.
- Cabinet Office Circular [CO \(19\) 2](#) outlines circumstances where the Attorney-General's consent to release does not need to be sought.
- The Circular provides that the release of draft Government legislation outside the Crown does not need the approval of the Attorney-General if "the draft legislation will be released, on an in-confidence basis and subject to legal professional privilege, to a Crown entity for the purposes of consultation that is... appropriate for the purposes of the Cabinet or Ministerial approval process".
- The Chief Legal Adviser has considered the applicable requirements of the Circular and approved the release of the Regulations.

**Recommendations**

We recommend you:

- 1 **agree** to share the draft Land Transport (Clean Vehicle Standard) Amendment Regulations (the Regulations) with the New Zealand Transport Agency Waka Kotahi on an in-confidence basis and subject to legal professional privilege. Yes / No
  
- 2 **note** that the Chief Legal Adviser has approved the release of the Regulations in accordance with Cabinet Office Circular [CO \(19\) 2](#). Noted




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Matthew Green  
**Chief Legal Adviser**  
 27 / 06 / 24

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Hon Simeon Brown  
**Minister of Transport**  
 ..... / ..... / .....

- Minister's office to complete:**
- Approved  Declined
  - Seen by Minister  Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Matthew Green, Chief Legal Adviser	s 9(2)(a)	✓

16 July 2024

OC240770

**Hon Simeon Brown**  
**Minister of Transport**

**Action required by:**  
Wednesday, 17 July 2024

## **INTRODUCING THE LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL**

### **Purpose**

To seek your agreement to lodge the following documents with the Cabinet Office by 18 July 2024, for the Cabinet Legislation Committee (LEG) meeting on 25 July 2024:

- Land Transport (Drug Driving Amendment Bill: Approval for Introduction Cabinet paper (the LEG paper);
- Land Transport (Drug Driving) Amendment Bill (the Bill); and
- Departmental Disclosure Statement.

To seek your agreement to one additional minor policy matter for inclusion in the Bill.

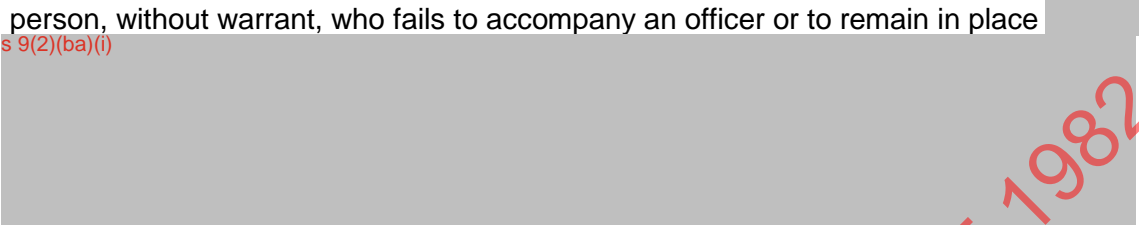

### **Key points**

- 1) The attached LEG paper seeks approval to introduce the Bill to enable the roll-out of a new roadside oral fluid testing regime for drug drivers.
- 2) We consulted departments on the Bill, LEG paper, and departmental disclosure statement. Your Office has consulted Ministers and coalition parties. Departmental feedback, and our response to it, is attached at Annex 1. Minor changes have been made to the attached papers to incorporate the feedback received.
- 3) There was no substantive feedback from Ministerial consultation.
- 4) The attached Bill is the most up-to-date version, but drafting will need to continue up until lodgement with the Cabinet Office to allow the Parliamentary Counsel Office (PCO) to run its final proofing processes and address minor drafting matters. The PCO will lodge the Bill with the Cabinet Office.

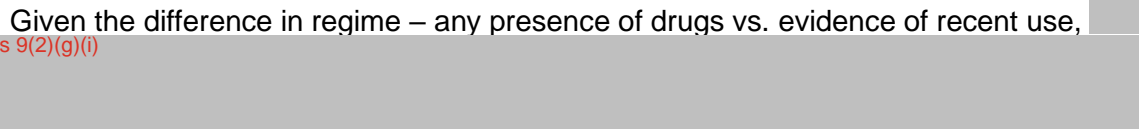
*Further policy matter which requires your agreement for inclusion in the Bill*

- 5) s 9(2)(f)(iv)



- 6) The Bill provides a new infringement offence for failing or refusing an oral fluid screening test or to provide an oral fluid sample (proposed s 60A). It also provides that failing to accompany an officer or to remain in place while undergoing screening or providing an oral fluid sample is also an infringement offence (proposed s 59(3)). The penalty for both is equivalent to the maximum penalty for a driver who is found to have two or more specified qualifying drugs in their oral fluid (a \$400 fee and 75 demerit points).
- 7) The Land Transport Act currently includes powers for an enforcement officer to arrest a person, without warrant, who fails to accompany an officer or to remain in place s 9(2)(ba)(i)  

- 8) We recommend the Bill remove these arrest powers in line with the infringement offences being introduced by the proposed s 59 (failure or refusal to remain in place or accompany an officer) and s 60A (failure or refusal to undergo an oral fluid test).
- 9) s 9(2)(ba)(i)  

- 10) We also note that the Bill has been drafted to make clear that s 60A applies to drivers who refuse to undergo an oral fluid screening test and who refuse to provide an oral fluid sample for a laboratory test. The original Cabinet approval did not differentiate between an oral fluid screening test and an evidential test performed in a laboratory in relation to the refusal infringement (i.e., the recommendation referred to an 'oral fluid test') [DEV-23-MIN-0077]. The intent of this approval was to capture both types of tests and therefore we consider that no further policy approval is required for this clarification in the Bill. The Bill makes the same clarification in s 59(3), following your previous agreement [OC240519 refers].

*Oral fluid testing devices used in Australia*

- 11) Australian states use a range of oral fluid screening devices to test for *any presence of certain illicit drugs* in drivers' oral fluid. In comparison, our regime is intended to screen for certain illicit and prescription drugs *at a level that indicates recent use* (a proxy for impairment).
- 12) The Minister of Police, in consultation with the Transport and Science Ministers, will be able to approve a device if they are satisfied that the positive threshold used by that device indicates *recent use* of specified qualifying drugs/families of qualifying drugs.
- 13) Given the difference in regime – any presence of drugs vs. evidence of recent use, s 9(2)(g)(i)  

- 14) However, the Independent Expert Panel on Drug Driving has reported that the 'cut-off drug concentrations for commercially available testing devices are generally aligned to oral fluid concentrations set in Standards ... and the recommended cut-offs are accepted as indicative of recent drug use.'

- 15) <sup>s 9(2)(f)(iv)</sup> [REDACTED] relying on the advice from the Independent Expert Panel on Drug Driving that “commercially available testing devices are generally aligned to oral fluid concentrations set in Standards.”
- 16) We recommend that you invite the select committee that examines the Bill to consider the workability of the proposed regime and, in particular, the availability of devices that meet the proposed new approval criteria.
- 17) If further detailed expert advice that comes forward during the legislative process does suggest policy changes are required to ensure successful implementation <sup>s 9(2)(f)(iv)</sup> [REDACTED] these could be considered at Cabinet before the departmental report to the Select Committee is presented.

*Expert technical support*

- 18) As the Bill progresses, Helen Poulsen, a forensic toxicologist at the Institute of Environmental Science and Research and former chair of the Independent Expert Panel on Drug Driving, will be available to advise during the select committee process. The capacity in which she will do so will depend on how the select committee decides to set up advisors.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

**Recommendations**

We recommend you:

- 1 **agree** to lodge the following papers with the Cabinet Office by 18 July 2024, for the for the Cabinet Legislation Committee (LEG) meeting on 25 July 2024:
  - Land Transport (Drug Driving) Amendment Bill (the Bill);
  - Land Transport (Drug Driving Amendment Bill: Approval for Introduction Cabinet paper (LEG paper); and
  - Departmental Disclosure Statement.

Yes / No
  
- 2 **agree**, for inclusion in the Bill, to remove the powers for an enforcement officer to arrest a person, without warrant, when a driver fails to accompany an officer or to remain in place under the oral fluid testing regime.
 

Yes / No
  
- 3 **note** a letter has been provided to your office to support consultation with the Minister of Justice and Minister of Police on recommendation 2 above and has already been circulated to other Ministers.
  
- 4 **note** minor changes were made to the Bill, LEG paper, and departmental disclosure statement based on feedback received from the consultation process.
  
- 5 **note** talking points for the LEG meeting will be provided on 19 July 2024.

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Paul O’Connell  
**Deputy Chief Executive, Sector Strategy Group**  
 16 / 07 / 2024

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Hon Simeon Brown  
**Minister of Transport**  
 ..... / ..... / .....

- Minister’s office to complete:**
- Approved
  - Declined
  - Seen by Minister
  - Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Paul O’Connell, Deputy Chief Executive, Sector Strategy Group	s 9(2)(a)	
Jo Gould, Principal Adviser, Safety		✓

**ANNEX 1**

**Table of feedback from the consultation process and the Ministry's response<sup>1</sup>**

Agency feedback	Response
<div style="position: absolute; top: 5px; left: 5px; font-size: 8px; color: red;">s 9(2)(h)</div>	
<p><b>Ministry of Health</b></p>	
<p>Generally supportive of efforts to reduce the behaviour of impaired driving because of the risk of harm associated with it. Suggests seeking further expert technical advice.</p>	<p>As noted previously, we have available to us the technical support of the former chair of the Independent Expert Panel on Drug Driving.</p>

THE OFFICIAL INFORMATION ACT 1982

<sup>1</sup>The Accident Compensation Corporation, New Zealand Transport Agency, Te Puni Kōkiri, Department of Prime Minister and Cabinet, The Treasury, and WorkSafe New Zealand did not respond or had minimal feedback.

Agency feedback	Response
<p>The reference to screening for families of qualifying drugs raises concerns about whether this will create a greater risk that individuals consuming prescribed substances in the correct manner will return positive results at the roadside. The families of qualifying drugs include commonly prescribed medications – for example:</p> <ul style="list-style-type: none"> <li>• ADHD is often treated with amphetamine-like substances;</li> <li>• anxiety can be treated with benzodiazepines;</li> <li>• pain conditions are treated with opiate medications; and</li> <li>• opioid dependence can be treated with methadone or other opiate medications.</li> </ul> <p>If screening for families of qualifying drugs will regularly result in positive screenings with prescription medications in these families, this will create an undue burden on some individuals through both the temporary stand-down from driving as well as having to go through the process of proving their medical defence. This would also increase and further perpetuate the stigma currently associated with many medical conditions and negatively impact people continuing to engage and comply with their treatment.</p>	<p>The regime does not seek to penalise drivers who have taken medications in accordance with their prescription.</p> <p>The specified qualifying drugs and families of qualifying drugs to be screened for at the roadside are yet to be determined. The Minister of Police, in consultation with the Ministers of Transport and Science, will be responsible for setting this out in a notice following enactment (under s 71G). This notice will also specify the concentration level at which an approved screening device will return a positive result for specified qualifying drugs and families of qualifying drugs and which is indicative of recent use.</p> <p>We consider that the points raised by the Ministry of Health will need to be given consideration by Ministers when approving screening devices. We also consider that expert advice should be sought during the device procurement process to determine the extent to which (non-qualifying) prescription medicines may trigger a positive screening test result. Such information will assist Ministers to determine which screening device to approve, and which qualifying drugs and families of qualifying drugs should be screened for.</p> <p>No amendments have been made to the Bill in response.</p>
<p>Notes that the Australian/New Zealand Standard (“Procedure for Specimen Collection and the Detection and Quantification of Drugs in Oral Fluid” AS/NZS 4760:2019) states “it is not appropriate to relate the presence of drugs in oral fluid to impairment, but rather to relatively recent exposure.”</p>	<p>In the Bill, the concentration thresholds in the Standard are a key source of guidance for the Minister of Police in approving a device that will screen for ‘recent use’ of qualifying drugs and families of qualifying drugs. We understand that the recommended concentration thresholds in the Standard are generally accepted as indicative of recent drug use.</p> <p>‘Recent use’ in the Bill is used as a proxy for impairment. It is well-recognised that many drugs can adversely impact the ability of people to drive safely. It is difficult to determine the extent to which any given driver was impaired by the drugs consumed. However, drivers who have recently used impairing drugs are at risk of being impaired.</p> <p>No amendments have been made to the Bill in response.</p>

Agency feedback	Response
<p>There is no indication that the concentration thresholds in the Standard would detect prescribed dosages of substances within the families of qualifying drugs. At this time, the Ministry of Health is unable to advise on whether those thresholds would result in positive screening results for commonly prescribed dosages of medications. The Ministry strongly advises seeking technical expertise to confirm whether this is a risk, and include discussion of this technical advice in the Cabinet paper to clarify that this has been considered.</p>	<p>Technical advice should be sought as part of the device procurement and approval process as to the extent to which commonly prescribed dosages of qualifying drugs may return positive roadside screening results. This advice should be considered by Ministers before approving a device.</p> <p>No amendments have been made to the Bill in response, but this feedback is noted in the LEG paper.</p>
<b>Ministry of Justice</b>	
<p>Supports the penalty levels and court fines for s 60A of the Bill (failure or refusal to undergo an oral fluid screening test or provide an oral fluid sample).</p>	
<p>Suggests that s 71A(7), 71B(5), and 71C(3) (which contain an arrest power if a driver refuses to undergo an oral fluid screening test, or does not accompany an enforcement officer to a place to take the test) is not compatible with the infringement offence under the new s 60A (failure or refusal to undergo an oral fluid screening test or provide an oral fluid sample).</p>	<p>We recommend that the arrest powers be removed as it is inappropriate to have such an arrest power available in relation to that behaviour for which a person can be issued with an infringement notice. The intention of the Bill is that a failure to cooperate/comply is an infringement offence.</p> <p>The Bill has been amended accordingly.</p>
<p>Queried why failing or refusing to accompany an officer/stay in place while being processed under the oral fluid regime will be an infringement offence, while a similar failure or refusal under the existing breath-screening provisions is a criminal offence.</p>	<p>The Bill focuses on the drug testing regime, and introduces infringement offences for not complying with this regime. In contrast, outright failing or refusing to do a breath screening test or evidential breath test leads to a blood test, the refusal of which is a criminal offence.</p> <p>There may be an opportunity to align the penalties across both the alcohol and drug testing regimes at a future date.</p> <p>No amendments have been made to the Bill in response.</p>
<p>The right to be presumed innocent until proven guilty (s 25(c) of the Bill of Rights Act (BORA)) may be engaged. Suggests this is referenced in the LEG paper.</p>	<p>The Bill introduces new strict liability offences (through an infringement regime) which shift the onus of proof onto the defendant, by requiring them to disprove an element of the offence to escape liability.</p> <p>The LEG paper now references s 25(c) of the BORA.</p>
<p>Suggests that the LEG paper notes that the Attorney-General may find this Bill inconsistent with BORA and in which case would be required to present a s 7 report to the House of Representatives where they conclude that a Bill is inconsistent with BORA (s 7 BORA and Standing Order 269).</p>	<p>This is now referenced in the LEG paper.</p>

Agency feedback	Response
<p>The Bill is potentially inconsistent with the International Covenant on Civil and Political Rights broadly for the same reasons as in relation to BORA rights. This inconsistency should be noted in the LEG paper in terms of compliance with relevant international standards and obligations.</p>	<p>This is now referenced in the LEG paper.</p>
<p><b>Police</b></p>	
<p>Suggests that there may be benefit in making the language in the Bill clearer that it is not a defence to proceedings if there may have been an error in a screening test in cases where failing to provide sufficient oral fluid may result in a blood test.</p>	<p>We consider that the Bill is sufficiently clear.</p> <p>No amendments have been made to the Bill in response.</p>
<p>Suggests that with s 71B (who must undergo a second oral fluid screening test), advising the driver of the result of the second screening test (if it is negative) may prejudice the infringement if the laboratory test comes back positive.</p>	<p>We do not agree. The Bill is clear that the results of the laboratory test are the basis for the infringement offence and that the roadside tests are "screening" tests.</p> <p>No amendments have been made to the Bill in response.</p>
<p>s 9(2)(h)</p>	
	<p>s 9(2)(f)(iv)</p>
	<p>Draft advice from the Crown Law Office has been incorporated into the Bill.</p>

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 RELEASED UNDER

Agency feedback	Response
<p>Consider it important to specify in the Bill that the oral fluid sample to be sent for laboratory analysis will be the second (or subsequent) screening test sample. This would remove ambiguity around which sample should have been tested (and therefore removing a legal argument that a different sample should have been used); and ensure that the Police has the ability to review the accuracy of devices in respect of false negative screening test results.</p>	<p>We consider that the sample that is sent for laboratory testing (i.e., whether it's the first, second, or third sample) is an operational matter to be determined through the device procurement process. The Bill provides flexibility on what sample is sent to the laboratory to facilitate broader options in terms of the potential devices available to be procured by the Police. This flexibility means that samples collected through the second test can be sent to the laboratory if that is what works operationally and is enabled through the screening device.</p> <p>By comparing the results from laboratory tests (from any sample) with a driver's roadside results, the Police will be able to determine the accuracy of the roadside tests/devices.</p> <p>No amendments have been made to the Bill in response.</p>
<p>Notes that while 10 of the listed qualifying drugs that may be tested for in a laboratory are opiates, there are many more opiates that will not be tested for. This may mean that some drivers may be impaired by non-listed qualifying opiates, but the laboratory test will return a negative result.</p>	<p>This may be a scenario which arises as there are only 25 listed qualifying drugs which may be tested for in a laboratory. However, such scenarios may be unlikely. Those 25 drugs were defined as listed qualifying drugs on the basis of the Independent Expert Panel's advice and their consideration of information regarding the types of impairing drugs in New Zealand drivers' systems when they died in crashes – i.e., those were the principal impairing drugs detected.</p> <p>As the types of drugs most commonly used in New Zealand changes, the legislation may need to be updated to reflect that. The Act provides that the list of qualifying drugs in Schedule 5 can be amended by the Governor-General by Order in Council, on recommendation of the Minister of Transport and Minister of Police.</p> <p>No amendments have been made to the Bill in response.</p>



Agency feedback	Response
<p>s 9(2)(f)(iv)</p>	
<p><b>Office of the Privacy Commissioner (OPC)</b></p>	
<p>Noted that serious privacy concerns have been raised throughout the process, principally related to:</p> <ul style="list-style-type: none"> <li>• the nature of obtaining saliva samples and what they reveal about a person;</li> <li>• the limitations of devices in terms of accuracy and specificity; and</li> <li>• the risk of false-positives roadside results.</li> </ul>	
<p>Oral fluid tests collect a person's DNA and other highly sensitive health information, and expose New Zealanders to serious privacy risks from inappropriate use of that information. The Bill should provide explicit language which prevents reuse of that information for any purpose other than detecting and deterring drug-impaired driving.</p>	<p>The Bill authorises the Police to collect oral fluid samples for drug testing in order to improve the detection and deterrence of drug-impaired driving. We consider this is sufficiently outlined in the Bill. Any provision to the extent proposed by the OPC would be out of step with other impairment-related regimes (e.g., blood tests for alcohol testing).</p> <p>No amendments have been made to the Bill in response.</p>
<p>The LEG paper states that "The Bill complies with ... the principles and guidelines set out in the Privacy Act 2020". While privacy is not an absolute right and often gives way to support the fulfilment of other public policy objectives, it is not accurate to say that this Bill is consistent with the Privacy Act 2020. The OPC asks that para 22.5 be deleted or amended accordingly.</p>	<p>We have amended this accordingly in the LEG paper.</p>
<p>Engagement with the OPC on the development of any associated regulations that provide for the collection, handling, storage and retention of oral fluid samples will not necessarily "ensure compliance with privacy."</p>	<p>We have amended the relevant section in the LEG paper to reflect that engagement will seek to ensure privacy implications are mitigated.</p>

Agency feedback	Response
Requested that the disclosure statement include the following at 3.5.1: "The Privacy Commissioner acknowledged the importance of road safety, but commented that there is a lack of evidence that the anticipated benefits from compulsory oral fluid testing for drugs are proportionate to justify the very serious privacy intrusion involved."	We do not agree that there will be a serious privacy intrusion involved, nor that there is a lack of evidence of the anticipated benefits. We have nevertheless included their statement in the departmental disclosure statement.
Requested that comment from the Privacy Commissioner be included in the LEG paper.	This comment has been included.

The Bill referred to as being attached to this briefing is refused under section 18(d) and can be found here: <https://bills.parliament.nz/v/6/2b4a9eb9-9673-43f1-6e83-08dcaf7c7d1e?Tab=sub>

RELEASED UNDER  
THE OFFICIAL INFORMATION ACT 1982

**In Confidence**

Office of the Minister of Transport

Cabinet Legislation Committee

**Land Transport (Drug Driving) Amendment Bill: Approval for Introduction**

**Proposal**

- 1 This paper seeks Cabinet Legislation Committee (LEG) approval to introduce the Land Transport (Drug Driving) Amendment Bill (the Bill).

**Policy**

*Background*

- 2 The Land Transport (Drug Driving) Amendment Act 2022 introduced a compulsory random oral fluid (saliva) testing regime.
- 3 The New Zealand Police (Police) has been unable to implement the oral fluid testing regime because there is no available oral fluid testing device that meets the legislative approval requirements set out in the Land Transport Act 1998 (the Act).
- 4 On 10 May 2023, the Cabinet Economic Development Committee (DEV) agreed to replace the current oral fluid testing regime with a new oral fluid screening regime. Under the new regime, oral fluid testing devices can be approved for use to screen drivers for impairing drugs, with evidential laboratory testing of oral fluid samples for specified qualifying drugs required before infringement notices are issued [DEV-23-MIN-0077]. This was confirmed by Cabinet on 15 May 2023 [CAB-23-MIN-0168].
- 5 On 13 May 2024, Cabinet noted my intention to proceed with the legislation amendments as previously approved by Cabinet to introduce the new roadside oral fluid screening regime [CAB-24-MIN-0167].
- 6 The Bill is required to give effect to Cabinet's decisions.

*Key elements of the Bill*

- 7 The purpose of the Bill is to introduce a more effective regime for detecting and deterring drug-impaired driving, as part of the Government's commitment to improve road safety.
- 8 The Bill gives effect to Cabinet's decisions by providing for [DEV-23-MIN-0077]:
  - 8.1 a compulsory random oral fluid testing regime, under which the Police will have the power to screen drivers at the roadside for specified qualifying drugs using oral fluid screening devices without cause to suspect a driver has consumed drugs;
  - 8.2 new approval criteria for the Minister of Police to approve oral fluid testing devices for use as screening devices that accounts for accuracy rates of devices, and allows devices to detect groups or families of drugs which specified qualifying drugs are a member;
  - 8.3 evidential laboratory testing of an oral fluid sample following one positive (failed) oral fluid screening test;

**IN CONFIDENCE**

- 8.4 two positive (failed) oral fluid screening test resulting in drivers being prohibited from driving for 12 hours;
- 8.5 an infringement fee and demerit points issued if the laboratory test confirms the presence of any specified listed qualifying drug at a level that indicates recent use; and
- 8.6 an infringement fee and demerit points issued at the roadside and prohibition from driving for 12 hours if a driver refuses to undergo an oral fluid screening test.

*Approval sought regarding new policy issue*

- 9 There is one new policy issue that I seek LEG approval to be included in the Bill, which is including a maximum penalty for a new infringement offence.
- 10 Cabinet agreed to create an infringement offence for a driver who refuses to undertake an oral fluid test, liable to an infringement fee of \$400 and 75 demerit points.
- 11 A maximum penalty on conviction for the new infringement offence is also required. This would apply where a driver elects to go to court to challenge an infringement notice for this offence. To align with existing offences in the Act, I propose the Bill set the maximum penalty at \$1,000.
- 12 The Ministry of Justice Offences and Penalties team support the inclusion of this penalty level in the Bill.

*Decisions made regarding minor changes to policy*

- 13 In May 2023, Cabinet authorised the Associate Minister of Transport to make decisions, in consultation with the Ministers of Police and Justice, in relation to any minor, technical, procedural, transitional or consequential matters that arise during the drafting of legislative amendments [DEV-23-MIN-0077, CAB-23-MIN-0168].
- 14 There are a number of other minor matters consistent with the original Cabinet policy approvals that I have made decisions on, in consultation with the Ministers of Police and Justice, for inclusion in the Bill:
  - 14.1 Cabinet agreed to create an infringement offence for a driver who refuses to undertake an oral fluid test.
    - 14.1.1 The Act currently provides that it is an offence for a person to refuse to accompany an enforcement officer to a place to undergo a screening test (if required to) or to remain in place until the test result is ascertained.
    - 14.1.2 Refusing the oral fluid screening test requirements at any point in the process should attract the same penalty as refusing an oral fluid screening test outright (an infringement offence).
    - 14.1.3 To align with the new infringement offence for drivers that refuse to undertake an oral fluid screening test, the Bill makes changes to the existing offences and penalties for drivers that fail or refuse to accompany an officer or to fail or refuse remain in place until a

result is ascertained. For consistency with the Act, the Bill provides that these are also infringement offences.

14.1.4 Consequentially, the Bill also provides that it is an infringement offence for a person, if required to provide a further oral fluid sample for the purpose of laboratory analysis, to fail or refuse to provide that sample, to fail or refuse to accompany an officer for the purpose of providing a further oral fluid sample, or to fail or refuse to remain in place for the purpose of providing a further oral fluid sample.

14.1.5 The Bill aligns the penalties each of these infringement offences (an infringement fee of \$400 and 75 demerit points). Aligning these penalties avoids any incentive for a driver to refuse to cooperate at any point.

14.1.6 s 9(2)(ba)(i)  


14.2 The Act currently provides that an enforcement officer can arrest a person, without warrant, who fails or refuses to accompany an officer or to remain in place when required to do so for the purpose of an oral fluid screening test.

s 9(2)(ba)(i)  


14.3 Cabinet agreed to amend the Act to include the necessary enforcement and evidential provisions to implement the new oral fluid screening regime, aligned with the existing provisions in the Act where possible.

14.3.1 The current drug driving regime prevents drug testing for the purpose of land transport offences from being used as evidence under other drug-related legislation. The Act currently provides that neither a positive result of an oral fluid test nor the result of a blood specimen may be used as evidence of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975.

14.3.2 Consistent with Cabinet's recommendation and the existing regime, the Bill amends section 73A(2) of the Act to clarify that the results of the new oral fluid test by an approved laboratory cannot be used as evidence in a prosecution under the Misuse of Drugs Act.

14.4 The Land Transport (Drug Driving) Amendment Act 2022 provided for a review of its provisions after 3 years. Parliament intended that there be a review of the amendments.

- 14.4.1 As a consequence of this Bill amending some of the provisions introduced by the Land Transport (Drug Driving) Amendment Act 2022, it is appropriate that this Bill also provides for a review of amendments made by it. This review should be no earlier than 3 years after the commencement of this Bill and should be combined with a review of amendments made by the Land Transport (Drug Driving) Amendment Act 2022 as they should be considered alongside each other.

### Impact Analysis

- 15 Cabinet's impact analysis requirements apply to the proposals in this paper.
- 16 A Regulatory Impact Statement (RIS) was prepared in accordance with the necessary requirements and was submitted at the time that the previous Cabinet approved the policy for the Bill.
- 17 The RIS was finalised before Cabinet approved additional proposals in May 2023. Those proposals were for a laboratory test of an oral fluid sample following one positive screening test, laboratory testing for any specified listed qualifying drugs, and a new infringement offence for drivers who refuse to undertake an oral fluid test. The RIS was not updated as Cabinet approved all the proposals.

### Compliance

- 18 The Bill complies with:
- 18.1 the principles of the Treaty of Waitangi;
  - 18.2 the rights and freedoms contained in the Human Rights Act 1993;
  - 18.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper); and
  - 18.4 the Legislation Guidelines (2021 edition), maintained by the Legislation Design and Advisory Committee.
- 19 The Bill may raise issues of consistency with the New Zealand Bill of Rights Act 1990 (BORA) and the principles and guidelines in the Privacy Act 2020 for reasons noted below.
- 20 The Ministry of Justice advised that the Bill is potentially inconsistent with relevant international standards and obligations, particularly the International Covenant on Civil and Political Rights for the same reasons as in relation to BORA rights.

#### *New Zealand Bill of Rights Act 1990*

- 21 This Bill is likely to raise issues and potentially affect several rights affirmed and protected by the BORA, including sections 21 (the right to be free from unreasonable search and seizure), section 22 (the right not to be arbitrarily arrested or detained) and section 25(c) (the right to be presumed innocent until proved guilty).
- 22 The Bill is likely to engage the rights under section 21 of BORA in the following ways:
- 22.1 for the taking of an oral fluid sample, which constitutes a search; and

- 22.2 for drivers to be prohibited from driving for 12 hours in situations where they have produced two positive oral fluid screening tests or refused to undergo an oral fluid screening test. This may require the seizure of a driver's keys.
- 23 The Bill also provides that drivers will be detained at the roadside for oral fluid screening tests to be administered, which may limit the right not to be arbitrarily arrested or detained as recognised in section 22 of the BORA.
- 24 The Bill may also engage section 25(c) of the BORA in that strict liability offences raise prima facie issues with section 25(c). The Bill introduces infringement offences at the roadside for refusing to undergo an oral fluid screening test, provide a further oral fluid sample, accompany an officer or remain in place where required to do so. The results of laboratory analysis will otherwise be the evidential basis for an offence.
- 25 However, on balance, I consider the potential limitations on the rights of drivers through the new regime to be justified as they are proportionate to the road safety risk that is being addressed. Improving road safety and addressing the significant risk of harm caused by drug-impaired drivers is in the public interest.
- 26 In addition, I also consider that adequate safeguards are build into the Bill to reduce the BORA impacts. These include:
- 26.1 the use of oral fluid to screen drivers for drug use rather than more invasive detection methods, such as a blood sample;
- 26.2 the process of using oral fluid to screen drivers for drug use will detain most people for a significantly shorter duration than the current compulsory impairment test process regime;
- 26.3 that oral fluid screening devices cannot be approved unless they have cut-off thresholds at a level that indicates recent use. It will be sufficient if the cut-off thresholds align with the relevant Australian/New Zealand Standard;<sup>1</sup>
- 26.4 the result of failing two oral fluid screening tests is the prohibition from driving for 12 hours, which is not an offence and is proportionate to addressing the immediate road safety risk posed by a drug-impaired driver;
- 26.5 the safeguard of two oral fluid screening tests before a driver is prohibited from driving for 12 hours, mitigating the possibility of enforcement action being taken on the basis of false-positive test results;
- 26.6 the basis for charging a person with an infringement offence for drug use detected in their oral fluid is the evidential testing of that oral fluid in a laboratory which is highly accurate and mitigates the possibility of a person being charged on the basis of a false-positive result at the roadside.
- 27 Advice on whether the Bill is consistent with the rights in the BORA will be provided by the Ministry of Justice to the Attorney-General. If the Attorney-General finds this Bill to be inconsistent with BORA, the Attorney-General will be required to present a report under section 7 to the House of Representatives.

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<sup>1</sup> Australian/New Zealand Standard (2019) *Procedure for specimen collection and the detection and quantification of drugs in oral fluid* (AS/NZS 4760:2019). The cut-off thresholds in this Standard are generally accepted as being indicative of recent drug use.

*Privacy Act 2020*

- 28 The Bill provides for the collection and testing of oral fluid samples, which is personal information, and therefore inherently raises privacy issues.
- 29 The Office of the Privacy Commissioner has been consulted on the Bill. The Privacy Commissioner has advised the proposed approach to roadside drug testing raises serious privacy concerns, which have been expressed in previous comments on Cabinet papers on roadside drug testing proposals. The Privacy Commissioner considers that the goal of improving road safety by roadside testing for drug impaired driving is a worthy one. However, before asking New Zealanders to undergo the privacy invasive process of a roadside saliva test, with penalties for noncompliance, the Privacy Commissioner would hope to see strong evidence that these tests are accurate and will not wrongly penalise people.
- 30 The Privacy Commissioner would also like to see evidence that the roadside drug testing regime is likely to be effective in reducing drug-impaired driving, as evidence of effectiveness is essential for assessing whether the privacy intrusion is proportionate to the expected benefits. The Privacy Commissioner has not seen that evidence. Without it, the Privacy Commissioner's view is that there is a real risk that use of these tests will fall short of Privacy Act requirements to uphold fairness and accuracy, and lead to unimpaired drivers being unfairly penalised. Instead, Cabinet could decide to retain the current legislated requirement for tests that are accurate, specific, and timely in relation to drug-impaired driving to allow implementation when tests meeting these requirements become available. Finally, the Privacy Commissioner would like to see explicit language in the Bill to ensure any information collected from oral fluid tests, including DNA, can only be used for the purpose of detecting and deterring drug-impaired driving.
- 31 I note that the purpose of the provisions in this Bill is about improving road safety by better detecting and deterring drug-impaired driving. The Bill provides that the use of any information from the testing of an oral fluid sample is limited to this purpose. Further, the collection of oral fluid is less invasive than the collection of other types of bodily information, such as blood, which is already provided for in the Act under different circumstances.
- 32 I also consider that the issues around accuracy and false positives of the screening devices are significantly mitigated by requiring two positive tests before a driver can be stood down for 12 hours. An infringement notice will not be issued until laboratory testing of an oral fluid sample returns a positive result.
- 33 I consider that any privacy implications are justified for the purpose of detecting and deterring drug-impaired driving and increasing safety for New Zealanders on our roads. I consider that any adverse implications are outweighed by the road safety benefits.
- 34 Officials will work with the Office of the Privacy Commissioner on the development of any associated regulations that provide for the collection, handling, storage and retention of oral fluid samples to ensure privacy implications are appropriately managed.



## Consultation

### *Relevant government departments or other public bodies*

- 35 The following Government departments and agencies have been consulted on the Bill: Accident Compensation Corporation, Police, New Zealand Transport Agency, Ministry of Health, Ministry of Justice, the Crown Law Office, The Treasury, WorkSafe, the Office of the Privacy Commissioner, and Te Puni Kōkiri.
- 36 The Department of the Prime Minister and Cabinet has been informed.

### *Ministry of Health*

- 37 The Ministry of Health is generally supportive of efforts to reduce the behaviour of impaired driving. However, it suggested that further expert advice is sought to understand the impact of screening for families of qualifying drugs and the extent to which the concentration thresholds in the Standard would detect prescribed dosages of substances within the families of qualifying drugs.
- 38 I will ask that expert advice be sought regarding the matters raised by the Ministry of Health during the device procurement and approval process.

### *Police*

- 39 The Police suggest some of the language in the Bill could be clearer in terms of various operational matters, for example, around when drivers are advised of the outcome of the screening tests and what oral fluid screening test sample should be sent to the laboratory for testing.
- 40 I consider that the Bill is either clear on these matters, or has been drafted in a way that offers Police flexibility to implement the regime. These matters can be further explored at the select committee stage.
- 41 The Minister of Police has requested an amendment be included in the Bill that enables a police officer to require a driver to undergo a compulsory impairment test (CIT) where the first oral fluid screening test returns a positive result for one qualifying drug. The officer would need reasonable grounds to suspect the driver had consumed drugs before requiring the CIT.
- 42 I acknowledge this request, and propose it be considered, alongside any operational concerns the Police has, at the select committee stage.

### *Relevant private sector organisations and public consultation processes*

- 43 Due to time constraints, consultation on the amendments to date has been limited to government officials. The public will have opportunities for consultation during the progression of the legislative process.

### *The government caucus and other parties represented in Parliament*

- 44 Government caucus consultation has been undertaken.

## Binding on the Crown

- 45 The Bill will amend the Act, which binds the Crown.

**Creating new agencies or amending law relating to existing agencies**

- 46 The Bill will not create a new agency that is legally separate from the Crown.
- 47 The Bill will not amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

**Allocation of decision-making powers**

- 48 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

**Associated regulations**

- 49 The Bill enables the Minister of Police to approve, by notice in the Gazette:
- 49.1 the oral fluid screening devices and the testing of specific qualifying drugs by these devices under the Act
  - 49.2 the evidential testing of specific listed qualifying drugs by an approved laboratory under the Act.
- 50 The Bill provides that these Ministerial notices are secondary legislation.
- 51 The Bill also amends the regulation making power in section 167 of the Act to enable the making of regulations for the handling of oral fluid samples. Regulations will be required by the time the Bill comes into force.
- 52 The Bill also makes consequential amendments to the Land Transport (Offences and Penalties) Regulations 1999 that will come into force at the same time as the Bill.

**Other instruments**

- 53 No other instruments are included in the Bill.

**Definition of Minister/Department**

- 54 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

**Commencement of legislation**

- 55 The Bill provides for a commencement date to be appointed by Order in Council or, if it has not yet come into force, then one year following Royal assent.
- 56 It is important that the Bill has a commencement date that provides enough time for the Police to procure suitable oral fluid screening devices and oral fluid testing services. At this time, the Police has estimated this will require 12 months to complete.
- 57 The explanatory note to the Bill sets out the reasons for commencement by Order in Council.

**Parliamentary Stages**

- 58 The Bill should be introduced to the House no later than 31 July 2024 and enacted by 31 December 2024.

59 It is proposed that the Bill be referred to the Transport and Infrastructure Committee for a three-month period of consideration from 6 August to 6 November 2024. As this is less than four months, this will trigger an unlimited debate in the House when introduced.

### Communications

60 I intend to make a public statement on these matters at the time the Bill is introduced.

### Proactive Release

61 I propose to proactively release this paper with appropriate redactions under the Official Information Act 1982 within 30 business days of final decisions being confirmed by Cabinet, in line with guidelines from the Cabinet Office (CabGuide), and the Cabinet Office circular, Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4].

### Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Land Transport (Drug Driving) Amendment Bill (the Bill) holds a category 2 priority on the 2024 Legislation Programme (must be passed by the end of 2024);
- 2 **note** that Cabinet agreed to replace the current roadside oral fluid testing regime with a new screening regime, where oral fluid testing devices are used to screen drivers' oral fluid for impairing drugs, with evidential laboratory testing of oral fluid samples for specified listed qualifying drugs required before infringement notices are issued [DEV-23-MIN-0077, CAB-24-MIN-0167];
- 3 **approve** for inclusion in the Bill a maximum penalty of \$1,000 for the infringement offence of refusing to undertake an oral fluid test, to align with existing offences provided for under the Land Transport Act 1998;
- 4 **note** the Minister of Transport has made decisions, consistent with Cabinet approvals, to include the following minor or consequential matters in the Bill:
  - 4.1 amending existing offences and penalties for drivers that initially cooperate but then refuse to accompany an officer or to remain in place;
  - 4.2 removal of an enforcement officer's power to arrest a person, without warrant, for offences that the Bill makes infringement offences;
  - 4.3 results of the new requirement for testing of oral fluid in an approved laboratory cannot be used as evidence in a prosecution against the Misuse of Drugs Act, consistent with the current approach taken to other oral fluid and blood tests;
  - 4.4 provide for a review of the amendments made by this Bill to be combined with a review of the amendments made by the Land Transport (Drug Driving) Amendment Act 2022;
- 5 **note** that, subject to the relevant approvals of this Committee, the Bill gives effect to recommendations 3 and 4 above;

**IN CONFIDENCE**

- 6 **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Bill be introduced to the House no later than 31 July 2024;
- 8 **agree** that the Government propose that the Bill be:
- 8.1 referred to the Transport and Infrastructure Committee for consideration;
  - 8.2 enacted no later than 31 December 2024;
- 9 **note** that a three-month select committee is proposed for the Bill and will trigger an unlimited date in the House before referral as per recommendation 8;
- 10 **agree** that the Parliamentary Counsel Office may continue to make any minor or technical drafting changes to the Bill before introduction following consideration by this Committee.

Authorised for lodgement

Hon Simeon Brown

**Minister for Transport**

RELEASED UNDER  
THE OFFICIAL INFORMATION ACT 1982

17 July 2024

OC240539

**Hon Simeon Brown**  
**Minister of Transport****Action required by:**  
Wednesday, 31 July 2024

## DRUG AND ALCOHOL MANAGEMENT PLANS - RULE APPROVAL

### Purpose

This briefing asks you to give effect to the provisions in the Civil Aviation Act 2023 (2023 Act) for drug and alcohol management plans and testing, by authorising new civil aviation rules.

### Key points

- The 2023 Act, which comes fully into force on 5 April 2025, introduces provisions to strengthen the management of the risk of drug and alcohol impairment in the commercial aviation sector.
- Civil aviation rules (the Rules) are required to support and give effect to these provisions. The Civil Aviation Authority (the CAA) has worked with the Ministry of Transport (the Ministry) to develop the Rules that specify who needs to develop a Drug and Alcohol Management Plan (DAMP) and a range of other operational matters.
- In March 2024 you were notified of consultation on the rules [briefing OC240170 refers]. Consultation with the sector took place between March - May 2024, with 14 submissions received.
- Submissions were generally supportive of the proposed DAMP rules. A minor amendment was made to reflect sector feedback - there were no significant issues raised.
- The Rules need to come into force on 5 April 2025 but have been developed well in advance of this date to give certainty to aviation participants who may be affected by the new drug and alcohol management regime.<sup>1</sup>
- We ask that you sign the Rules and authorise their notification in the *New Zealand Gazette*.

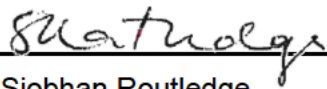
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<sup>1</sup> The ability to make the drug and alcohol rules, in anticipation of the 2023 Act, is discussed in paragraph 18, as legal advice].

**Recommendations**

We recommend you:

- 1 **sign** the attached Civil Aviation Rules Part 99, *Drug and Alcohol Management Plans*, to give effect to Civil Aviation Act 2023 requirements for drug and alcohol management plans and testing. Yes / No
- 2 **authorise** the notification of the signed Rules by you in the *New Zealand Gazette*. Yes / No
- 3 **authorise** the presentation of the Rules signed by you to the House of Representatives. Yes / No

  
 \_\_\_\_\_  
 Siobhan Routledge  
**Acting Deputy Chief Executive, Policy Group**  
 16 / July / 2024

\_\_\_\_\_  
 Hon Simeon Brown  
**Minister of Transport**  
 ..... / ..... / .....

- Minister's office to complete:**
- Approved
  - Declined
  - Seen by Minister
  - Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Siobhan Routledge, Acting Deputy Chief Executive, Policy Group, Ministry of Transport	s 9(2)(a)	
John Kay, Deputy Chief Executive, System and Practice Design, Civil Aviation Authority		✓
Gary Tonkin, Manager CAA Implementation, Ministry of Transport		

## DRUG AND ALCOHOL MANAGEMENT PLANS - RULE APPROVAL

### Background

*The Civil Aviation Act 2003 introduces a Drug and Alcohol Management Plan regime*

- 1 The 2023 Act comes fully into force on 5 April 2025. The 2023 Act introduces provisions to strengthen the management of the risk of drug and alcohol impairment in the commercial aviation sector. It sets the framework for DAMPs for some operators (persons who hold aviation documents) involved in safety sensitive activities.
- 2 The core statutory requirements for a DAMP are that it must provide for random testing of safety-sensitive workers<sup>2</sup> and include a response plan for a safety-sensitive worker who refuses to consent to a test, or whose test returns a result other than a negative result. The 2023 Act also empowers the Director of Civil Aviation (the Director) to carry out testing of any safety-sensitive worker in relation to alcohol and testable drugs in the relevant operator's DAMP.
- 3 The DAMP regime will have a two-year transition period for operators to develop and prepare to implement their plans, from 5 April 2025 to 5 April 2027<sup>3</sup>. Existing document holders who meet the criteria for needing to develop a DAMP must submit it to the Director for approval.
- 4 Under the 2023 Act, the scope of operators subject to DAMP requirements is potentially very wide - any class of persons with an aviation document, undertaking safety-sensitive activities and specified in the rules. Rules are necessary to specify which classes of person will be subject to DAMP requirements.
- 5 Work to develop the Rules has been led by the CAA, working with the Ministry and sector stakeholders to ensure the changes being made are practical and effective.

### Consultation on the proposed rules has been undertaken

- 6 In March 2024 you were notified of consultation on the proposed Rules (OC240170 refers)<sup>4</sup>. This was undertaken between 26 March - 10 May 2024. The Notice of Proposed Rule Making was published on the Authority's website and relevant industry stakeholders advised.
- 7 Key features of the proposed Rules that were consulted on are:
  - 7.1 all commercial operators with safety management system requirements will be subject to DAMP requirements.
  - 7.2 persons not included as being subject to DAMP requirements are:

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<sup>2</sup> A safety-sensitive worker is an individual employed or engaged by a DAMP operator in a role that involves the individual performing a safety-sensitive activity, including the DAMP operator, if the DAMP operator is an individual.

<sup>3</sup> This is provided for under Schedule 1 of the 2023 Act.

<sup>4</sup> In accordance with the requirements of section 61(1) of the Civil Aviation Act 2023.

- 7.2.1 the recreation/private use sector, because existing provisions already adequately mitigate the risk of drug and alcohol use in this part of the sector
- 7.2.2 the Aviation Security Service (AvSec) because, under the 2023 Act, AvSec will no longer hold an aviation document (which is a prerequisite to being a DAMP operator)<sup>5</sup>
- 7.2.3 operators of uncrewed aircraft, because further work is required on rules for unmanned aircraft generally, which will take place over time
- 7.3 Other provisions covering:
  - 7.3.1 not allowing for exemptions from DAMP requirements, ability to specify testable drugs (should that become necessary in the future), detail about notifying the Director of non-negative results and refusal to consent and tampering
  - 7.3.2 administrative and process requirements covering renewals, amendments, record-keeping, reporting to the CAA and clarifying the accountabilities of DAMP operator chief executives
  - 7.3.3 transitional requirements.

*The majority of submissions supported the provisions, or recognised that drug and alcohol testing is a necessary part of aviation safety*

- 8 A total of 14 submissions were received (11 from organisations and 3 from individuals). Most submissions were supportive. Submitter feedback on specific aspects of the proposed rules falls into the following themes:
  - 8.1 support, opposition or queries on the scope of certificate holders
  - 8.2 scope of those considered “safety-sensitive workers”
  - 8.3 costs to operators
  - 8.4 ability of small operators to ensure real random testing and the risk of sanctions if non-compliant
  - 8.5 DAMP approval process time frames and resource constraints
  - 8.6 use of a transport instrument to set out testable drugs
  - 8.7 the information required by CAA (and related keeping of records) when a DAMP operator notifies the Director of non-negative results, refusal to test and suspicion of tampering
  - 8.8 annual reporting and the draft transport instrument
  - 8.9 ongoing renewal/amendment processes, and associated costs

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<sup>5</sup> The CAA will work on how AvSec can meet equivalent requirements to DAMP operators, by 5 April 2027 when DAMPs come into effect.



- 8.10 comments about the Advisory Circular, which is released along with the Rules when they are Gazetted.
- 9 The Summary of Public Submissions (that includes the response from CAA) will be published on the CAA website once the proposed Rules are approved and Gazetted (refer Annex 1).
- 10 The following minor changes have been made to the draft final rules:
- 10.1 amend 99.17 following submitter feedback, to remove the requirements to keep a record of the exact time of the test - leaving just the need to keep a record of the test date
- 10.2 two technical changes to improve workability of the rules.<sup>6</sup>
- 11 The draft Part 99 DAMP rules are attached in Annex Two.
- 12 As a result of consultation feedback, the Advisory Circular will be updated. Advisory Circulars provide guidance about standards, practices, and procedures resulting from rules promulgated by the CAA.

## Compliance

- 13 The rules are consistent with the principles of the Treaty of Waitangi. They comply with both the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, the principles and guidelines set out in the Privacy Act 2020, and the relevant international standards. They are consistent with the Legislation Design and Advisory Committee's guidelines.

## Matters and criteria for your specific consideration

- 14 You are required to consider a number of matters when deciding to make a rule. These are set out in sections 61(2) and 72 of the 2023 Act. You must consider these matters yourself and cannot delegate this obligation to anyone else. They are set out in Annex 1, together with our advice on each and consist of:
- 14.1 matters that you must be satisfied about
- 14.2 criteria that you must have regard to and give the weight that you consider appropriate in each case.
- 15 You should also have regard to the legal advice in the next section of this briefing.

## Legal Advice

- 16 This section is legal advice.

---

<sup>6</sup> Move the definition of DAMP from Part 99 (draft rule 99.3) to rule Part 1; and move the transport instrument definition to Part 1 and consequently amend rule 99.21.

17

s 9(2)(h)

18

*Matters for your consideration*

19

s 9(2)(h)

*Consultation*

20 Before making a rule, you are required by section 61(1) of the 2023 Act to, as you in each case consider appropriate:

20.1 publish a notice of your intention to make the rule and a statement specifying the objective of the rule; and

20.2 consult representative groups within the aviation industry or elsewhere, and any other persons.

21

s 9(2)(h)

*Regulations Review Committee*

22 Ordinary rules are disallowable instruments for the purpose of the Legislation Act 2019 and in accordance with section 114 of that Act and Standing Order 325A must be presented to the House of Representatives within 20 working days after the day on which they are made.

**Next steps**

*Commencement and notification*

23 We propose that these Rules come into force on 5 April 2025, alongside the 2023 Act and its DAMP requirements. To achieve this, the Rules need to be signed and notified in the Gazette by no later than 6 March 2025.

24 However, to give those operators who will be required to implement a DAMP legal certainty and time to prepare, if you agree to give effect to the proposed Rules, we ask that you sign the Rules no later than 31 July 2024 to enable the CAA to lodge the Gazette notice by 9 August 2024.

*Publicity and tabling*

25 The CAA will notify the making of the Rule in the New Zealand Gazette and will also publicise the Rule in its publications and on its website.

- 26 Subject to your approval, the CAA will work with officials from your office to arrange the laying of the signed Rules before the House.

*Communications*

- 27 The CAA will work with the relevant stakeholders to ensure the changes are understood and complied with.

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## ANNEX 1: MATTERS FOR SPECIFIC CONSIDERATION

Matter to be satisfied about	Advice
<p><b>Section 61(2)(a)</b></p> <p><i>That the rule will, to the extent that is practicable, facilitate conformity with the applicable standards of ICAO relating to aviation safety and security</i></p>	<p>The proposed rules are not inconsistent with the standards of ICAO relating to aviation safety and security, to the extent adopted by New Zealand.</p>
Matter to be satisfied about	Advice
<p><b>Section 66(2)(b)</b></p> <p><i>That the rule is not inconsistent with New Zealand's international obligations relating to aviation safety and security</i></p>	<p>The proposed rules are not inconsistent with New Zealand's international obligations relating to aviation safety and security.</p>
Matter to have regard and give the weight you consider appropriate to	Advice
<p><b>Section 72(a)</b></p> <p><i>The main and additional purposes of the Act</i></p>	<p>The proposed rules are consistent with the main and additional purposes of the Act.</p>
Matter to have regard and give the weight you consider appropriate to	Advice
<p><b>Section 72(b)</b></p> <p><i>The recommended practices of ICAO relating to aviation safety and security</i></p>	<p>The proposed rules are consistent with the ICAO (SARPs) as applicable:</p> <ul style="list-style-type: none"> <li>- ICAO Annex 1 Personnel Licensing</li> <li>- ICAO Annex 19 Safety Management</li> </ul>
Matter to have regard and give the weight you consider appropriate to	Advice
<p><b>Section 72(c)</b></p> <p><i>The level of risk existing to aviation safety in each proposed activity or service</i></p>	<p>The proposed rules reduce the level of risk to aviation safety by strengthening the management of drug and alcohol-related risks in the commercial aviation sector.</p>

<p><b>Matter to have regard and give the weight you consider appropriate to</b></p>	<p><b>Advice</b></p>
<p><b>Section 72(d)</b> <i>The nature of the activity or service for which the rule is being established</i></p>	<p>The proposed rules introduce drug and alcohol management plans (DAMPs) for certain organisations and allows the Director of Civil Aviation to conduct drug and alcohol testing.</p>
<p><b>Matter to have regard and give the weight you consider appropriate to</b></p>	<p><b>Advice</b></p>
<p><b>Section 72(e)</b> <i>The level of risk existing to aviation safety and security in New Zealand in general</i></p>	<p>Safety is a key driver for this proposal.  It is envisaged that the level of risk to the New Zealand aviation safety from this proposal is low and if anything, decreased.</p>
<p><b>Matter to have regard and give the weight you consider appropriate to</b></p>	<p><b>Advice</b></p>
<p><b>Section 72(f)</b> <i>The need to maintain and improve aviation safety and security, including (but not limited to) personal security</i></p>	<p>The proposed rules will strengthen the management of drug and alcohol-related risks in the commercial aviation sector.  It is envisaged this will bring greater safety assurance for users of commercial aviation services.</p>
<p><b>Matter to have regard and give the weight you consider appropriate to</b></p>	<p><b>Advice</b></p>
<p><b>Section 72(g)</b> <i>The costs of implementing the measures for which the rule is being proposed</i></p>	<p>Costs will vary depending on factors such as the size of the operator and whether they already have drug and alcohol policies in place. DAMP regime costs for a medium sized operator have been estimated at \$1,965 for establishment, with ongoing annual costs of \$2,285.<sup>7</sup></p>
<p><b>Matter to have regard and give the weight you consider appropriate to</b></p>	<p><b>Advice</b></p>
<p><b>Section 72(h)(i)</b> <i>The international circumstances in respect of aviation safety and security</i></p>	<p>The proposed rules will not affect, or be affected by, international circumstances in respect of aviation safety and security. Most other jurisdictions have similar requirements.</p>

<sup>7</sup> The relevant regulatory impact statement is available here [RIS Clear heads \(transport.govt.nz\)](https://www.transport.govt.nz/ris-clear-heads/).

<b>Matter to have regard and give the weight you consider appropriate to</b>	<b>Advice</b>
<b>Section 72(h)(ii)</b> <i>The international circumstances in respect of mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements</i>	The proposed rules will have no effect on the mutual recognition of safety certifications.
<b>Matter to have regard and give the weight you consider appropriate to</b>	<b>Advice</b>
<b>Section 72(i)</b> <i>Such other matters as the Minister considers appropriate in the circumstances</i>	There are no other matters that need to be considered in the making of these proposed rules.

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## ANNEX 2: DRAFT PART 99 DAMP RULES

Annex 2 is refused under section 18(d) and can be found here:

<https://www.aviation.govt.nz/assets/rules/pending-rules/ca-act-2023/Part-099-Initial-Issue.pdf>

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18 July 2024

OC240795

Hon Simeon Brown

Action required by:

Minister of Transport

Friday, 2 August 2024

## PASSENGER SAFETY ON PUBLIC TRANSPORT BUSES IN NEW ZEALAND

### Purpose

Update you on existing policies in place to protect passenger safety on public transport buses in the event of an attack or altercation and advise you on options and recommendations that could be made to provide greater safeguards to bus passengers in these situations.

### Key points

- We have sourced information from the six largest Public Transport Authorities (PTAs) on violence and other threatening and anti-social behaviour on buses. The picture is mixed across the country. <sup>s 9(2)(ba)(i)</sup>

This may reflect broader criminal activity and violent behaviour trends rather than a specific issue for public transport.

- Existing policies are set by Public Transport Operators (PTOs) and clearly advise drivers they should not put themselves in a position of danger when there is a violent incident on the bus. Instead, drivers are advised to focus on getting the bus to a safe position and communicating with the depot. <sup>s 9(2)(ba)(i)</sup>

- We consider there is benefit in issuing national guidance on good practice for managing passenger safety. National guidance will ensure greater alignment in policies across the country and provide an opportunity to more clearly define roles and responsibilities, consider where policies and procedures can be strengthened, and improve data collection. We propose working with the National Public Transport Workforce Steering Group (the **Steering Group**) to develop the guidance so there is appropriate input from the sector and to ensure their workability.

- We have also looked at Australian states to see what other passenger safety measures could be utilised in New Zealand. <sup>s 9(2)(f)(iv)</sup>



s 9(2)(f)(iv)

- Other actions to support increased safety for passengers and drivers include removing the ability to pay by cash on buses and making greater use of real-time CCTV monitoring in emergencies. These could be supported through existing initiatives such as the National Ticketing System and the \$15 million of Budget 2024 funding to enable improvements to bus driver safety and environments. We are separately briefing you on this funding shortly.

**Recommendations**

We recommend you:

- |   |  |          |
|---|--|----------|
| 1 | <b>agree</b> to NZTA and the Ministry of Transport developing national guidance on good practice for managing passenger safety that will be issued by NZTA   | Yes / No |
| 2 | <b>agree</b> to NZTA and the Ministry of Transport engaging with the National Public Transport Workforce Steering Group when developing the guidelines to ensure sector input into the advice and their workability  | Yes / No |
| 3 | s 9(2)(f)(iv)  |          |
| 4 | <b>note</b> other initiatives, such as the National Ticketing System and Budget 2024 funding for improvements to bus driver safety and work environments, could support other measures to be rolled out that will improve safety for bus drivers and passengers such as cashless payment and increased real-time usage of CCTV | Noted    |

*Siobhan Routledge*

Siobhan Routledge  
**DCE – Policy Group (Acting)**  
**Ministry of Transport**  
18 / 07 / 2024

*David Shepherd*

David Shepherd  
**National Manager – Multimodal & Innovation (Acting)**  
**NZ Transport Agency**  
18 / 07 / 2024

Hon Simeon Brown  
**Minister of Transport**

..... / ..... / .....

- Minister's office to complete:**
- Approved
  - Declined
  - Seen by Minister
  - Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Jessica Ranger, Manager – Urban Development and Public Transport, Ministry of Transport	s9(2)(a)	✓
Talia Cohen-Wolf, Manager – Public Transport, NZ Transport Agency		

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## PASSENGER SAFETY ON PUBLIC TRANSPORT BUSES IN NEW ZEALAND

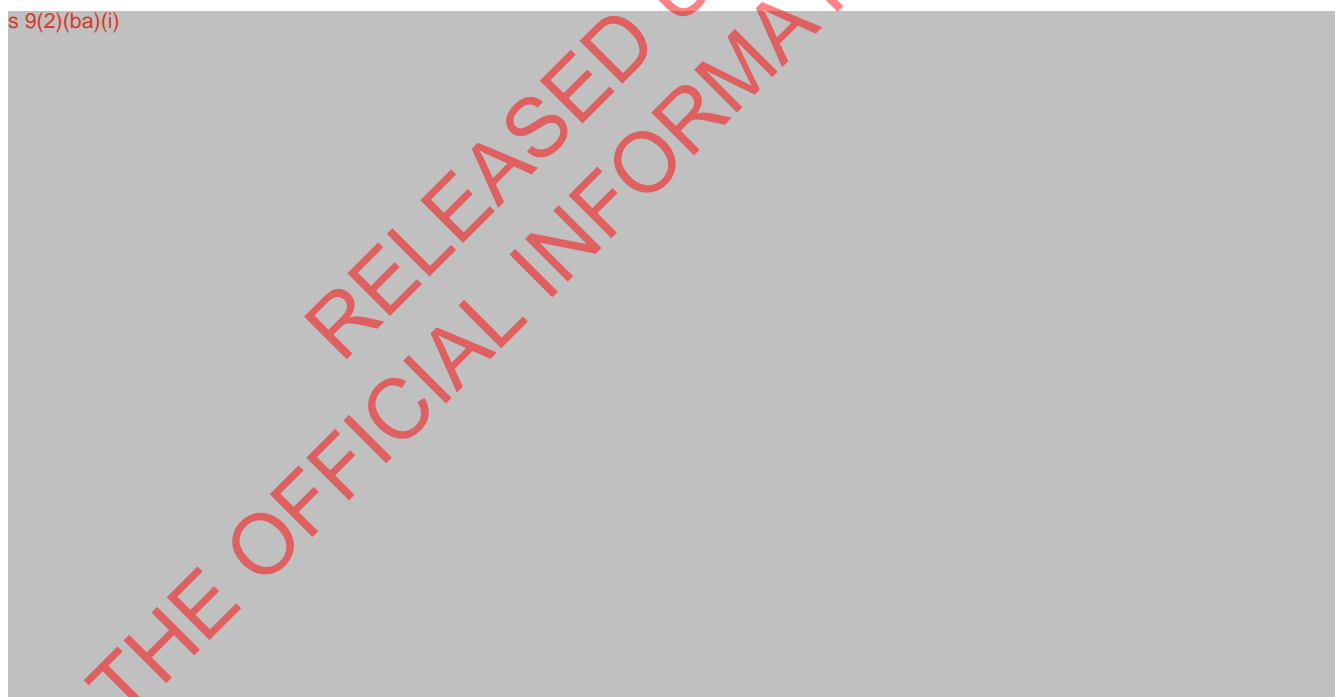
### We have reviewed existing policies by Public Transport Authorities (PTAs) to protect passenger safety in the event of an attack or altercation

- 1 Auckland Transport (**AT**), Greater Wellington Regional Council, Environment Canterbury, Waikato Regional Council, Otago Regional Council, the Bay of Plenty Regional Council and the Bus and Coach Association (**BCA**) have provided information for this review.
- 2 We have also looked at what Australian states are doing to protect bus passengers and to assess whether there are any policies or measures we could build on in New Zealand.

### Levels of violence and other threatening and anti-social behaviour on buses is varies across the country

- 3 As part of the review, we sought information from the six largest PTAs on their experiences with violence and anti-social behaviour on buses. The following table summarises their feedback.

s 9(2)(ba)(i)



- 4 As can be seen from this table, collection and reporting of these statistics is done differently across New Zealand, making it challenging to assess and compare national and regional trends. This data only reflects incidents reported to the PTAs, so additional incidents are likely to be occurring that are unreported by the public.
- 5 Some PTAs, such as Auckland Transport, already have very detailed schemes for incident collection, reporting, and analysis. Any of the proposals in this briefing should build on this to lift the standard nationally.

## Existing passenger safety policies are clear that drivers should not put themselves in a position of danger

- 6 Public Transport Operators (**PTOs**) set the policies for responding to assaults or attacks on the services they operate. The advice for drivers in these situations is clearly defined:
  - 6.1 Drivers should not put themselves in a position of danger.
  - 6.2 Drivers are to get the bus to a position of safety and safely offboard passengers.
  - 6.3 Drivers are to communicate with their depots when incidents arise and escalate to Police when necessary.
  - 6.4 Drivers are not able to detain passengers or stop them from getting on or off the bus.
- 7 We understand this advice reflects the potential risk to passengers arising from a bus driver stopping the bus in an unsafe location or intervening in an attack while driving. Bus drivers in the also have a high average age, which increases the risk of harm to the driver if they intervene physically in a situation.
- 8 There is a range of mandatory safety measures required via the Requirement for Urban Buses, administered by NZTA, that support drivers to respond to an assault or attack. All buses used for public transport must have:
  - 8.1 depending on the size of the bus, a minimum of four, seven, or ten interior CCTV cameras to ensure coverage of the entire bus. There must be at least 14 days of onboard storage for camera footage.
  - 8.2 a driver-operated duress alarm, which must open a secure radio channel to the bus operations facility to allow the driver to request assistance (including from emergency services) and protect the CCTV footage and audio from being overwritten.
  - 8.3 audio recording enabled around the driver's area, which can be synchronised with the CCTV footage.
- 9 Drivers are also trained with de-escalation techniques as part of their inductions and advised not to get into confrontational situations that can escalate.

s 6(c), s 9(2)(ba)(i)

**We consider it would be beneficial to align and strengthen passenger safety policies through nationally issued guidance on good practice**

- 12 While existing policies are clear about the role of the driver in responding to an attack or assault, we have noted some inconsistency and lack of detail in the advice on what steps they need to take across PTOs. For example, there is different advice on who has the obligation to contact emergency services and how they should do so. Some direct the driver to make contact, whereas others put the onus on the depot or other passengers.
- 13 We propose NZTA issues national guidance on good practice for managing passenger safety to PTAs and PTOs to ensure greater alignment across the country. This provides an opportunity to:
  - 13.1 clarify roles and responsibilities
  - 13.2 consider where policies and procedures can be strengthened
  - 13.3 ensure consistent approaches to responding to incidents
  - 13.4 improve data collection on incidents on buses.
- 14 National guidance also provides an opportunity to consider how different passenger safety policies interact with each other. An example of this is how bus drivers can deal with a group of children and young people behaving in a threatening manner while adhering to the requirement to follow a policy of not leaving children behind at a bus stop.

- 15 We propose engaging with the National Public Transport Workforce Steering Group (**the Steering Group**) as we develop the guidance to ensure it is workable and supports bus driver recruitment and retention. The Steering Group is chaired by NZTA and comprises the Ministry, the Bus and Coach Association, and representatives from PTAs and unions.
- 16 To improve the guidance, and PTA data collection, the Ministry will also work with the Police on collection and analysis of incidents on public transport so there is a more robust national picture.

**Australian states are also experiencing passenger safety issues, and there are lessons we can learn**

- 17 Each state in Australia sets the minimum safety standards and procedures for its public transport buses and utilises a range of safety measures.
- 18 We have identified Victoria and Western Australia as offering the most comprehensive safety measures for both passengers and drivers, which New Zealand could learn from. The table below summarises measures taken in these States to support passenger safety.

	Western Australia	Victoria
Reported crime levels aboard buses	Increasing, from 2916 incidents on buses in 2021-2022 to 4121 in 2022-2023.	Increasing, from 2332 'crimes against the person' on buses in year to March 2019 to 2574 in the year to March 2023.
Similar measures to New Zealand	<ul style="list-style-type: none"> <li>• CCTV coverage of buses</li> <li>• Duress alarms</li> <li>• Conflict de-escalation training for drivers</li> </ul>	
Additional measures to New Zealand	<ul style="list-style-type: none"> <li>• Transit Officers and Contracted Security Officers</li> <li>• Comprehensive and publicly reported bus incident statistics</li> </ul>	<ul style="list-style-type: none"> <li>• No cash aboard buses</li> <li>• Travel cards cannot be topped up by the driver</li> <li>• Driver safety screens on all buses</li> </ul>

s 9(2)(f)(iv)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

**We can also action some of the bus safety measures used in Western Australia and Victoria to reduce the likelihood of violence and other antisocial behaviour on buses**

*Removing cash from buses removes a key contributor to violence and other antisocial behaviour on buses*

30 The presence of cash on buses is one of the major contributors to attacks and assaults. Key reasons for this include theft of fare boxes and disputes over fare payment.

31 Completely removing cash payments from buses is being explored through the National Ticketing System roll out and is supported by the BCA for safety reasons. Environment Canterbury is already planning to remove cash fares from buses once the National Ticketing System is in place.

*Supporting greater use of CCTV for real-time monitoring and covering high patronage bus stops*

32 s 9(2)(ba)(i) [REDACTED] Linking live CCTV footage from buses to bus operation facilities (the relevant depot and NZTA's Transport Operations Centres) when a duress alarm has been triggered has become technically feasible with the availability of relatively low-cost and high-speed mobile data. Real-time monitoring when an incident is happening would allow better monitoring of situations, and better direction for emergency services.

33 We consider PTAs could apply for co-funding for such improvements as part of the roll out of the \$15 million of existing funding that was refocused on improving bus driver safety and work environments in Budget 2024. We are separately briefing you on this funding shortly.

34 Such applications would need to clearly demonstrate the need for the technology, and the benefit to driver safety. They would also need to meet the funding criteria for the fund. In terms of delivering value for money, we would expect to see a contribution from PTOs towards safety improvements on their buses as per their health and safety obligations.





23 July 2024

Hon Simeon Brown

Minister of Transport

## AIDE MEMOIRE: MEETING WITH KIWIRAIL 24 JULY 2024

**To:** Hon Simeon Brown, Minister of Transport

**From:** David Wood, Deputy Chief Executive, Investment & Monitoring

**Date:** 23 July 2024

**OC Number:** OC240841

### Summary/Purpose

1. You are meeting with Peter Reidy (Chief Executive), Jason Dale (Chief Financial Officer), David Gordon (Chief Planning and Asset Development Officer) and Angus Hodgson (Group Manager Government Engagement) from KiwiRail on Wednesday, 24 July 2024 at 10.30am.
2. This Aide Memoire provides talking points (consolidated in Annex 1) and background information on KiwiRail's proposed agenda.

### Agenda Item A: Safety Performance

3. Lifting the safety performance is a critical focus for KiwiRail and it has a programme in place to shift behaviours and planning across the organisation.
4. The initial key performance indicators (KPIs) are split into Lead Indicators to promote a positive reduction in actual events occurring over time, and Lag Indicators measuring actual near-misses and events.
5. Safety Lead Indicators results, on average for the 2023/24, were:
  - a) 204 safety interactions, with targets of 245, 294, and 353 for the next three years. Safety interactions involve discussions between leadership and staff about observed safe behaviours and providing feedback on coaching based on the consequences of unsafe behaviour.
  - b) 76 critical risks walks, with targets of 90, 108, and 130 for the next three years. Critical risk walks are regular and intentional site walks to look for potential hazards that have high risk exposure to people, followed by action to eliminate the risks identified.
  - c) 408 critical risk control verifications, with targets of 489, 587, and 705 for the next three years. Critical risk control verifications ensure compliance is met and exceeded by confirming work was executed safely to plan.

- d) 66 high risk hazards identified, with targets of 53, 42, and 34 for the next three years. High risk hazards are those which have the potential to be fatal or cause life changing injuries.
- 6. Safety Lag Indicators results, on average for the 2023/24, were:
  - a) 6 High Risk Injuries, with a continued goal towards zero.
  - b) 24 Total Recordable Injury Frequency Rate, with targets of 19, 15, and 12 for the next three years.
  - c) 12 Lost Time Injury Frequency Rate, with targets of 9, 7, and 6 for the next three years.
  - d) 12 High Potential Near Miss Frequency Rate, with targets of 8, and 6 for the next three years.

*Speaking points*

- 7. You provided me with details of the safety indicators, current, and projected targets for the next three years. Can you provide me with past results (i.e.2021/22 and 2022/23), as a point of comparison?
- 8. What do these statistics mean overall in terms of KiwiRail's safety performance? How does that compare to any comparable jurisdictions?
- 9. What steps are in place to ensure the targets are achieved?

**Agenda Item B: KiwiRail One Plan**

- 10. KiwiRail One Plan outlines KiwiRail's strategy to be "commercially self-sustainable".
- 11. By "commercially self-sustainable" KiwiRail means to be in a position such that the revenue it generates from its customers covers the operating and ongoing capital costs of their above rail business.

12. s 9(2)(f)(iv)

*Speaking points*

13. s 9(2)(b)(ii)

14.

15.

16.

**Agenda Item C: Metro Networks**

- 17. KiwiRail updated you on 16 July 2024 on progress resolving issues with Britomart points and work to remove Temporary Speed Restrictions across the Auckland Metro Network.
- 18. Following metro funding announced in Budget 2024, KiwiRail is currently working through the split and schedule of renewals work in Auckland and Wellington. Additional off peak

line closures in both cities may be required to carry out those renewals. KiwiRail expects to report back to you on the proposed work plan, for approval this financial quarter.

19. s 9(2)(j), s 9(2)(f)(iv)

*Speaking points*

20. s 9(2)(f)(iv)

*For your information*

s 9(2)(j)

**Agenda Item D: Interislander**

21. Aratere returned to service on 15 July 2024, under specific return-to-service conditions imposed by Maritime New Zealand (MNZ). These conditions end on July 28, 2024.

*Aratere Grounding and Investigations Summary*

22. KiwiRail appointed a third party for an internal investigation. A draft report is expected next week. The final report is expected by August 2024 and will be communicated to the Board.

23. Collaboration is ongoing between MNZ, crew members' lawyers, and the Transport Accident Investigation Commission (TAIC) investigation.

24. MNZ has announced a focused audit on the Interislander fleet, looking at processes, training, risk management and familiarisation with new equipment.

25. KiwiRail wants to have a lessons-learned review with MNZ on the regulatory responses to the event to discuss and make improvements to this process.

*Speaking points*

26. s 9(2)(g)(i)

**Agenda Item E:** s 9(2)(f)(iv)

27. s 9(2)(f)(iv)

28.

Speaking points

29. § 9(2)(f)(iv)

**Economic Value of Auckland Rail Programme Business Case**

- 30. On 23 July, KiwiRail provided you with a briefing on the economic assessment associated with the investment proposed in the Auckland Rail Programme Business Case (the PBC). The PBC was jointly commissioned by KiwiRail and Auckland Transport “to determine the future needs of the Auckland rail system over the next 30 years, informing your long-term funding decisions.”
- 31. The PBC and the associated economic assessment of its value, requires further interrogation.
- 32. One of the key weaknesses associated with the PBC is that it does not appear to be constructed within a realistic fiscal envelope, nor do we see trade-offs between investment in other modes of transport (both public transport and freight).

**Contacts**

Name	Telephone	First contact
David Wood, Deputy Chief Executive, Investment & Monitoring	<span style="color: red;">§ 9(2)(a)</span>	
Bev Driscoll, Manager, Rail		✓

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**Speaking points**

**Agenda Item A: Safety Performance**

1. You provided me with details of the safety indicators, current, and projected targets for the next three years. Can you provide me with past results (i.e.2021/22 and 2022/23), as a point of comparison?
2. What do these statistics mean overall in terms of KiwiRail's safety performance? How does that compare to any comparable jurisdictions?
3. What steps are in place to ensure the targets are achieved?

**Agenda Item B: KiwiRail One Plan**

4. s 9(2)(b)(ii) [Redacted]
5. [Redacted]
6. [Redacted]
7. [Redacted]

**Agenda Item C: Metro Networks**

8. s 9(2)(j) [Redacted]

**Agenda Item D: Interislander**

9. s 9(2)(g)(i) [Redacted]

**Agenda Item E: s 9(2)(f)(iv) [Redacted]**

10. s 9(2)(f)(iv) [Redacted]

THE OFFICIAL INFORMATION ACT 1982

23 July 2024

OC240794

**Hon Simeon Brown**  
**Minister of Transport**

## MEETING WITH THE BUS AND COACH ASSOCIATION, 25 JULY 2024

Note this meeting did not go ahead

### Snapshot

You are meeting with the Bus and Coach Association (**BCA**) to discuss its priority policy issues. This will primarily be an opportunity to hear the BCA's perspectives. It also offers a good opportunity for you to discuss areas of concern for you such as passenger safety and value for money in public transport.

<b>Time and date</b>	3.30 – 4.00pm, 25 July 2024
<b>Venue</b>	Parliament EW5.1
<b>Attendees</b>	Delaney Myers, Chief Executive, Bus and Coach Association Grant Lilly, Independent Chair, Bus and Coach Association
<b>Officials attending</b>	Jessica Ranger, Manager, Urban Development and Public Transport, Ministry of Transport David Shepherd, Acting National Manager – Multimodal & Integration, NZ Transport Agency
<b>Agenda</b>	Delaney and Grant specifically wish to discuss: <ul style="list-style-type: none"> <li>• safety on buses</li> <li>• sustainable public transport provision</li> <li>• bus driver workforce shortages</li> </ul>

### Contacts

Name	Telephone	First contact
Jessica Ranger, Manager, Urban Development and Public Transport	s 9(2)(a)	✓
Liam Fechny, Adviser, Urban Development and Public Transport		

## Meeting with the Bus and Coach Association, 25 July 2024

### Key points

- The Bus and Coach Association (**BCA**) is concerned about the safety of drivers on board buses. The Government has committed to providing \$15 million of refocused funding to enable improvements to bus driver safety and work environments through Budget 2024. You have also asked the Ministry of Transport (the **Ministry**) and NZ Transport Agency (**NZTA**) to undertake a review of passenger safety on public transport buses and have  
s 9(2)(f)(iv)
- The BCA has the view that Public Transport Authorities (**PTAs**) overly focus on price over quality when tendering bus contracts, which may deliver lower value for money and contribute to workforce sustainability issues.
- In the procurement space, the BCA does not want PTAs or councils to own strategic public transport assets such as bus depots. s 9(2)(f)(iv)
- The BCA is concerned that national bus driver shortage is only temporarily fixed as, in its view, the underlying recruitment and retention issues have not been resolved. You are closely monitoring the bus driver workforce, with officials providing monthly updates. In  
s 9(2)(ba)(i)  
Average bus cancellation rates across Auckland, Wellington, and Christchurch (at aggregate level, most determined by availability of drivers), were 2.6 percent in April 2024. This cancellation rate reached as high as 12.2 percent in October 2022.
- The BCA may ask about refocusing Budget 2022 and 2023 funding for bus driver working conditions. It issued statements to its members after Budget 2024 that we understand caused some concern in the sector, as the BCA stated allocated funding was being returned, and there would be no funding for bus driver recruitment and retention. We suggest making it clear you have refocused the funding to deliver practical improvements to driver working conditions, rather than addressing further remuneration issues that you (and the BCA in its 'Briefing to the Incoming Minister') consider should be addressed through contract negotiations over time.
- The BCA may ask for an update on the status of the 2025 zero emissions bus procurement mandate, which it supports, and the 2035 zero emissions bus fleet target, which it does not support. You could ask for more detail on its views to help inform your decision on whether to maintain the mandate and target [OC240426 refers].

## The BCA is the peak industry body for Public Transport Operators

- 1 The BCA is the industry representative and advocacy group for all bus Public Transport Operators (**PTOs**) along with 98 percent of school bus operators. It also represents most charter, tour, and long-distance operators and domestic bus manufacturers.

## Bus driver safety is important to the BCA

- 2 The BCA is concerned about increasing anti-social behaviour on buses and at bus stops and exchanges as well as the impact this behaviour has on bus driver recruitment and retention and on public transport use.
- 3 The BCA recently travelled to Australia to discuss driver recruitment and retention with the Bus Industry Confederation, as this is also an issue across the Tasman. It has noted many similarities between the two countries in terms of challenges in this space. It is currently exploring whether research commissioned in Australia could be applied to the New Zealand context and may present this to you in the meeting.

- 4 s 9(2)(f)(iv)  


- 5 The Government is providing \$15 million through Budget 2024 to provide practical improvements to bus driver working conditions (including both safety and comfort). The Ministry is due to present you with advice this week on finalising the settings of this funding.

## The BCA wants to ensure competition is enabled by the framework for planning and procuring public transport services

- 6 The BCA supports competition in the public transport sector and wants to ensure it is enabled by the current regulatory framework for planning and procuring public transport services, which was called the Sustainable Public Transport Framework (**SPTF**) by the previous Government. The BCA also wants to see more of a focus on smarter and bundled procurement, where procurement practices are focused on outcomes rather than inputs and may include longer contract lengths (the current standard is nine years).
- 7 The BCA is concerned about amendments to the Land Transport Management Act 2003 (**LTMA**) in 2023 that make it easier for PTAs or councils to own public transport assets (e.g. bus depots or vehicles) if they want to control how these assets are used and deployed. Prior to these legislative changes, PTAs were required to establish a Council Controlled Trading Organisation (**CCTO**) to own these public transport assets. Most councils found the requirements for setting up a CCTO onerous, and the LTMA was amended to remove this requirement. The BCA has requested that you repeal the changes to the LTMA.



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s 9(2)(f)(iv)

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10

11

### Bus driver wages

- 12 The BCA has the view PTA bus contract procurement has been overly focused on price instead of taking a holistic view of cost. The largest variable cost a PTO faces is staff. To compete on cost, there is significant pressure to reduce or at least maintain driver wages even if that threatens the long-term sustainability of the workforce.
- 13 BCA's 'Briefing to the Incoming Minister' considers wage increases beyond the current levels should happen through contract negotiations, rather than through Crown funding. The BCA also may want to see further action to guarantee PTAs will not revert to the previous practice of awarding contracts completely on price, particularly in the current fiscal environment.

### Bus driver workforce

- 14 The BCA considers the bus driver shortage has only eased temporarily, and that addressing this relied heavily on overseas recruitment, which means it is likely to re-emerge. In the BCA's view, permanent resolution would require fixing issues in the way bus services are procured (such as the focus on cost instead of quality mentioned in the wages section above).
- 15 s 9(2)(ba)(i) [REDACTED] We will continue communicating these reported shortages to you monthly.
- 16 Average bus cancellation rates across Auckland, Wellington, and Christchurch (at aggregate level, most determined by availability of drivers) were at a record low of 2.6

percent in April 2024. This cancellation rate reached as high as 12.2 percent in October 2022.

17

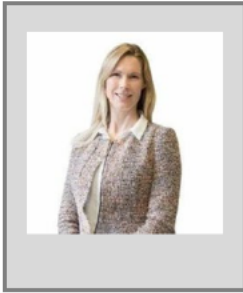
s 9(2)(f)(iv)

**The BCA support uptake of zero emissions buses, but are concerned that the speed of uptake may have unintended consequences**

- 18 The BCA supports the 2025 zero emissions bus procurement mandate. However, it has advocated for removing the 2035 target to completely decarbonise bus fleets. The BCA states that the target will lead to the premature retirement of diesel buses with negative economic and environmental consequences.
- 19 We provided you with advice on the mandate and target [OC240426 refers] and are currently reviewing the cost-effectiveness and achievability of each of these.
- 20 In April 2024, NZTA released commissioned research and a modelling tool of the economics of zero emission buses. This tool will help the BCA, PTAs and PTOs assess economics and the lifecycle emissions impact of replacing a diesel bus ahead of the end of its working lifespan.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

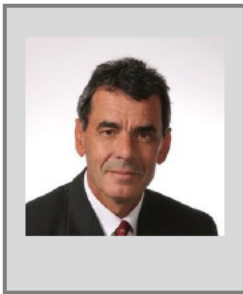
## Biographies



### **Delaney Meyers, Chief Executive, Bus and Coach Association**

Delaney started as the Chief Executive of the BCA in July 2023.

Prior to the BCA, she worked at NZTA as the Manager - Public Transport from November 2020 to July 2023. She also previously worked at NZTA between 2005 and 2015 in a variety of infrastructure and policy roles. Between 2015 and 2020, she held senior management roles at the Ministry of Education, working on school transport.



### **Grant Lilly, Independent Chair, Bus and Coach Association**

Grant is an experienced chairperson, and is currently on the board of Invercargill Airport, Hanmer Springs Pools, and Rainbow's End. He also worked in a variety of management roles for Air New Zealand between 1987 and 2001, and for Qantas between 2001 and 2011.

RELEASED UNDER  
THE OFFICIAL INFORMATION ACT 1982

24 July 2024

OC240597


**Hon Simeon Brown**  
**Minister of Transport**
**Action required by:**  
 Monday, 29 July 2024

## ROAD POLICING INVESTMENT PROGRAMME 2024–2027

### Purpose


This briefing supports your consideration of whether to approve the Road Policing Investment Programme (RPIP) 2024–2027, as recommended by the New Zealand Transport Agency Board.

### Key points

- The RPIP funds the costs of road policing activities which support transport sector outcomes. This contribution is agreed every three years through a process regulated by the Land Transport Management Act 2003.
- In line with that statutory process, the Board of the New Zealand Transport Agency (NZTA) has recommended you approve the proposed RPIP 2024–27, which outlines the road policing activities New Zealand Police (Police) will deliver over the next three years. This briefing is written to be read alongside the Board's recommendations.
- The RPIP requests a total of \$1.335 billion over the 2024–27 period. This figure includes \$72 million intended to be performance-dependent funding, as signalled in the Government Policy Statement on land transport. It also includes \$20 million to support implementation of the oral fluid testing regime.
- As Minister of Transport, you may approve the RPIP after consulting with the Minister of Police. The Ministry of Transport is comfortable with the proposed RPIP and recommends you approve it. The RPIP will begin once you notify the Board of your approval.
- s 9(2)(iv) 
- If you approve the RPIP after 31 July 2024, interim funding arrangements may need to be put in place to ensure that Police are able to continue to deliver road policing activities.

**Recommendations**

We recommend you:

- 1 **agree** to forward this briefing to the Minister of Police to consult him on the Road Policing Investment Programme 2024–2027 Yes / No
- 2 **approve**, following consultation with the Minister of Police, the recommended Road Policing Investment Programme 2024–2027 Yes / No
- 3 **sign**, following consultation with the Minister of Police, the attached letters outlining your decisions to the New Zealand Transport Agency Board and the Commissioner of Police (Annexes 1 and 2 refer) Yes / No
- 4 s 9(2)(f)(iv) 
- 5 **note** that, should the RPIP be approved after 31 July, interim funding arrangements may need to be put in place to ensure that Police are able to continue to deliver road policing activities




Chris Nees  
**Acting Deputy Chief Executive,  
 Sector Strategy**  
 24 / 07 / 2024

Hon Simeon Brown  
**Minister of Transport**  
 ..... / ..... / .....

- Minister's office to complete:**
- Approved
  - Declined
  - Seen by Minister
  - Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Chris Nees, Acting Deputy Chief Executive, Sector Strategy	<span style="color: red;">s 9(2)(a)</span> 	
Joanna Heard, Manager, Safety		✓

## ROAD POLICING INVESTMENT PROGRAMME 2024–2027

- 1 Road policing in New Zealand is funded through the National Land Transport Fund (NLTF), under the Land Transport Management Act 2003 (LTMA).
- 2 Under the LTMA, the New Zealand Transport Agency (NZTA) must recommend to the Minister of Transport police activities to be funded for the following three financial years. The 2021–24 period ended in June 2024 and the NZTA Board (the Board) have recommended a new Road Policing Investment Programme (RPIP) 2024–27. This briefing is intended to be read alongside the Board's recommendation to you.
- 3 The RPIP requests a total of \$1.335 billion over the 2024–27 period. Of this, \$72 million (\$24 million per year) is dependent on agreed speed and impairment measures being met. A further \$20 million is provided for implementation of the oral fluid testing (OFT) regime and one year of activity.

### The Road Policing Investment Programme proposes a new operating model managing Police road safety activities

- 4 Formerly known as the Road Safety Partnership Programme (RSPP), the proposed RPIP 2024–27 builds on recent strong delivery of road policing by (among other things):
  - 4.1 introducing an outcomes framework linking road policing activities to intermediate and long-term outcomes; and
  - 4.2 introducing new performance measures where road policing activities were not previously reported (e.g., commercial vehicles) or where supported by evidence (e.g., targeting breath testing to high alcohol-risk times).

### Procedural requirements have been met


- 5 Before recommending Police activities that are to be funded from the NLTF, NZTA must consult the Secretary of Transport and Police Commissioner. This has occurred and the programme has been supported by both parties.
- 6 Before recommending the RPIP, the Board must be satisfied it contributes to an effective, efficient, and safe land transport system in the public interest. The RPIP contributes to making our roads safer (and more efficient) by funding evidence-based activities targeting key risks on our roads.
- 7 As required under the LTMA, this strategic refocus is consistent with the Government Policy Statement on land transport (GPS) 2024, which emphasises the role of enforcement in road safety alongside a strong focus on delivery and value for money. In particular:
  - 7.1 \$72 million of the total funding envelope is intended to be dependent on delivery of speed and impairment measures, in line with the GPS expectation that an element of funding for police activity is dependant on performance; and
  - 7.2 the proposed programme sets an initial target of 3.3 million roadside alcohol breath tests per year, in line with minimum targets outlined in the Safety strategic priority.

- 8 The GPS includes an expectation that road policing will eventually target 3.5 million tests per year, over the medium term. The RPIP does not explicitly outline a pathway to 3.5 million tests per year. Given this, we recommend you reiterate your expectation that NZTA is expected to identify an intended pathway to delivering 3.5 million tests. We have drafted the letter to the Board accordingly.

### Some risks remain and will require management

- 9 The funding envelope for implementation of the OFT regime does not include ongoing operating costs, but NZTA and Police will be better placed to have an informed negotiation about operating costs after the first year of operation. A variation to the RPIP (either its performance outcomes or funding levels) may be needed to support ongoing operation.
- 10 Aside from \$20 million for implementation of the OFT regime, there is no additional funding for programmes or projects. This means new Ministerial priorities arising during the term of the RPIP may require reprioritisation or additional funding.
- 11 Operational settings supporting delivery dependant funding will be addressed in a memorandum of understanding between NZTA and Police, which is under development. NZTA is forming a Monitoring and Assurance Group (MAG) which will assess delivery against the targets specified in the RPIP. NZTA anticipates appropriate senior officials would be delegated authority to approve Police to access funds which are delivery dependent.

### Next steps

- 12 We recommend you approve the RPIP 2024–2027. Provided you approve the RPIP, the programme will begin following notification of your approval.
- 13 We have drafted a letter to the NZTA Board (Annex 1) which notifies them of your approval. This draft letter also notes:
- 13.1 while transparency has been improving, there is still room for improvement on reporting how the funding is being used by Police.
- 13.2 you are looking forward to hearing from the NZTA Board their plan to reach the target of 3.5 million alcohol breath tests per year.
- 14 A similar letter has been drafted for the Commissioner of Police (Annex 2).
- 15 s 9(2)(f)(iv) 
- 16 Should approval of the RPIP occur after 31 July, interim funding arrangements may need to be put in place to ensure that Police are able to continue to deliver road policing activities.

# Hon Simeon Brown

Minister for Energy  
Minister of Local Government  
Minister of Transport  
Minister for Auckland  
Deputy Leader of the House



Hon Simon Bridges  
Chair  
New Zealand Transport Agency Board  
Private Bag 6995  
**WELLINGTON**

Dear Simon,

Thank you for your letter of 17 July 2024 where you provided me with the Road Policing Investment Programme 2024–2027 (RPIP) for my consideration and approval in accordance with the Land Transport Management Act 2003 (LTMA).

I acknowledge that financial transparency in relation to road policing has been improving, however, I consider there remains room for improvement on reporting how transport funding is being used by New Zealand Police. I expect transparency and reporting, as per section 102 of the LTMA will, continue to improve during the RPIP 2024–2027 term.

I also note the Government Policy Statement on land transport (GPS) 2024 includes an expectation that targets will be set such that Police undertake at least 3.3 million roadside alcohol breath tests per year, towards a target of 3.5 million tests per year. I would like to reiterate my expectation that over the medium-term Police reach the target of 3.5 million alcohol breath tests per year. I would like to see a plan for reaching this target in due course.

I have consulted the Minister of Police who supports the RPIP. Considering that the RPIP meets the requirements set out under the LTMA and is aligned with my objectives set out in the GPS, I agree to approve the RPIP 2024–27.

Thank you again for writing.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'S B', written over a large red watermark that reads 'THE OFFICIAL INFORMATION ACT 1982'.

Hon Simeon Brown  
**Minister of Transport**

Copies to:  
Secretary of Transport  
Police Commissioner



# Hon Simeon Brown

Minister for Energy  
Minister of Local Government  
Minister of Transport  
Minister for Auckland  
Deputy Leader of the House



Andrew Coster  
Commissioner of Police  
c/o [ministerial.services@police.govt.nz](mailto:ministerial.services@police.govt.nz)

Dear Commissioner,

On 17 July 2024, Hon Simon Bridges, Chair of the New Zealand Transport Agency (NZTA) Board provided me with the Road Policing Investment Programme 2024-2027 (RPIP) for my consideration and approval.

I have considered the RPIP in consultation with the Minister of Police. As the proposal meets the requirements set out under the Land Transport Management Act 2003 and is aligned with my objectives set out in the GPS, I have agreed to approve the RPIP 2024-27.

In my response to Hon Simon Bridges, I have outlined my expectation that transparency and reporting will continue to improve during the RPIP 2024-2027 term. I have also indicated that I expect to receive, in due course, a plan to reach the target of 3.5 million alcohol breath tests per year. I appreciate your support with these Government priorities.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simeon Brown'.

Hon Simeon Brown  
**Minister of Transport**

Copies to:  
Secretary of Transport  
NZTA Board Chair

24 July 2024

OC240825

**Hon Simeon Brown**  
**Minister of Transport**

## MEETING WITH LEE MARSHALL, CHIEF EXECUTIVE OF THE MOTOR TRADE ASSOCIATION

### Snapshot

You will meet with Lee Marshall, Chief Executive of the Motor Trade Association for a general catch up.

<b>Time and date</b>	9.30am – 10.00am, 26 July 2024
<b>Venue</b>	Auckland Policy Office
<b>Attendees</b>	Lee Marshall, Chief Executive
<b>Officials attending</b>	None
<b>Agenda</b>	An agenda has not been provided
<b>Talking points</b>	Talking points have been provided throughout, where relevant

### Contacts

Name	Telephone	First contact
Siobhan Routledge, Acting Deputy Chief Executive	s 9(2)(a)	
Marian Willberg, Manager Maritime and Freight		✓

## MEETING WITH LEE MARSHALL, CHIEF EXECUTIVE OF THE MOTOR TRADE ASSOCIATION

### Key points

- You will meet with Lee Marshall, Chief Executive of the Motor Trade Association (MTA) at the Auckland Policy Office on 26 July 2024.
- You previously met Lee Marshall when he attended your three-monthly catch up with key road transport industry bodies on 20 June 2024.
- MTA has not provided an agenda ahead of this meeting. Lee may raise:
  - the disestablishment of Te Pūkenga and vocational training
  - the review of the Clean Vehicle Standard targets
  - shifting the Clean Vehicle Standard to a user pays model
  - the *Supercharging EV Infrastructure* work programme
  - vehicle systems reform.

### Background

- 1 MTA was founded in 1917 and currently represents over 4,000 businesses within the New Zealand automotive industry and its allied services.
- 2 MTA members operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and vehicle sales.

### MTA will likely raise the disestablishment of Te Pūkenga and vocational training

- 3 We understand that a consultation document is expected to be released in the next few weeks, outlining the change proposals.
- 4 MTA's position is that if changes are unsatisfactory, employers will seek to train their staff (formally or informally) elsewhere. Additionally, MTA is of the view that the industry's qualifications have not kept up with technological changes in the automotive sector and need to keep pace. If the new arrangements do not address these concerns, MTA has said the result will be a fragmented system.
- 5 MTA is calling for an independent industry training organisation for the sector, with the power to set standards and qualifications and deliver training. You may like to ask for more details on how this would work and what would be needed from the government.

- 6 We expect the transport sector would want to ensure it has a role in the decision-making around educational requirements and industry standards for their respective industries. It will appreciate the ability to provide feedback through consultation.

### **MTA may raise Clean Vehicle Standard (the Standard) targets and fees**

#### *Review of the Standard's targets*

- 7 MTA supports the decisions the Government took on the review of the Standard.
- 8 The MTA's position was that targets need to achieve a compromise that reduces average CO2 emissions from vehicles entering the light vehicle fleet, while not leading the world in our reduction levels. The MTA emphasised the importance of achieving this goal without imposing excessive costs on vehicle importers. Its primary concern is that such costs would ultimately be passed on to consumers, potentially delaying the replacement of older vehicles and limiting safer options with lower CO2 emissions.
- 9 The MTA may raise the issue that 2026 is too late for the new flexibility measures, agreed as part of the Standard review, to be operational. These measures are the:
- 9.1 extension of the lifespan of emission credits (existing and future) from three to four years
  - 9.2 extension of the use of borrowing of future target overachievement (i.e. payment obligation deferral) beyond 2025
  - 9.3 removal of the legislative restriction on credit transfers between the new and used-import sectors, with a 2026 start date for transfers.

10

s 9(2)(f)(iv)

#### *Shifting the Standard to a user pays model*

- 11 As flagged in the Weekly Report, work is underway to transition the Standard to a user pays model. s 9(2)(f)(iv)

- 12 You will be briefed on outcomes and next steps in early August.

### **MTA may be interested in the Supercharging EV Infrastructure work programme**

- 13 MTA made a submission on the previous government's *Charging Our Future: a draft long-term electric vehicle charging strategy for Aotearoa New Zealand* last year. At the time, the MTA recommended that the strategy would need to incorporate EV charging technology as it evolves and best practices as they are established. MTA

also recommended utilising the existing service station network for EV charging infrastructure to minimise stress on the electricity network and address geographic variations, and that the protection of consumers' data should be made clear.

*The Supercharging EV Infrastructure work programme will support public charging*

14 The initial priorities for the Supercharging EV Infrastructure work programme are to:

14.1 continue regulatory work to reduce barriers to investment in EV charging infrastructure. The Electricity Authority is progressing work to address connection costs and processes. Work is also underway by MBIE and the Ministry for the Environment to address consenting barriers as part of *Electrify NZ*.

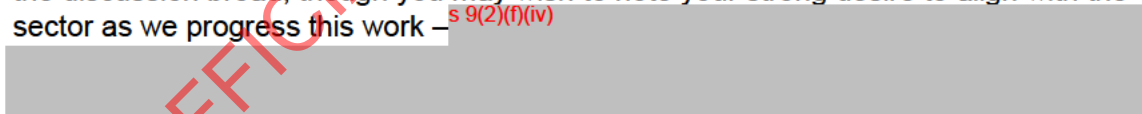
14.2 revise the government's co-investment model for public EV charging infrastructure to ensure maximum value from government investment.

### Vehicle system reform


15 s 9(2)(f)(iv)



16 Although officials anticipate working closely with MTA on all matters raised in OC230895 | BRI 3088, there is likely to be sensitivity around some of the proposals s 9(2)(f)(iv). For the purpose of this meeting we recommend keeping the discussion broad, though you may wish to note your strong desire to align with the sector as we progress this work – s 9(2)(f)(iv)



### Biographies

<p><b>Lee Marshall, Motor Trade Association (MTA)</b></p> <p>Lee Marshall has been Chief Executive of the MTA since April 2023. He previously held management roles in the car rental industry.</p>	
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## Annex 1: Talking Points

### MEETING WITH LEE MARSHALL, CHIEF EXECUTIVE OF THE MOTOR TRADE ASSOCIATION

#### *The disestablishment of Te Pūkenga and vocational training*

- I encourage you to provide feedback on the proposed changes through consultation.
- **Question** – What do you think is needed to improve vocational training for this sector?

#### *Shifting the Clean Vehicle Standard (the Standard) to a user pays model*

- It is my intention that the Standard moves to a user pays model. It is appropriate that those who benefit from the Standard should contribute to its costs.
- This is not uncommon in the transport sector – for example, electric vehicles are now required to pay Road User Charges.
- I understand that you have been asked for your views on how the Standard's costs should be recovered.
- Thank you for your involvement and I look forward to sharing further details on cost recovery at a later date once decisions are finalised.

#### *Supercharging EV Infrastructure*

- The Government is focused on increasing public charging infrastructure, with a commitment to enable delivery of a network of 10,000 public EV chargers by 2030.

#### *Vehicle system reform*

- s 9(2)(f)(iv)

25 July 2024

OC240736

**Hon Simeon Brown**  
**Minister of Transport**

**Action required by:**  
 Friday, 9 August 2024

## **CONFIRMING FUNDING ARRANGEMENTS FOR RECRUITING AND RETAINING BUS DRIVERS INITIATIVE**

### **Purpose**

This briefing seeks your agreement to a proposed co-funding model for improvements to bus driver safety and work environments funded through Budget 2024.

### **Key points**

- Budget 2024 included a commitment to refocus \$15 million of existing funding over two years to improve safety and work environments for bus drivers.
- We propose a co-funding model with funding criteria that will ensure additionality, value for money, innovation, and competition. So, the funding can be allocated efficiently and effectively, we propose using the following grant process:
  - NZTA invites all PTAs to submit a request for a Crown contribution to safety and work environment improvements that are not already committed to or funded.
  - NZTA assesses the requests against the funding criteria and allocates funding. The Crown's maximum contribution will be up to 51 percent for safety improvements, and between 60 and 75 percent for the one-off establishment costs of work environment improvements, reflecting significant differences in scale, cost, and economic life.
- The intention is for NZTA to complete the initial grant process by the end of 2024. If there is funding remaining, we propose NZTA runs an additional round in 2025.
- Having PTAs submit requests for funding at the same time enables opportunities for bulk procurement to be identified. Bulk procurement will enable economies of scale, reduced costs and improved value for money, particularly for smaller PTAs.
- We propose NZTA and the Ministry engage with the National Public Transport Workforce Steering Group to build a picture of need across the country, help develop bulk procurement approaches, and encourage and support PTAs to complete their requests for funding.
- Subject to your agreement, we will formalise the co-funding model in a funding agreement between the Ministry and NZTA, and a letter for you to send to NZTA's

Board Chair outlining your expectations for how the fund will be managed and administered.

**Recommendations**

We recommend you:

- 1 **agree** the co-funding model must align with the following funding criteria:  
 additionality; value for money; innovation; and competition Yes / No
- 2 **agree** to a co-funding model that enables Public Transport Authorities to apply for a Crown contribution towards improvements that will improve bus driver safety and/or work environments and that are not already funded or committed to fund Yes / No
- 3 **agree** the Crown’s maximum contribution will be:  
 up to 51 percent for safety improvements Yes / No  
 between 60 and 75 percent for the one-off establishment costs of work environment improvements Yes / No
- 4 **agree** the co-funding will be allocated via a grant process in 2024 where all Public Transport Authorities will be invited to submit a request for funding for safety and work environment improvements that will be assessed by NZTA against the funding criteria Yes / No
- 5 **agree** an additional round will be run in 2025 if the funding is not fully allocated via the initial grant process Yes / No
- 6 **note** the Ministry and NZTA plan to engage with the National Public Transport Workforce Steering Group to support the effective and efficient roll out of the funding. Noted

*Siobhan Routledge*  
 \_\_\_\_\_  
 Siobhan Routledge  
**DCE – Policy Group (Acting)**  
 25 / 07 / 2024

\_\_\_\_\_  
 Hon Simeon Brown  
**Minister of Transport**  
 ..... / ..... / .....

- Minister’s office to complete:**
- Approved  Declined
  - Seen by Minister  Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Jessica Ranger, Manager, Urban Development and Public Transport	s 9(2)(a)	✓
Liam Fechny, Adviser, Urban Development and Public Transport		



## CONFIRMING FUNDING ARRANGEMENTS FOR RECRUITING AND RETAINING BUS DRIVERS INITIATIVE

### Government funding will support bus driver recruitment and retention by delivering practical improvements to bus driver safety and work environments

- 1 Budget 2024 included a commitment to refocus \$15 million of existing funding over two years for practical improvements to working conditions for bus drivers to increase driver retention and recruitment. We advised the funding could be used for a range of improvements including driver safety screen retrofits, new driver toilet facilities, and new driver rest and break rooms [OC240571 refers].
- 2 At your request, the Ministry of Transport (**Ministry**) and the NZ Transport Agency (**NZTA**) undertook a review of passenger safety on buses following an incident in Auckland in June 2024 [OC240795 refers]. The review highlighted there are some safety improvements that benefit the driver and their passengers such as real-time CCTV monitoring. These improvements can also be funded via this Budget 2024 funding provided they meet the proposed funding criteria.

### We propose a co-funding model to help deliver these improvements

- 3 A co-funding model will enable Public Transport Authorities (**PTAs**) to request a funding contribution from the Crown towards improvements that will enhance the safety and work environments of bus drivers.
- 4 We propose the following funding criteria for the co-funding model:

#### *Additionality*

- 4.1 Co-funding will not be provided for improvements that are already funded, or where there is an existing commitment to fund.
- 4.2 Co-funding will be prioritised to deliver new improvements.

#### *Value for money*

- 4.3 Co-funding will only be provided where there is a clearly demonstrated need for an improvement.
- 4.4 For work environment improvements, co-funding will only support the one-off establishment costs with PTAs responsible for managing any cost escalations.
- 4.5 For safety improvements, co-funding should only be provided where there is good asset life (i.e. buses that are not close to replacement) and there is a contribution from the Public Transport Operator (**PTO**) who owns the asset.
- 4.6 Co-funding should encourage PTOs to contribute their fair share to working environment improvements in key network locations controlled by PTAs.

- 4.7 Co-funding will require requests for funding to align with NZTA's public transport procurement policies and guidelines, including NZTA's general directive that investments need to achieve value for money.

*Innovation*

- 4.8 Co-funding should consider opportunities to enhance innovation such as bulk procurement of similar improvements across PTAs to deliver greater value for money and efficiency.

*Competition*

- 4.9 Co-funding should support fair competition between PTOs.
- 4.10 Co-funding will only be provided for work environment improvements in key network locations controlled by PTAs or local authorities.

**The local funding component will vary due to the scale and cost of delivering different types of improvements**

- 5 We propose setting a maximum amount for the Crown contribution that differs between safety and work environment improvements. This is because the funding has a wide variety and scale of uses, with delivery costs differing significantly. For example, while driver safety screens are relatively cheap to provide in large numbers, capital works are required to improve toilet and meal break facilities.
- 6 Our proposed Crown contribution is:
- 6.1 up to 51 percent for safety improvements
- 6.2 between 60 and 75 percent for the one-off upfront cost of the capital component of work environment improvements, reflecting the high impact and long life of these improvements against the capital outlay required.
- 7 NZTA will be required to consider the appropriate level of local funding for each improvement and allocate Crown funding accordingly. The local funding contribution will come from PTAs, local authorities, and PTOs.

**A grant process will allow funding to be allocated effectively and efficiently...**

- 8 We recommend funding is allocated to PTAs via a grant process that comprises the following steps:
- 8.1 NZTA will use the funding criteria to develop a request for funding template that will be sent to all PTAs to submit for consideration. The template will ensure PTAs are clear on the requirements for accessing the funding and enable NZTA to have the information it needs to make funding decisions.
- 8.2 NZTA will assess the requests according to the funding criteria and take into consideration the scale of need and proposed co-funding required.

8.3 NZTA will approve or decline requests. There may also be a third category of requests, which are those that are granted provisional approval but require further information from the PTA to finalise. NZTA has found having this third category to be a pragmatic approach to give the sector certainty as part of similar funding processes.

9 NZTA considers this grant process can be up and running quickly. The intention would be to have it completed by the end of 2024. If there is funding remaining, we propose NZTA runs an additional round in 2025.

10 After the funding is fully allocated, the expectation is PTAs will need to incorporate any further improvements to bus driver safety and working environments into contract negotiations with PTOs or seek funding via standard processes such as the National Land Transport Fund or a local authority's Long Term Plan (LTP).

**...and make the most of bulk procurement opportunities**

11 One of the benefits of inviting all PTAs to submit requests for funding at the same time is that it enables NZTA to identify opportunities to consolidate orders across PTAs and bulk purchase improvements. Bulk purchasing can lead to cost savings through a lower per-unit price and reduced administration costs. It also means smaller PTAs can leverage economies of scale they would not otherwise be able to do so.

**Auckland Council has recently announced funding for driver safety screen retrofits**

12 Auckland Council has provided \$6.5 million to Auckland Transport through its recently adopted 2024-2034 LTP. The intention is to install driver safety screens in 80% of buses within two years, instead of taking 10 years to do all of them under business-as-usual funding.

13 Auckland Transport already requires new buses being introduced into its fleet to be fitted with safety screens before entry into service, so this funding is exclusively to retrofit the existing fleet.

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s 9(2)(j)

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## **Engaging with the National Public Transport Workforce Steering Group will help ensure a successful roll out**

- 17 The previous Government used the National Public Transport Workforce Steering Group (**the Steering Group**) to help develop the funding settings for bus driver wages and conditions initiatives funded via Budgets 2022 and 2023. The Steering Group evolved from previous sector working groups and is only advisory. None of its recommendations are binding on any party.
- 18 The Steering Group is chaired by NZTA and includes the Ministry, representatives from several PTAs and unions, and the Bus and Coach Association. While the Steering Group is currently inactive, NZTA intends to stand it up to help inform work on developing national guidance on good practice for managing passenger safety.
- 19 The Ministry and NZTA plan to engage with the Steering Group to inform the roll out of this funding. Its members have expertise and experience that can help to build a national picture of where there would be the most benefit from improvements to safety and work environments. They can also help to develop the most effective approach to bulk procurement.
- 20 The Steering Group can also play a role in encouraging and supporting PTAs to complete their funding requests.

### **Next steps**

- 21 Once you have agreed to an approach for allocating the bus driver safety and work environments funding, Ministry officials will draft a letter from you to the NZTA Board Chair setting out your expectations regarding how the funding will be allocated to PTAs. The Ministry will then work with NZTA to put in place the funding agreement.



25 July 2024

OC240854

**Hon Matt Doocey**

**Action required by:**

**Acting Minister of Transport**

Tuesday, 6 August 2024

cc Hon Simeon Brown

Minister of Transport

## FIRST READING OF THE LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL

### Purpose

To provide you with a first reading speech and legislative statement for the Land Transport (Drug Driving) Amendment Bill.

### Key points

- The Land Transport (Drug Driving) Amendment Bill (the Bill) seeks to enable the roll-out of a new roadside oral fluid testing regime to better detect and deter drug driving.
- The first reading of the Bill is scheduled to take place on 6 August 2024. We have provided a first reading speech in Annex 1 and a legislative statement in Annex 2 for this purpose.
- The legislative statement provides detailed information about what the legislation is intended to achieve. Your office will need to ensure that the statement is circulated to the Clerk, and to the leader, whip or relevant spokespeople of each party no later than 11 am on the day of the first reading.
- Following the first reading, the Bill will be referred to the Transport and Infrastructure committee for consideration. <sup>s 9(2)(f)(iv)</sup>
- <sup>s 9(2)(f)(iv)</sup>
- Some elements of the Bill raise issues of compliance with rights and freedoms and freedoms affirmed and protected by the New Zealand Bill of Rights Act 1990, for example, the freedom from unreasonable search and seizure, and the right not to be arbitrarily detained. The Ministry of Justice is advising the Attorney-General on these

matters. If the Attorney-General decides that the Bill is inconsistent with the Bill of Rights Act, a report will be presented to the House when the Bill is introduced (scheduled for 31 July 2024).

- The first reading speech acknowledges that the Bill may impact on some rights and freedoms set out in the Bill of Rights Act, and that there are a number of safeguards built into the Bill to help address these issues.
- Officials are available to discuss any questions you may have about the Bill and the first reading at your weekly meeting on Tuesday 30 July 2024.

**Recommendations**

We recommend you:

- 1 **note** the attached speech is provided for the first reading of the Land Transport (Drug Driving) Amendment Bill, scheduled for 6 August 2024.
- 2 **note** that the attached legislative statement will need to be circulated to the Clerk and relevant spokespeople of each party in advance of the first reading of the Bill on 6 August 2024.
- 3 **note** that a shortened period for Select Committee consideration of the Bill is being sought, and that this will trigger an unlimited debate in the House.

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Paul O'Connell  
**Deputy Chief Executive, Sector Strategy Group**  
 .25. / 07 / .2024.

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Hon Matt Dooney  
**Acting Minister of Transport**  
 ..... / ..... / .....

- Minister's office to complete:**
- Approved
  - Declined
  - Seen by Minister
  - Not seen by Minister
  - Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Paul O'Connell, Deputy Chief Executive, Sector Strategy Group	s 9(2)(a)	
Jo Gould, Principal Adviser, Safety		✓

**ANNEX 1 FIRST READING SPEECH**

RELEASED UNDER  
THE OFFICIAL INFORMATION ACT 1982



## House of Representatives: First reading speech for Land Transport (Drug Driving) Amendment Bill

### First reading speaking points

**Paper Title:** Land Transport (Drug Driving) Amendment Bill

**Portfolio:** Transport

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#### Structure

1. Introduction
2. The Bill amends the Land Transport Act to enable the roll out of random roadside oral fluid drug testing
3. A new oral fluid testing regime
4. New approval criteria
5. Use of oral fluid testing devices for screening
6. Evidential laboratory testing
7. Bill of Rights Act implications
8. Issues for consideration at select committee
9. Passing this Bill is a priority

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#### Legislative Statement

- I present the legislative statement on the Land Transport (Drug Driving) Amendment Bill.

*[The speaker will state that the legislative statement is published under the authority of the House and can be found on the Parliamentary website]*

#### Introduction

- Mr Speaker, I move that the Land Transport (Drug Driving) Amendment Bill be now read a first time.
- I nominate the Transport and Infrastructure Committee to consider the Bill.
- At the appropriate time, I intend to move that the Bill be reported to the House by 5 December 2024.

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#### The Bill amends the Land Transport Act to enable the roll out of random roadside oral fluid drug testing in New Zealand

- Drug-impaired driving is a persistent issue on New Zealand's roads and has a significant impact on road safety. Approximately 30 percent of road deaths involve a driver who



has consumed impairing drugs. These are preventable fatalities that result in vast costs to families, communities, and society generally. We need to do more to detect and deter drug-impaired driving and protect the lives of all road users.

- The previous Government sought to introduce a roadside oral fluid drug testing regime through the Land Transport (Drug Driving) Amendment Act 2022. This Act was intended to enable police officers to test drivers' oral fluid for the presence of the highest-risk illicit and prescription drugs that impair driving.
- However, that regime was found to be unworkable as no oral fluid testing device can meet the approval criteria set out in legislation. Those approval criteria require a level of specificity and accuracy in the results produced by testing devices that is beyond the current capability of oral fluid testing technology. As a result, roadside oral fluid testing has been unable to be implemented.
- This Government is committed to improving road safety, and in particular to targeting the highest contributing factors in fatal road crashes. This Bill signifies our commitment to address the problem of drug-driving and resolve issues with the current regime.

#### **A new oral fluid testing regime**

- The Bill establishes a new regulatory framework to enable a compulsory random roadside oral fluid testing regime. The Bill will allow police officers to screen drivers for the presence of impairing drugs anywhere, anytime, using oral fluid testing devices without cause to suspect a driver has consumed drugs – in a similar approach to breath screening for alcohol.
- The new oral fluid testing regime will sit alongside existing compulsory impairment testing, which police officers can employ when they have good cause to suspect a driver has consumed drugs. The oral fluid testing regime will provide police officers with a faster, more efficient tool to remove impaired drivers from our roads and to better deter drug-impaired driving.
- The Bill retains much of the existing regime, with some critical changes.

#### **New approval criteria**

- The Bill introduces new device approval criteria that better reflect the limitations of oral fluid testing devices.

- The Bill provides that in approving oral fluid testing devices for use, the Minister of Police:

- 
- will only be able to approve a device if satisfied that it has a high level of accuracy;
  - can approve devices that detect both specified qualifying drugs and groups or families of drugs which specified qualifying drugs are a member of; and
  - can approve devices that will return a positive result for a specified qualifying drug (or specified family of qualifying drugs) at a concentration level that indicates recent drug use.
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- The criteria are designed to include safeguards to ensure the regime is administered fairly and does not unintentionally penalise drivers who are not impaired. Drivers who have very low levels of drugs in their system which are not likely to be impairing will not be penalised.

#### **Use of oral fluid testing devices for screening**

- The Bill provides for the use of these approved oral fluid devices to conduct screening tests at the roadside.
- The Bill enables the Minister of Police to specify (by notice) the qualifying drugs that will be screened for using an approved device. Typically, the devices can detect THC (the psychoactive substance in cannabis), methamphetamine, amphetamine, benzodiazepines, cocaine and opiates. The drugs that are tested for at the roadside will not be known until a procurement process for the devices has been completed after the legislation comes into force.
- If a driver tests positive for a specified qualifying drug at the roadside, they will need to undergo a second roadside oral fluid test.
- Drivers who return two positive screening tests at the roadside will be prohibited from driving for 12 hours to address any immediate road safety risk.
- The requirement for two positive screening tests before being prohibited from driving is intended to mitigate the possibility of enforcement action being taken on the basis of false positive oral fluid test results.

- Drivers who refuse to take a screening test will be issued with an infringement fee and demerit points at the roadside, and be prohibited from driving for 12 hours.

### **Evidential laboratory testing**

- Provided drivers do not refuse a test, infringement notices are only issued after laboratory test results are returned. The Bill requires the evidential testing of oral fluid in a laboratory before infringement notices are issued.
- A positive screening test at the roadside will require a sample of oral fluid to be sent to an approved laboratory for testing. An infringement fee and demerit points will only be issued if the laboratory test detects the presence of any specified qualifying drug at a level that is indicative of recent use.
- The Bill enables the Minister of Police to specify the qualifying drugs that will be tested for by an approved laboratory, which must be from the list of 25 drugs in Schedule 5 of the Land Transport Act 1998. Those drugs were included in that schedule on the advice of an independent expert panel, based on New Zealand data linking road crashes with the presence of the drugs in the drivers' blood samples. Those drugs are also representative of the drugs typically detected in oral fluid testing devices.
- A medical defence will continue to be available to drivers who can establish that they have taken any prescription medication in accordance with a current prescription and any instructions from a health practitioner or manufacturer.

### **Bill of Rights Act**

- The regime described in this Bill impacts on some rights and freedoms set out in the New Zealand Bill of Rights Act 1990. These include the freedom from unreasonable search and seizure and the right not to be arbitrarily detained. I note that similar proposals to introduce or change drink- and drug-driving laws over the decades have had similar impacts.
- A number of safeguards are built into the Bill to help protect people's rights and freedoms. These include:
  - using oral fluid to screen drivers for drug use rather than more invasive detection methods, such as a blood sample;

- a person that fails two oral fluid screening tests will be prohibited from driving for 12 hours, this provision does not come with an offence and is proportionate to addressing the immediate road safety risk posed by a possibly drug-impaired driver;
  - the basis for charging a person with an infringement offence for drug use will be laboratory testing of that oral fluid which is highly accurate and mitigates the possibility of a person being charged on the basis of a false-positive result from a screening device at the roadside.
- I appreciate that some people will be concerned about being detained on the roadside to undergo an oral fluid test, and that this will involve an intrusion on bodily privacy. On balance, I consider the potential limitations on the rights of drivers through the new regime are proportionate to the road safety risk that is being addressed. Driving is a heavily regulated activity because of the importance of road safety and the risk to other road users caused by unsafe practices. Addressing the significant risk of harm caused by drug-impaired drivers is in the public interest.

#### **Consideration at select committee**

- This Bill is intended to fix the issues with the current legislation which have meant oral fluid testing devices could not be approved.
- The regime outlined in this Bill was developed by the previous Government. While I have taken it forward in the interests of timeliness, I invite the select committee to consider further the workability of the proposed regime, particularly, the availability of screening devices to meet the proposed new approval criteria.
- I will also invite the committee to consider any further possible operational improvements that may be suggested by Police.

#### **Passing this Bill is a priority**

- It is important to ensure that the New Zealand Police has appropriate powers to detect and deter drug driving. Oral fluid testing for drugs at the roadside has been employed as a road safety tool overseas for decades.
- It is time for New Zealand to adopt this. The amendments in this Bill will enable the rollout of random roadside oral fluid screening tests, with laboratory testing following a positive screening result. This will help keep New Zealanders safe on our roads. It has

been estimated that 65 lives and 431 serious death and injury crashes will be prevented over a 10-year period with the implementation of an oral fluid testing regime.

- I commend this bill to the House.
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***[After the Question is put that the Bill be considered by the Transport and Infrastructure Committee]***

- I move that the Land Transport (Drug Driving) Amendment Bill be reported to the House by 5 December 2024.
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RELEASED UNDER  
THE OFFICIAL INFORMATION ACT 1982

## ANNEX 2 LEGISLATIVE STATEMENT

This annex is refused under section 18(d) and can be found here:  
[http://nzlii.austlii.edu.au/nz/legis/bill/\\_ls/otsrotltdabls821/](http://nzlii.austlii.edu.au/nz/legis/bill/_ls/otsrotltdabls821/)

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