

Discussion Paper
Clear heads: options to reduce the risks
of alcohol-and drug-related impairment in
aviation, maritime and rail

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Section five – post-occurrence testing for all

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Option 5: post-occurrence testing for all involved in incident

The Commission to have the power to test those involved in an occurrence

Option 5	
Post-occurrence testing for all involved in incident	<ul style="list-style-type: none">▶ Changes to the Transport Accident Investigation Commission Act to allow it to conduct post-occurrence testing for alcohol or drug impairment▶ Testing will be for any person involved in an occurrence▶ The Commission (or a suitably approved third party) will be able to test for the presence of alcohol or drugs after a defined occurrence▶ No additional penalties for impairment beyond those that exist now (status quo). New penalties would be needed for people who refuse testing

Points to consider

- ▶ Should the Commission (or more likely a suitably approved third party) be given a new power to require samples from all those involved in an occurrence to determine the presence of alcohol and drugs?
- ▶ Are there any types of occurrence where the Commission should not be able to undertake post-occurrence testing for its own investigations?
- ▶ What organisation(s) should be able to carry out testing on behalf of the Commission?

- 5.1 The Commission has reported that it is currently unable to enforce mandatory alcohol and drug tests following an occurrence. This limits its ability to accurately fulfil its legislated purpose, which is to determine the circumstances and causes of incidents or accidents, with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person. In its recommendations, the Commission specifically asked the government to “prescribe post-occurrence testing requirements for drugs and alcohol”. This was discussed in more detail under option 3.1.
- 5.2 None of the options discussed above would give the Commission the power to test all parties involved in an accident. This is because all of the options refer only to a defined group, such as safety-sensitive staff, or a skipper in the recreational boating sector. In the case of the enforcement options, they only relate to the testing for the presence of alcohol.
- 5.3 A specific law change would be required to enable the Commission (or more likely a suitably approved third party) to obtain samples from people after a defined occurrence for the presence of alcohol or drugs. This would create powers similar to those discussed in option 3.2, but in this case they would apply to all those involved in an accident.

- 5.4 With this option, the testing would be solely to assist the Commission to determine the causes and circumstances of an incident or accident.
- 5.5 As with the other options that propose post-occurrence testing, new legislation would be needed to set out when such testing was required, the testing procedures to be used, and the powers of any organisation to detain people and to take samples. If a person refused to be tested, offences and suitable penalties would need to be established. Privacy legislation and relevant national and international standards for testing procedures would need to be adhered to in order to safeguard the integrity and accuracy of the testing, and to protect the privacy, confidentiality and rights of individuals.
- 5.6 Further consideration of consistency with the Bill of Rights Act would also be required. If the Commission needed testing only for the small subset of accidents it actively investigates, this would be a relatively limited power.

Costs

- 5.7 Further work is required to assess and quantify the costs to implement and administer a post-occurrence testing regime. It is likely the Commission would need testing to be carried out to a high standard, but the number of tests would be expected to be smaller than for the enforcement-focused options discussed in section 4.
- 5.8 A stand-alone post-occurrence testing regime would provide a number of benefits. The collection of aggregated test result data would provide valuable research on the level of alcohol and drug impairment involvement in occurrences within the aviation, maritime and rail sectors in New Zealand. This would better inform future policy options.