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## The Drug Detection Agency - Clear Heads Submission

The Drug Detection Agency (TDDA) is the largest provider of workplace drug testing services in New Zealand and therefore has extensive experience of dealing with the risks of drug and alcohol use in the Aviation, Maritime and Rail transport sectors.

The Drug Detection Agency welcomes the opportunity to provide a submission on the 'Clear heads' discussion document "Clear heads: options to reduce the risks of alcohol and drug-related impairment in Aviation, Maritime and Rail." TDDA have previously provided a submission on this discussion paper back in April 2015. This updated submission contains greater detail on TDDA's position.

The commercial aviation, maritime and rail transport sectors are vital parts of the New Zealand infrastructure. It is also clear that these transport activities include some of the most safety sensitive operations in the commercial and public environments.

It is TDDA's view, based on our experience, that these sectors should take a 'zero tolerance' approach to the use of drugs and/or alcohol by people employed in these sectors. TDDA utilise the risk management approach used by airport security as an analogy example of the appropriate risk management strategy towards drug use in the workplace. Airport security enforce the prohibition of objects such as knives, scissors etc. with zero tolerance. These objects in the hands of almost the entire population would not be considered weapons however the risk associated with an individual who might use such an object as a weapon is unacceptable. With respect to drugs and alcohol whilst a proportion of the population may use alcohol and recreational and prescription drugs responsibly, the risk of one individual mismanaging their use or indeed having a disregard for the consequences of their use poses an equally unacceptable risk. Hence a zero-tolerance approach is not only the most appropriate approach it provides the best assurance and risk mitigation.

This also aligns with the Health and Safety at Work Act 2015, which specifically states there is a duty to firstly eliminate the H&S risk, or to minimise/manage that risk. In this Act it defines a hazard as:

- "A person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour"

A zero-tolerance approach for alcohol is not only easily enforceable by testing using breathalysers, it is also analogous to the Land Transport Act requirements for persons under the age of 20. The application of an acceptable breath or blood alcohol limit in the context of Aviation, Maritime and Rail transport would be disproportionate to the risk posed.

Commercial sector

#### Option 1 - status quo

It is the opinion of TDDA that this option (status quo), albeit with an increased education and awareness campaign, would not be an appropriate response to the requirements for the management of the risk posed by alcohol and drug use in this sector. Our vast experience is that non-legislative actions are not compelling enough to compel the appropriate level of action required to manage the risks of drugs and alcohol in this environment.

#### Option 2 - drug and alcohol management plan

The discussion document references the regulatory model introduced in 2012 for the 'Adventure Tourism' Industry. It also identifies that a good proportion of Aviation, Maritime and Rail operators (outside of adventure tourism) already have management plans to deal with the risk of drug and alcohol use. In this regard, the adventure tourism industry prior to 2012, had been a very slow adopter of these types of health and safety systems and therefore required remedial action.

The issues identified by the Transport Accident Investigation Commission (TAIC) and its recommendations included the consideration of the systems and models already available to this sector. That TAIC identified the need for additional interventions would suggest that the current regulations do not go far enough in addressing the safety concerns.

We suggest that adoption of any new regulation by the commercial sector needs to be mandated and comprehensive. It would be unacceptable to allow parts of the commercial sector to opt out.

#### Option 3 - drug and alcohol management plan with mandatory post- occurrence testing

TDDA view mandatory post-occurrence testing as an essential component of any robust drug and alcohol management plan. Indeed, we would suggest that in the absence of mandatory random (no cause) drug and alcohol testing, the reactionary approach of post-occurrence testing (in isolation) would be deficient in addressing the issues the sector needs to address.

The discussion document identifies the change in driver and road user behaviour seen after decades of focused attention on drink driving. A critical component influencing this change in behavior is the increased attention and police diligence with respect to roadside breath alcohol testing (basically random roadside alcohol testing). We would argue that in the absence of the deterring influence of random roadside breath alcohol we would not have seen the positive effects on driver behaviour.

In our opinion, mandatory random drug and alcohol testing (along with post incident and reasonable cause drug and alcohol testing) needs to be incorporated into the regulations. This action will not only facilitate best practice across the sector, it will also simplify enforcement and compliance monitoring.

#### Option 4 - maximum limits for alcohol, with testing for enforcement

With reference to our previous statements, we suggest that a zero-tolerance approach for alcohol limits is the only acceptable action for this sector.

The recent revisions to the Land Transport Act relating to 'drink driving' limits have in effect almost applied a zero-tolerance program. The application of the breath alcohol level of 250 microgram per litre breath or blood alcohol level of 50 milligrams per decilitre should be the maximum allowable across the Aviation, Maritime and Rail sector. However, we would suggest that for the commercial sector lower thresholds would be more applicable. For example, the Department of Transport (DOT-USA) apply a 100 microgram per litre breath (20 milligram per decilitre blood) threshold in their alcohol testing program. With respect to commonly used breath alcohol devices the 100 microgram per litre breath is effectively zero tolerance.

The discussion document identifies the potential significant cost of using Police to enforce this component of the testing program. It is however common for breath alcohol testing to be conducted as part of routine drug and alcohol testing and there are numerous private providers of these services already engaged by members of this sector (and other numerous safety sensitive sectors). It would be cost effective to continue to use these service providers and only escalate those cases exceeding the regulated limits to the Police as part of the process.

Further

One relevant topic of conversation in workplace drug and alcohol testing is the merits of urine vs oral fluid as a method of testing for the presence of drugs. Whilst this is can be quite a complex subject and certainly one where you are not comparing apples with apples, it can also come down to one simple question – what is the employer/testing requester trying to achieve? The answer to this question will often guide the most appropriate method available.

Whilst it is now true that both urine and oral fluid have combined Australian and New Zealand Standards, there are differences between these two. Examples of this are:

- There is currently no verified oral fluid device in New Zealand that can screen to the standard 5 drugs as listed in the new Standard.
- There is currently no verified oral fluid collection devices in New Zealand that can transport an oral fluid sample to a lab for confirmation analysis.
- There is currently no lab in New Zealand that is accredited under the new Standard to carry out oral fluid confirmations.
- There is accreditation in New Zealand for urine screening, collection and lab analysis.
- The window of detection for THC (cannabis) is smaller for oral fluid testing as

opposed to urine testing. This therefore does not allow for the carry over effect of drugs as discussed in numerous research papers, including the Yesavage study (Carry over effects of marijuana intoxication on aircraft pilot performance: a preliminary report) as well as well-known rebound fatigue effects from methamphetamine and stimulant substances.

- Oral fluid testing does not have the scope for detecting large ranges of prescription drugs or synthetic designer compounds like synthetic cannabis, whereas urinalysis can achieve greater detection of these types of drugs.

It is TDDA's opinion that consideration should also be given to the appropriateness of utilising drug hair testing as another option. Drug hair testing is currently a highly effective and well-established option for pre-employment drug testing in the commercial sector (for both safety sensitive and non-safety sensitive roles) as this can provide a longer window of detection for "lifestyle use" of drugs, as opposed to one off usage. Hair testing may also be appropriate for random testing in the maritime sector, when ships may be at sea for extended periods of time and a pre or post deployment urine or oral fluid drug test will not cover the risk of drug use during the extended time at sea.

Further to this, the discussion document mentions the importance of education programs and TDDA are strongly supportive of this stance. It is TDDA's opinion that training and education should not be seen in isolation, but that it should be part of a properly structured drug and alcohol management plan. It is imperative that any training and/or education consider the following:

- It is provided by qualified and knowledgeable facilitators
- It is more effective as a reoccurring option as opposed to a one off
- It allows staff tasked with implementing the drug and alcohol management plan to learn the required skills to correctly identify drug indicators and appropriate actions
- It utilises overseas evidence-based training in relation to identifying potential issues with employees "under the influence" of drugs

#### Recreational sector

The discussion document describes the complexity of the recreational portion of this sector, particularly relating to marine craft that are extensively used for recreational purposes in New Zealand. However, in many respects, the use of personal marine and aviation vehicles is akin to that of a motor vehicle on the roads. The regulation of the recreational sector must consider both the individual risk and risk to the general public and hence we would support the implementation of a similar regime as that used for road transport. That is:

- Legislation controlling drug and alcohol use
- Ability for Police to monitor and enforce the legislation
- Mandatory post-occurrence and reasonable-cause testing

Obviously, legislation without enforcement is ineffective and hence it should be recognised that appropriate resourcing would be required.

Summary.

It is unfortunate that recent events continue to identify the risks associated with drug and alcohol use in this sector. We commend the Ministry of Transport for their diligence in reviewing the options to address these risks and we appreciate the opportunity to provide feedback.

The Drug Detection Agency have worked with members of this sector and other Government agencies with respect to drug and alcohol policy development and health & safety monitoring programs for well over a decade and we are acutely aware of the risk involved. In our view given the real risks identified in this sector the only reasonable responses are legislation addressing acceptable drug and alcohol levels and mandated random and post-occurrence/reasonable cause drug and alcohol testing. Whilst it may seem appropriate to attempt to apply a model that incorporates a component of impairment into the testing program, the measurement of impairment or inference of impairment is exceedingly difficult using the technology currently available to the sector. We would also suggest that the risks in the Commercial Aviation, Maritime and Rail sectors are such that a zero tolerance paradigm is the only acceptable response.

The Drug Detection Agency would be pleased to assist the Ministry with further information if required.

A handwritten signature in black ink, appearing to be 'G. Dobson', with a small dot at the end.

Glenn Dobson  
Chief Operating Officer  
TDDA