



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

**to the**

**Ministry of Transport**

**on the**

**Enhanced Drug Impaired Driver Testing  
Discussion Document**

**P O Box 6645**

**Wellington**

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## Summary of recommendations

1. That workers are not unfairly effected by law changes on drug testing, and that there is consistency between policies for road safety and for workplace health and safety
2. That a drug testing scheme tests for impairment and not detection.
3. That the method used to test for drug impairment provides the greatest protection for driver and worker rights and dignity.
4. That recognition is made of the limitations in drug testing for impairment, and that the methodology used for drug testing updates as the technology in this area improves.
5. That an effective drug driving scheme needs to include input from Iwi, Unions, and Community groups as those who can send positive messages on drug driving.

## **1. Introduction**

- 1.1. This submission is made on behalf of the 27 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 310,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU recognises that no driver should put other drivers at risk by driving impaired by drugs or alcohol.
- 1.4. We also recognise that peoples' right to privacy must be maintained as much as possible, they also have the right to refuse medical treatment and the right against unreasonable search and seizure. However these rights are not absolute and must be balanced with the need to maintain safety on the roads. When limiting rights, it may only be limited to the extent reasonably necessary for this intended purpose.
- 1.5. It is important that drug testing captures actual impairment (driving ability) rather than simply detecting the presence of a substance. Mere detection can show that a substance was consumed but it may no longer have any effect on that persons' ability to drive safely.
- 1.6. While we are concerned to protect and improve road safety, our primary objective in making this submission is to ensure that there is consistency between policies for road safety and for workplace health and safety. The road is a workplace, and there are concerns regarding workplace testing for drugs and alcohol.
- 1.7. With this in mind we turn to the specific questions asked in the discussion document:

## **2. Question 1: Do you think roadside drug screening is a good option for deterring drug driving and detecting drug drivers? Are there other options not mentioned in this Discussion Document?**

- 2.1. Effective deterrence requires visibility, therefore we agree that a calculated roadside drug screening process could be useful for deterrence purposes. Careful consideration needs to be given to the implementation of roadside testing which

balances the positive deterrence effects and negative consequences such as delay, costs, and public confidence in the scheme.

2.2. An option not mentioned is to provide more education and advertising in relation to drug-impaired driving, especially in regards to prescription drugs. Given the information provided it appears clear that the current attitudes of NZ drivers shows that many are (whether wilfully or not) ignorant of the effects of prescription drugs on driving impairment.

2.3. We also suggest looking into 'joint ventures' with groups that could target demographics at risk of driving while impaired. To promote an effective drug driving campaign, this would need cross sector support and should not be left with the Police to deal with on their own. Iwi, Unions and community groups can have strong impact in sending a positive message on drug driving and should be consulted through the process.

**3. Question 2: Do you support oral fluid screening for roadside drug testing of drivers? Are there other options not mentioned in this Discussion Document that could be considered?**

3.1. The CTU position on the means of testing for drugs is:

3.1.1. It is vital that drug and alcohol testing captures actual impairment (fitness for work) rather than simply detects the presence of a substance. Mere detection can show that a substance was consumed at some point but is not relevant to health and safety risks. There is suggestion from the courts that quick, less invasive, up to date, testing technology should be used by employers.

3.1.2. Drug and alcohol testing must be for genuine health and safety reasons. Random testing may only be justified in safety sensitive roles, otherwise random testing is unreasonable.

3.2. Of the methods of testing for drug and alcohol, only breath and blood testing for alcohol reliably test impairment. None of the methods of testing for illegal drug use measure actual impairment per se.

3.3. The longer the detection window, the less likely the testing is to measure impairment. Urine testing is problematic because of the length of time in which metabolites, particularly cannabis, remain in the body (along with its intrusive nature).

- 3.4. While none of the methods are perfect, the union movement strongly supports whatever method of testing provides the greatest protection for workers' rights and dignity at work. This method may change as the science improves.
- 3.5. Given that "oral fluid screening devices can only detect the presence of drugs. They cannot test for impairment", the CTU cannot fully endorse the use of saliva testing alone in providing penalties for drug driving.
- 3.6. As this is an area in which the technology is developing, we would like to see the methodology update as the technology improves.

**4. Question 3: Is it reasonable to delay drivers by 3 to 5 minutes to administer a roadside drug screening test, in order to detect drug drivers and remove them from the road?**

- 4.1. Assuming that there is already good cause to undertake the screening test, it is unlikely that 3-5 minutes is unreasonable. Truly random testing, such as an alcohol breath test check point could be seen as a significant inconvenience if each test was to take 3-5 minutes.
- 4.2. Some considerations we have regarding the reasonableness of screening testing are:
  - How does 3-5 minutes compare with average police traffic stop times?
  - Would the 3-5 minutes to administer drug screening be additional time added to a police traffic stop, or would a drug screening test be able to run concurrently with other actions police take when stopping a driver? For example a licence/ WOF check.
  - Does an estimate of 3-5 minutes account for false positive retesting?

**5. Question 4: Is a presence based zero tolerance approach to drug-driving, where presence of a drug is sufficient for an offence, appropriate for NZ?**

- 5.1. No, we do not support a zero tolerance approach. As stated we support an impairment based approach.
- 5.2. We currently do not impose a zero tolerance approach on drink-driving offences which have similar effects to drugs on the ability to drive, nor is there a zero

tolerance on fatigued drivers who have also been shown to suffer similar effects upon their driving ability as drugged drivers.

- 5.3. This shows that the legal system does not consider a zero tolerance approach to impairment reasonable, there is no reason that drug driving should be singled out with a zero tolerance approach.

**6. Question 5: Should there be legal limits for some drugs**

- 6.1. As we believe that the focus should be on impairment, legal limits could act as a mitigation for only finding the presence of drugs in the system and go towards showing impairment.
- 6.2. Legal limits would also provide some safeguard against the limitations of the current testing technology.
- 6.3. With the possibility of cannabis legalisation in the coming year, we think it would be short-sighted not to consider legal limits in line with alcohol laws.
- 6.4. Drug interactions need to be considered when setting limits.

**7. Question 6: If roadside drug screening was introduced, which of the three approaches discussed above do you prefer?**

- 7.1. We would support testing under the current “good cause to suspect” criterion and targeted testing following an accident. See below for our comment on random screening.

**8. Question 7: If a random drug screening was introduced, do you think it is a reasonable and proportionate response to the harm of drug driving? Are there circumstances in which it would be more or less reasonable?**

- 8.1. Given that random testing for drink driving has been found to a reasonable and proportionate response to the harm it causes, it would follow the same is applicable to drug driving given the significant number of road deaths involving drugs.
- 8.2. Our concern lies with the reliability of the means of drug testing. Alcohol breath testing is considered accurate in detecting impairment, being only mildly invasive, and a minor inconvenience. Its use in random alcohol testing is reasonable.

- 8.3. As drug testing does not currently meet these same standards it may not be considered reasonable. As the technology improves however drug testing may be seen to be more reasonable.
- 9. Question 8: What criteria should be used to determine if a drug is included, or excluded, from drug screening?**
- 9.1. We support the 3 criteria outlined at paragraph 130 in the discussion document.
- 10. Question 9: What regulatory process should be used to specify the drugs that are identified for screening?**
- 10.1. We support adopting the option outlined in paragraph 133 of the discussion document. We believe there needs to be a level of Government oversight.
- 11. Question 10: Should illicit and prescription drugs be treated differently?**
- 11.1. No, our belief is that the focus should be on impairment, to that end, the legal status of the drug that is causing the impairment can be considered irrelevant.
- 12. Question 11: Should there be a medical defence for drivers who have taken prescription drugs in accordance with a prescription from a medical professional?**
- 12.1. Yes, however the difficulty is the onus to show that a prescription was taken at the prescribed level and that a medical practitioner gave them an assurance that driving would be appropriate.
- 12.2. We would like to see a national drug driving programme include input from health practitioners to ensure that drivers are being properly informed when receiving their prescribed medicines. We do not want drivers to stop taking or refuse to take prescribed drugs on the basis that they may be convicted of an offence for driving.
- 12.3. We think the Ministry should also turn its mind to the unintended consequences of prescribed medication such as coming off medication. For medication such as anti-depressants, there can be effects such as fatigue associated with ending a course of medication. This is not easily assessable but can cause serious impairment. Education and awareness of these dangers should be included within this scheme.

**13. Question 12: If oral fluid testing was introduced in NZ, do you think there should be a requirement for a second drug screening test following a failed test? Do you prefer another option for screening drivers?**

- 13.1. The NZCTU does not hold an opinion on the legitimacy of drug testing methodology but supports the best method that provides the greatest protection for rights, and workers' rights.
- 13.2. We do however recognise that the technology in this area is still improving and there is a high false positive risk in the testing (7%) an additional step in the process will definitely be necessary.
- 13.3. What is required is a process that protects drivers from false positives and unreasonable detention. This process must also be able to obtain evidence that will be able to meet the burden of proof in criminal cases, as drivers will have the right to a defended hearing.

**14. Question 13: Do you think that drug driving offences should be confirmed with an evidentiary blood test? If not, what evidence should be required to establish an offence of drug driving?**

- 14.1. As there are serious consequences for drug driving offences, there is a strong need for evidential safeguards.
- 14.2. As saliva based testing shows detection, not impairment, the only way to balance the rights of drivers is to require testing that can show impairment levels to the criminal standard.
- 14.3. Whether this is an evidentiary blood test or not depends upon the effectiveness of evidentiary blood tests in determining impairment to beyond a reasonable doubt.
- 14.4. Given our preference for an impairment based system we consider keeping some form of compulsory impairment testing ("CIT") as evidence of impairment that can be tested in a court of law. We recognise the difficulty of CIT in some instances. However the combination of CIT, roadside screening, evidentiary testing and police witness evidence could be considered.

**15. Question 14: Do you think an infringement offence (instant fine and demerit points) or a criminal penalty (mandatory licence qualification, fines and possible imprisonment) is appropriate for the offence of drug driving?**

- 15.1. This is a criminal law question and is best answered by looking towards international best practice, from jurisdictions with an impairment focused scheme. From the jurisdictions discussed in the document we would favour a scheme in line with the laws in Canada.
- 15.2. From an industrial relations viewpoint we want to advocate for a system that seeks rehabilitation and corrective action favoured over criminalisation, in line with an approach that views drug use as a health issue.
- 15.3. A concern of the CTU is the flow on effect of criminal penalties on workers, and, workers being punished by employers for low level offences that have occurred outside of the workplace.

**16. Question 15: Is there any other penalty or action in response to the offence of drug driving that you think should be considered?**

- 16.1. We must take a rehabilitative approach towards workers who are found guilty of drug impaired driving. Drug addiction is a health issue and drug drivers should be offered support and the opportunity to rehabilitate.
- 16.2. The CTU endorses the NZNO submission of including “*Diversion to a health intervention programme*”.

**17. Question 16: Do you think it is reasonable to penalise drivers who have used drugs, but may not be impaired?**

- 17.1. No, we advocate for an impairment based system and consider drug use to be a health issue, not a criminal issue.
- 17.2. We support the suggestion in the discussion document that any scheme retains the current “any detection of illicit drugs from roadside testing would not lead to criminal liability under the Misuse of Drugs Act 1975 or the Psychoactive Substances Act 2013”. The intention of the law is to reduce the harm of drug driving, not to regulate the private lives of the population.

17.3. We also express concern that penalising drivers for use solely would have a disproportionate impact on Māori who already face a disproportionate amount of drug convictions.

**18. Do you have anything else you would like to say about drug driving?**

18.1. Our focus is on the effects of law changes on the workers of NZ. Through this lens we want to ensure that workers are not wholly and unfairly disadvantaged by law changes. We do not want to see workers unduly punished by employers for low level offences unrelated to their work. Drug driving convictions should not open up avenues of investigation into drug use at work (if driving is not a requirement of the job). Where driving is a requirement of the job we would support a similar limited licence regime as for drunk driving and that employers take a rehabilitative approach.

18.2. As the technology improves and becomes more accurate we want to ensure that provision of drug testing is amenable to improvements in technology. There needs to be a mechanism in the system that allows for the law to recognise new and emerging technology in detecting drug impairment.