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Discussion Document: Enhanced Drug Impaired Driver Testing

Introduction

The saying ‘don’t let perfect be the enemy of good’ seems an ideal description of the issue of detecting drugged driving. It would be perfect if an infallible, fast, cheap way of detecting drivers who are impaired by any and all drugs existed, but that isn’t the case.

However, that does not mean that there are not good actions that can be taken to reduce the deaths and injuries on our roads involving drug impairment and the AA sees introducing oral fluid testing as a key step forward.

It is clear that, if we want to improve road safety, it is not acceptable to simply continue with the current regime for detecting drivers under the influence of drugs. Its limitations mean that only a tiny fraction of grossly impaired drivers ever face being caught drugged driving, yet the data shows that a substantial proportion of road deaths involve people with drugs in their system.

The New Zealand Automobile Association is an incorporated society with 1.7 million Members, and a key focus of our advocacy and policy work is enhancing the safety of road users. We have been calling for more effective actions to detect and deter drug impaired drivers for many years and this submission on the Enhanced Drug Impaired Driver Testing discussion document draws on a combination of perspectives from AA staff, volunteer members of our 17 AA District Councils and survey responses from AA Members nationwide.

Key principles

Drug impaired driving is a much more complex issue to deal with than alcohol impaired driving. It involves a myriad of potential substances, technologies, research and legal considerations that make it a far from straightforward issue to deal with in a policy sense.

The AA has spent considerable time looking at how other countries are approaching the drugged driving problem, what the research is showing, talking with other groups involved in the policy debate, and having our own internal discussions about a range of possible approaches that New Zealand could take.

This has shown that while there are many different actions that could be taken, each with their own strengths and weaknesses, there are some overarching principles that the AA believes must be the aim of enhancing drugged driving testing.

These are that:

- Deterrence is key. We need to be sending a much stronger message to drivers that if they are drug impaired they risk being tested and caught.
- New ways to test for drug impaired driving are needed but they must be part of a wider package that includes public awareness campaigns, improvements in medical information and more use of assessment and rehabilitation for those that have been caught drugged driving and require it.
- An effective Government response to drug impaired driving will require a high-level of investment or else it will be ineffective. This should be additional too and not reduce the resources put into combatting alcohol impaired driving.
- Testing and enforcement should be focussed as much as practically possible on detecting drivers impaired by drugs on the road
- We need to collect more consistent and comprehensive data on drug presence from all drivers involved in fatal and serious injury crashes.
- Changes to the legislation around drug impaired driving need to allow for flexibility in the future as testing technology will continue to evolve and develop quickly.

How can we better detect drug drivers and deter drug driving?

The AA strongly supports the introduction of oral-fluid testing devices for Police to be able to screen drivers for the presence of drugs at the roadside.

Our quarterly surveys of AA Members has shown a consistent level of support over several years at 95% for introducing saliva-based roadside drug testing, but there are many complexities around oral-fluid testing that the general public are not aware of.

The AA believes that the devices can be introduced in a way that will overcome the challenges around them and substantially increase the amount of drug testing taking place on our roads. This will be a critical factor in making people that do use drugs and drive think they could be caught and deter them from doing so.

In what circumstances should drivers be tested for drugs?

The key aim of an enhanced testing regime should be to maximise the deterrence effect by enabling as many potentially drug impaired drivers as possible to face testing.

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In an ideal world, drug testing would be used in the same anytime, anywhere manner as alcohol testing but we recognise that a more targeted system may be a workable initial approach.

The AA believes that a new regime should at a minimum give Police the discretion to use oral fluid as a screening test:

- on any driver that has been stopped (either for a traffic offence or at a checkpoint)
- on any driver involved in a crash (and mandatory for fatal or serious injury crashes)

An oral fluid test will take several minutes to complete on the roadside but we believe that the wider safety benefits are more than worth this imposition on individuals and that the vast majority of the public will accept this in the same way they do with alcohol testing.

We would note that while the alcohol screening devices that Police use are now very quick, drivers can sometimes spend minutes in a queue of vehicles waiting to pass through a checkpoint or be required to undergo an evidential test if the breath-screening device gives a false positive. These are considered a more than acceptable trade-off for preventing alcohol impaired driving.

We are aware of conflicting views about whether the current legal threshold of 'good cause to suspect drugs' prevents Police officers from using a CIT test unless a driver is extremely and blatantly impaired. The AA would be deeply concerned if this was the case. If a Police officer has concerns that a driver is impaired we see the public interest in ensuring they are fit to drive – using any or all of an alcohol breathalyser, oral fluid drug test, and CIT test – as being the most important concern.

How do we decide what drugs to test for?

As previously stated, there is no perfect device that can test for all substances able to potentially impair a driver.

So the AA sees the real questions here being what drugs are the most common among drivers whose blood is tested following a crash? And what would be the most practical and efficient way to introduce a testing device?

Alcohol, cannabis and methamphetamine are the most common individual substances found in the blood of drivers following a crash, so these must be the priority for testing.

We favour New Zealand using the same oral fluid testing devices as Australia, which would detect cannabis and methamphetamine as well as providing economy of scale benefits through New Zealand not needing to create a device solely for use in our comparatively small population.

The AA's concern is drug impaired driving, so medicines can be as much of a risk as recreational drugs. However, we are not aware of roadside testing devices that can deal well with this area. That is why the Police need to retain the ability to use a CIT-type test for impairment even in the event that an oral fluid test for drugs is negative.

What evidence is required to establish a drug driving offence?

Because current testing devices can only detect a limited range of substances and a single positive test does not prove impairment, oral fluid testing will need to be part of a system that gives Police officers different testing options depending on circumstances.

The most thorough system would be for Police officers to use an oral fluid test as an initial screening tool that could be followed by a CIT-type test to show impairment and a blood test for confirmation of the presence of drugs.

However, CIT-type tests will not be possible in all circumstances (when drivers are physically or emotionally affected by a crash for instance) so the system will need to also allow Police officers to use oral-fluid and/or blood testing alone when necessary.

One positive oral-fluid test alone should not be enough evidence to sanction a driver but a system using either two oral-fluid results or a confirmatory blood test would be acceptable to the AA. If a CIT-type test is not possible to prove impairment, an infringement sanction would ensure potentially risky drivers are taken off the roads in a similar manner to .05-.08 alcohol offences.

An option to potentially minimise one step in the process would be to allow a driver to elect whether or not to go on to a blood test if they have had positive oral-fluid or CIT tests. This could be at the individual's own expense if the blood test confirmed a positive result, in a similar approach to alcohol testing. In our discussions with other parties on drugged driving, some concerns were raised over this approach due to oral-fluid and CIT tests both being more open to legal challenges around accuracy than blood testing. Authorities would need to consider this carefully.

How should we deal with people caught drug driving?

Good arguments can be made as to why either an infringement-offence or a criminal-offence approach would be the better option for reducing drugged driving. The AA would be open to either, although if a driver has been found to be impaired by drugs through a CIT-type test we believe this should be regarded as severely as an alcohol impaired driver over the .08 level.

There are also some other changes that we believe are needed to support a more effective drugged driving regime.

A number of people caught drugged driving will have serious drug problems and unless these are addressed it is likely that they will reoffend regardless of what penalty they receive. Our justice system, for both alcohol and drug impaired drivers, needs to do much more to assess whether someone has a substance-abuse problem. If this is the case, then rehabilitation needs to be a part of their sentence and the AA continues to urge the Government to rapidly expand specialist Alcohol and Drug Courts around New Zealand.

The AA also believes it would be appropriate to have a sliding scale of punishments that become more severe for repeat offenders.

Looking specifically at medicines, if someone is impaired by a substance while driving it creates similar road safety risks regardless of whether it is illegal or not. Yet there are some obvious complexities around whether a driver is using the medicine as advised and what information they have been provided. It does not seem appropriate for someone who has taken a medicine as prescribed and without awareness of a risk to face the same sanctions as someone who has taken a drug purely for recreational purposes and then driven.

The warning 'do not operate heavy machinery after use' is included on numerous medicines but many people probably do not associate this with driving and the AA believes much more needs to be done to ensure people get good and consistent information from doctors and pharmacists about whether they should drive while taking a substance.

Additional considerations

The AA has three final points for the Government to consider.

Action is long-overdue on drugged driving already but we believe that there is added impetus created by the upcoming referendum on cannabis. No one can pre-judge what the outcome of that referendum may be but if New Zealand does make changes that could result in increased cannabis usage we would want there to be strong measures in place to ensure that does not lead to an increase in drug impaired driving.

We also strongly urge the Government to improve the information that is currently gathered on drug impaired driving. At the moment, some drivers involved in fatal crashes are only tested for alcohol, others are blood tested for specific substances, while others undergo full-spectrum testing. Testing of hospitalised drivers is also inconsistent, meaning we are unable to form a fully accurate picture of the scale of the problem or trends over time. If the Government makes changes to drugged driving testing and enforcement it is the perfect opportunity to set up a system where there is consistent tests and data gathered from all drivers to ensure the best available evidence is being captured.

Finally, we believe there is the need to review the CIT test and ensure there are not alternatives for judging impairment that could be more effective or practical for use in the field by Police officers. In addition to that review, not all Police officers are currently able to provide

a CIT test, so there needs to be more investment in training to increase the number of officers around the country with the skills to officially detect drug impairment.

Yours sincerely

AA Motoring Affairs policy team