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D-Brief No. 1, 2006

## **ROAD SAFETY (DRUGS) BILL 2006**

Information about the bill and Victoria's random roadside drug testing program. The paper includes a summary of drug driving offences and penalties, and outlines the drug testing process. Statistics on the prevalence of drug driving in Victoria and Australia and developments in other Australian jurisdictions are also covered.

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April 2006

*This D-Brief is part of a series of papers produced by the Library's Research Service. D-Briefs provide a short analysis and description of current bills, with links to relevant reports and articles.*



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**Road Safety (Drugs) Bill 2006**

**NB:** Readers should note that this paper was prepared prior to the passage of the *Road Safety (Drugs) Act 2006* through both Houses of the Victorian Parliament on the 3<sup>rd</sup> May. The Act was assented to on the 9<sup>th</sup> of May 2006 (Act No. 20/06). Readers interested in the Act as passed should visit the Victorian Legislation & Parliamentary Documents website @ <http://www.dms.dpc.vic.gov.au/>

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**1. About the Bill**

On 1 March 2006 the Minister for Transport, the Hon. Peter Batchelor MP, gave the second reading speech for the *Road Safety (Drugs) Bill 2006 (Vic)* ('the Bill') in the Parliament of Victoria's Legislative Assembly. The Bill's main purpose is to allow random roadside drug testing of drivers to continue in Victoria on an ongoing basis.

Victoria's random roadside drug testing program commenced on 13 December 2004, when amendments to the *Road Safety Act 1986 (Vic)* ('the principal Act') introduced by the *Road Safety (Drug Driving) Act 2003* commenced. The provisions authorising the program were originally due to sunset six months later on 1 July 2005. However, this date was later extended to 1 July 2006 with the passing of the *Road Safety (Further Amendment) Act 2005*. The current Bill provides for the scheme to continue indefinitely, by repealing the provisions of the *Road Safety (Drug Driving) Act 2003* that provide for the sunset of the scheme on 1 July 2006.

The Bill also amends the principal Act to include 'ecstasy' as one of the prescribed illicit drugs that can be tested for under the program, in addition to methylamphetamine (speed) and cannabis.

Finally, the Bill repeals section 95A of the principal Act, in order to give effect to a national agreement whereby the states and territories will now set heavy vehicle registration and permit fees directly, without reference to Commonwealth legislation. (This paper does not concentrate on this element of the Bill).

## 2. Drug driving offences in Victoria

In 2000, the *Road Safety (Amendment) Act 2000* (Vic) introduced offences relating to driving whilst impaired by a drug in Victoria. The amendments arose from recommendations made by the Parliament of Victoria Road Safety Committee in 1996 in relation to the effects of drugs other than alcohol on road safety in Victoria.<sup>1</sup>

Most other Australian jurisdictions also have offences of driving whilst impaired by a drug. For example, under the NSW *Road Transport (Safety and Traffic Management) Act 1999*, it is an offence to drive under the influence of a drug, and under the ACT's *Road Transport (Alcohol and Drugs) Act 1977*, it is an offence to drive under the influence of a substance specified in the Act or related regulations. However, for the purposes of these existing offence provisions, police must generally first hold a reasonable belief that a driver is impaired by a drug before drug testing can proceed.

In contrast, drug driving offences introduced by the *Road Safety (Drug Driving) Act 2003* (Vic) with the commencement of Victoria's roadside drug testing program do not require a driver to actually be impaired by a drug for testing to be authorised, or for an offence to have been committed. The relevant offences are set out in Part 5 of the principal Act, and include:

### ***Road Safety Act 1986 (Vic) – Section 49. Offences Involving Alcohol or Other Drugs***

(1). A person is guilty of an offence if he or she –

...

(bb) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or

...

(eb) refuses to provide a sample of oral fluid in accordance with section 55D or 55E when required under that section to do so or refuses to comply with any other requirement under that section; or

...

(h) within three hours of driving or being in charge of a motor vehicle provides a sample of oral fluid in accordance with section 55E and –

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57B and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle; or

(i) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and –

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

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<sup>1</sup> Road Safety Committee (1996) *Inquiry into the Effects of Drugs (Other than Alcohol) on Road Safety in Victoria*, Parliament of Victoria, Melbourne.

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle.

...

Only 'prescribed illicit drugs' are tested for under the program. These are currently defined in section 3(1) of the principal Act to include methylamphetamine ('speed'), and delta-9-tetrahydrocannabinol ('THC', which is the active component of cannabis). The Bill adds a third drug to this definition, 'ecstasy' (using its chemical description of '3, 4-Methylenedioxy-N-Methylamphetamine', or 'MDMA').

In the second reading speech for the *Road Safety (Drug Driving) Bill 2003*, the Minister for Transport stated that these two illicit drugs had been selected for the scheme because:

...there is clear evidence that drivers using these drugs are at increased risk of causing crashes; they are the impairing substances with the highest incidence, after alcohol, in the blood of fatally injured drivers; neither THC nor methylamphetamine are found in any Australian prescription medicines; and they can be reliably detected in oral fluid samples of drivers at the time that they will adversely affect a driver's ability to drive safely.<sup>2</sup>

The term 'prescribed concentration of drugs', used in section 49(1)(bb), is defined in section 3(1) of the Principal Act as: '...in the case of a prescribed illicit drug, any concentration of the drug present in the blood or oral fluid of that person;'. Similarly, for the purposes of the offences under section 49(1)(h) or (i), any trace of a prescribed illicit drug will mean an offence has been committed. Therefore, no concentration of prescribed illicit drugs is lawful for the purposes of these offence provisions, unlike the legal limit which applies in relation to drink driving offences.

### 3. Drug driving penalties in Victoria

- Drivers who test positive for a prescribed illicit substance are either fined and lose three demerit points, or are prosecuted in court;
- If a matter is prosecuted, the maximum penalty for a first offence against section 49(1)(bb), (eb), (h) or (i) upon conviction is a fine of six penalty units, or for a second offence, 12 penalty units - section 49(3AAA);
- For a first offence against section 49(1)(bb), (h) or (i) licence cancellation for three months, or for a subsequent offence, 6 months – section 50(1E);
- Offences against section 49(1)(bb), (h) or (i) each attract three demerit points - regulation 301 of the Road Safety (Drivers) Regulations 1999;
- For an offence against section 49(1)(eb) of refusing to supply a sample of oral fluid for testing purposes, licence cancellation is mandatory upon conviction by a court - section 50(1DA).

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<sup>2</sup> See second reading speech, *Road Safety (Drug Driving) Bill 2003*, in Parliamentary Debates (Hansard) (2003) *Fifty-fifth Parliament, Spring Session Legislative Assembly, Bk. 5*, Parliament of Victoria, p.1419.

#### 4. The roadside drug testing process

Sections 55D and 55E of the principal Act govern the roadside drug testing procedure. The following summary of the process is sourced from a media release issued by the Minister for Police and Emergency Services ('World First Random Drug Testing to Start', 30 November 2004):

- Drivers are chosen for testing at random, in the same way that drivers are selected for roadside blood alcohol testing;
- Drivers are asked to provide a sample of saliva by placing a small absorbent pad on their tongue for a few seconds;
- This saliva sample is tested by police at the roadside using the 'Securetec Drugwipe II Twin' device;
- If this test returns a positive result, drivers are asked to accompany police to a drug bus, similar to a 'booze bus', to provide two further saliva samples;
- One of these samples is given to the driver to keep;
- The other sample is tested on the spot by police either using the Securetec Drugwipe II Twin device again, or the alternative 'Cozart Rapiscan' device;
- If this second test returns a positive result, the saliva sample is sent to a laboratory (the Victorian Institute of Forensic Medicine) for further testing;
- If the laboratory test returns a positive result, the above penalties apply.

#### 5. Statistics on the prevalence of drug driving in Victoria and Australia

The table below shows Victoria Police statistics relevant to the random roadside drug testing program for the period 13 December 2004 to 12 December 2005.

**Table 1: Roadside drug testing program results (13 December 2004 – 12 December 2005)**

	<b>Car drivers</b>	<b>Heavy vehicle drivers</b>	<b>TOTAL</b>
Number of drivers tested for drugs	9,202	3,974	13,176
Number of drivers who tested positive for drugs	229	58	287
Number of drivers who refused to provide saliva samples	9	3	12
Number of drivers caught twice driving under the influence of drugs	2	1	3

*Source: Victoria Police Media Release, 28 February 2006*

According to these figures, 287 of the 13,176 drivers tested under the program over the period 13 December 2004 to 12 December 2005 tested positive for a prescribed illicit drug, which equates to a ratio of 1 in every 46 drivers tested (approximately 2% of all drivers tested). By comparison, in 2004, Victoria Police statistics indicate that of 1.46 million drivers breath tested in Victoria under the "Booze Bus" program, approximately 5,500 were found to have an illegal blood alcohol concentration. This equates to approximately 1 in every 265 drivers tested (approximately 0.4% of all drivers tested).

Information on the VicRoads *Arrive Alive* website states that in 2003, 31% of drivers killed in Victoria tested positive to drugs other than alcohol.<sup>3</sup> According to the Australian Drug Foundation's *DrugInfo Clearinghouse* website, just over 25% of all drivers and motorcyclists killed on Victoria's roads in the same year had a blood alcohol concentration of .05 or higher.<sup>4</sup>

Further surveys and reports concerning the prevalence of drug driving in Victoria and Australia include the following:

- The 2004 Victorian Youth Alcohol and Drug Survey, which surveys drug use by 16–24 year olds in Victoria, provides that 21% of survey respondents admitted to driving a motor vehicle whilst under the influence of an illicit drug;<sup>5</sup>
- The Parliament of Victoria Road Safety Committee's 1996 report showed that for the period 1990-1995, drugs other than alcohol were detected in the bodies of 23% of drivers killed in Victoria. Cannabis was the most frequently detected drug other than alcohol. An increase in the incidence of drugs from 21.6% to 24.4% of driver fatalities was detected over the period, and drivers who had consumed drugs alone, or both drugs and alcohol, were found to be at a higher risk of being involved in a fatal crash than drug free drivers;<sup>6</sup>
- A 2004 report by the Monash University Accident Research Centre on the effects of cannabis use and road safety notes that cannabis was present in a significant proportion of drivers killed and injured in Australian road accidents. The report stated that a total of 8.5% of drivers killed in Australia between 1997 and 1999 tested positive for THC. Drivers who tested positive for THC were found to be significantly more culpable than drivers who did not test positive for drugs, with culpability increasing when THC was combined with alcohol;<sup>7</sup>
- 3.9% of respondents (5.7% of men and 2.2% of women) to the Australian Institute of Health and Welfare's 2001 *National Drug Strategy Household Survey* admitted that they had driven whilst under the influence of drugs in the 12 months leading up to the survey;<sup>8</sup>
- A 2003 study by the Monash University Department of Forensic Medicine considered the presence of drugs in 3398 drivers who died in crashes in NSW, Victoria and WA in the period 1990-1999. The study found that drugs other than alcohol were present in 26.7% of all deceased drivers;<sup>9</sup>
- A 2004 survey of 300 regular intravenous drug users in Sydney indicated that 87% of those users who had ever driven reported having driven soon after using drugs. They represented 83% of the total sample. Of the sample, 32% reported having been involved in a car accident while drug driving.<sup>10</sup>

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<sup>3</sup> VicRoads (2006) *Arrive Alive* website, Access at: [http://www.arrivealive.vic.gov.au/c\\_drugsAD.html](http://www.arrivealive.vic.gov.au/c_drugsAD.html)

<sup>4</sup> Australian Drug Foundation (2006) *DrugInfo Clearinghouse* website, Access at: <http://www.drugsdriving.adf.org.au/>

<sup>5</sup> Premier's Drug Prevention Council (2004) *Victorian Youth Alcohol and Drug Survey 2004: Illicit Drug Findings*, Department of Human Services, Melbourne, pp.23-24.

<sup>6</sup> Road Safety Committee, (1996) *Inquiry into the Effects of Drugs (Other than Alcohol) on Road Safety in Victoria*, Parliament of Victoria, Vol. 1, Chapter 5.

<sup>7</sup> M. Lenné, T. Triggs & M. Regan (2004) 'Cannabis and Road Safety: A review of recent epidemiological, driver impairment, and drug screening literature', *Report No. 231*, Monash University Accident Research Centre, Clayton.

<sup>8</sup> Australian Institute of Health and Welfare, (2002) 'National Drug Strategy Household Survey 2001', *Drugs Statistic Series No. 9*, Australian Institute of Health and Welfare, Canberra .

<sup>9</sup> O. Drummer, J. Gerostamoulos, H. Batziris, M. Chu, J. Coplehorn, M. Robertson & P. Swann (2003) 'The incidence of drugs in drivers killed in Australian road traffic crashes', *Forensic Science International*, Vol. 134, Issue 2, pp.154-162.

<sup>10</sup> S. Darke, E. Kelly & J. Ross (2004) 'Drug driving among injecting drug users in Sydney, Australia: prevalence, risk factors and risk perceptions', *Addiction*, Vol. 99, no. 2, pp.175-85.

## 6. How reliable are roadside drug testing devices?

The roadside testing devices used for the Victorian program underwent laboratory testing at the Victorian Institute of Forensic Medicine at Monash University, and were also tested using human volunteers at Swinburne University. The Minister for Police and Emergency Services noted in a media release, dated 30 November 2004, that the full laboratory testing would provide a back-up to roadside testing before any prosecution could proceed.<sup>11</sup> According to media reports, the fourth driver who was stopped when the drug screening began in Victoria on 13 December 2004 returned two positive roadside saliva samples. However, on 22 December 2004, his laboratory tests returned a negative result. Laboratory tests also returned a negative result in relation to another of the first three drivers to test positive at the roadside at the commencement of the program. One of these drivers pursued legal action against Victoria Police in relation to his identification in the press.<sup>12</sup>

In response, then Minister for Police and Emergency Services, Andre Haermeyer, was reported in the press as saying that the Securetec Drugwipe II Twin devices used for the tests had returned no false positive results during the pre-pilot testing, whilst the Shadow Minister Kim Wells called for a halt in testing until the equipment was improved. In the same press article, Dr Philip Swann of VicRoads and chair of the taskforce that oversaw the testing of the roadside testing devices, stated that while the rate of false positives could never be zero during the screening process, laboratory tests were 100% accurate.<sup>13</sup>

A detailed analysis of recent literature on the accuracy of roadside drug testing devices is contained in a 2004 report of the Monash University Accident Research Centre.<sup>14</sup> The report notes that oral fluid has been identified as the preferred specimen for roadside drug testing in the European Union (in relation to drug impairment), and that the majority of roadside drug testing device research has been conducted in Europe as part of a large research program on drug driving known as the 'ROSITA project'. The ROSITA research confirms that oral fluid testing is the most promising alternative to blood testing. The study concludes that saliva screening in the field offers practical advantages over other types of screening for cannabis, however further published evaluation studies of oral fluid screening devices are needed.

## 7. Developments in other Australian jurisdictions

In Tasmania, a similar random roadside drug testing scheme to that operating in Victoria was established with the passing of the *Road Safety (Alcohol and Drugs) Amendment Act* in July 2005. Under the Tasmanian scheme, it is an offence to drive with a prescribed illicit drug present in a person's blood, unless the drug was obtained in accordance with other legislation. Random roadside testing of oral fluid

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<sup>11</sup> Minister for Police and Emergency Services (2004) *World First Random Drug Testing to Start*, 30 November.

<sup>12</sup> See N. Ross (2005) 'Drug-test driver sues: Wrongly accused in writ against police', *Herald-Sun*, 1 June, p.33; J. Dowling (2005) 'Drugged drivers can cheat testing', *Sunday Age*, 29 May, p.5; S. Milovanovic (2005) 'Cleared drug-test driver sues state', *The Age*, 1 June, p.3; D. Silkstone (2005) 'Drug tests catch one in 50 drivers', *The Age*, 15 July, p.7; J. Dowling (2005) 'Drug drivers face ban', *Sunday Age*, 20 November, p.1.

<sup>13</sup> S. Milovanovic (2004) 'Driver saliva tests for drugs will continue', *The Age*, 23 December, p.5.

<sup>14</sup> M. Lenne, T. Triggs & M. Regan (2004) 'Cannabis and road safety: A review of recent epidemiological, driver impairment and drug screening literature', *Report No. 231*, Monash University Accident Research Centre, Clayton.



is provided for, followed by blood testing if oral testing indicates that a prescribed illicit drug may be present in the person's blood. The term 'prescribed illicit drugs' is defined widely in the accompanying regulations and includes amphetamine, cocaine, THC, heroin, GHB, speed, ecstasy and morphine.

In December 2005 the South Australian Parliament passed the *Road Traffic (Drug Driving) Amendment Act 2005*, which provides for the random roadside drug testing of drivers in South Australia for cannabis and ecstasy. The legislation is due to commence in mid 2006.

In NSW, a proposal to implement roadside drug testing has gained Cabinet approval, but no Bill has yet been introduced into the NSW Parliament (as at 3 April 2006). The NSW Roads and Traffic Authority has indicated that although no Bill has been finalised, the proposed legislation is likely to involve an initial 12 month moratorium on offences for drug driving, with the moratorium possibly being lifted following a review of the program at the end of the first 12 months of operation.

In WA, the Road Traffic Amendment (Drug Impaired Driving) Bill 2005, which had its second reading in the WA Legislative Assembly on 9 November 2005, creates a new offence of driving whilst impaired by drugs and provides for standardised drug impairment testing. The amendments proposed by the Bill are concerned with driver impairment, rather than a prescribed concentration of drugs in oral fluid or blood.

## 8. Further References

### Media releases

- Minister for Police and Emergency Services (2006) *Drug driving crackdown targets road toll*, media release, 28 February.
- Victoria Police (2006) *Random roadside drug testing program expanded*, media release, 28 February.
- Victoria Police (2005) *Latest drug driver figures released*, media release, 5 October.
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- Minister for Police and Emergency Services (2005) *Drug driving trial should go national, says Minister*, media release, 19 May.
- Minister for Police and Emergency Services (2005) *Tests driving drug-affected motorists off the road*, media release, 15 April.
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- Tomazin, F. (2005) 'Roadside drug test trial may get another run', *The Age*, 10 May, p.7.

#### **Additional resources and articles**

- Australian Institute of Health and Welfare, (2002) 'National Drug Strategy Household Survey 2001', *Drugs Statistic Series No. 9*, AIHW, Canberra.
- Carney, M. (2006) 'The Ice Age', *Four Corners*, ABC TV, Australian Broadcasting Corporation, 20 March.
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#### **Websites of relevant organisations**

- Australian Drug Information Network: <<http://www.adin.com.au>>
- International Council on Alcohol, Drugs and Traffic Safety: <<http://www.icadts.org>>
- Ministerial Council on Drug Strategy: <<http://www.nationaldrugstrategy.gov.au>>
- Monash University Accident Research Centre: <<http://www.monash.edu.au/muarc/>>
- National Drug and Alcohol Research Centre: <<http://ndarc.med.unsw.edu.au/>>
- National Drug Law Enforcement Research Fund: <<http://www.ndlerf.gov.au/>>
- Premier's Drug Prevention Council: <<http://www.health.vic.gov.au/pdpc/>>
- Transport Accident Commission: <<http://www.tacsafety.com.au/>>
- United Nations Office on Drugs and Crime: <<http://www.unodc.un.or.th/>>
- VicRoads: *Arrive Alive* <<http://www.arrivealive.vic.gov.au/>>

- Victorian Government Drug Information Site (Department of Human Services):  
<<http://www.health.vic.gov.au/drugs/>>
- Australian Drug Foundation: DrugInfo Clearinghouse:  
<<http://www.druginfo.adf.org.au/>>
- Victorian Institute of Forensic Medicine: <<http://www.vifm.org/>>
- Australian Drug Foundation: <<http://www.adf.org.au/>>



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