

# **Land Transport (Random Oral Fluid Testing) Amendment Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to introduce a more effective regime for detecting drug driving in relation to THC, MDMA, and methamphetamine, by allowing for random oral fluid testing by enforcement officers.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill will come into force on the day after the date on which it receives the Royal assent.

*Clause 3* states that the Bill amends the Land Transport Act 1998 (the **principal Act**).

*Clause 4* amends section 2 to provide definitions of terms used in provisions inserted by Bill.

*Clause 5* inserts *new section 11B*, prohibiting driving when the oral fluid contains a specified drug (methamphetamine, MDMA, or THC).

*Clause 6* amends section 58, which relates to the offence of contravening the section 12 prohibition on driving under the influence of alcohol or drugs, to include the prohibition in *new section 11B*.

*Clause 7* amends section 59, which relates to a failure to remain at a specified place or accompany an enforcement officer, to extend it to compulsory oral fluid tests under *new section 71B*.

*Clause 8* amends section 60, which relates a failure or refusal to permit a blood specimen to be taken or to undergo a compulsory impairment test, to extend it to compulsory oral fluid tests under *new section 71B*.

*Clause 9* amends section 61, which relates to drivers causing injury or death while under the influence of drink or a drug, to extend it to those using any of the specified drugs.

*Clause 10* amends section 62, which relates to causing injury or death in circumstances in which section 61 does not apply, to extend it to drivers using specified drugs.

*Clause 11* amends section 64, which relates to defences, to include compulsory oral fluid tests.

*Clause 12* inserts *new section 71B*, which imposes a requirement to undergo compulsory random oral fluid tests.

*Clause 13* amends section 73A, so as to provide that evidence of the use of a controlled drug in oral fluid samples, as well as blood samples, is not to be used as evidence of controlled drug use in prosecutions for offences under the Misuse of Drugs Act 1975.

*Clause 14* inserts *new section 74A*, which relates to the procedure for dealing with oral fluid specimens.

*Jami-Lee Ross*

## **Land Transport (Random Oral Fluid Testing) Amendment Bill**

Member's Bill

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
4	Section 2 amended (Interpretation)	2
5	New section 11B inserted (Persons must not drive or attempt to drive while their oral fluid contains evidence of use of specified drug)	3
	11B Persons must not drive or attempt to drive while their oral fluid contains evidence of use of specified drug	3
6	Section 58 amended (Contravention of section 12)	3
7	Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)	3
8	Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test)	3
9	Section 61 amended (Person in charge of motor vehicle causing injury or death)	3
10	Section 62 amended ( Causing injury or death in circumstances to which section 61 does not apply)	4
11	Section 64 amended (Defences)	4
12	New section 71B inserted (Requirement to undergo compulsory random oral fluid test)	4
	71B Requirement to undergo compulsory random oral fluid test	4

**Land Transport (Random Oral Fluid Testing)  
Amendment Bill**

cl 1

13	Section 73A amended (Evidence of controlled drug in blood sample taken under section 72 or 73 may not be used as evidence of use of controlled drugs in prosecutions under Misuse of Drugs Act 1975)	5
14	New section 74A inserted (Procedure for dealing with oral fluid specimens)	5

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Land Transport (Random Oral Fluid Testing) Amendment Act **2018**.

**2 Commencement**

5

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Principal Act**

This Act amends the Land Transport Act 1998 (the **principal Act**).

**4 Section 2 amended (Interpretation)**

10

In section 2(1), insert in their appropriate alphabetical order:

**approved oral fluid testing device** means a device of a kind approved for the purpose of oral fluid tests by the Minister of Police, by notice in the *Gazette*

**oral fluid specimen** means a specimen of oral fluid taken in accordance with an oral fluid specimen collecting procedure

15

**oral fluid specimen collecting instrument** an instrument of a kind designed for the taking of oral fluid specimens approved by the Minister of Police (after consulting the Science Minister and the Minister of Transport) by notice in the *Gazette*

**oral fluid specimen collecting procedure** means the taking of an oral fluid specimen by an oral fluid specimen collecting instrument in a manner prescribed by the Minister of Police by notice in the *Gazette*

20

**oral fluid test** means the test carried out by an approved oral fluid testing device for the purposes of ascertaining whether any specified drug is present in that person's oral fluid

25

**specified drug** means any of the following drugs:

- (a) MDMA (2-methylamino-1-(3,4-methylenedioxyphenyl) propane)
- (b) methamphetamine (2-methylamino-1-phenylpropane):
- (c) THC (Delta-9 tetrahydrocannabinol)

- 5 New section 11B inserted (Persons must not drive or attempt to drive while their oral fluid contains evidence of use of specified drug)**
- After section 11A, insert:
- 11B Persons must not drive or attempt to drive while their oral fluid contains evidence of use of specified drug** 5
- A person must not drive or attempt to drive a motor vehicle while that person's oral fluid contains evidence of the use of a specified drug.
- 6 Section 58 amended (Contravention of section 12)**
- (1) In the heading to section 58, replace “**section**” with “**sections 11B or**”.
- (2) In section 58(1)(b), after “1975”, insert “; or”. 10
- (3) After section 58(1)(b), insert:
- (c) if the person's oral fluid, as ascertained from an analysis of an oral fluid specimen, contains evidence of the use of a specified drug.
- (4) In section 58(1A), replace “does” with “and **subsection (1)(c)** do”.
- 7 Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)** 15
- (1) In section 59(1)(b), after “71A,”, insert “**71B,**”.
- (2) In section 59(1)(c), after “71A,”, insert “**71B,**”.
- (3) In section 59(1)(c)(i), after “impairment test”, insert “or a compulsory oral fluid test”. 20
- (4) In section 59(1)(d), after “71A,”, insert “or a compulsory oral fluid test under **section 71B**”.
- 8 Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test)**
- (1) In the heading to section 60, after “**impairment**”, insert “**or oral fluid**”. 25
- (2) In section 60(1)(d), after “71A”, insert “; or”.
- (3) In section 60(1), after paragraph (d), insert:
- (e) fails or refuses to undergo a compulsory oral fluid test under **section 71B**.
- 9 Section 61 amended (Person in charge of motor vehicle causing injury or death)** 30
- (1) In section 61(2)(c)(ii), after “drug”, insert “; or”.
- (2) In section 61(2), after paragraph (c), insert:
- (d) if the oral fluid of the person in charge, as ascertained from an analysis of an oral fluid specimen subsequently taken under **section 71B**, contains evidence of the use of a specified drug. 35

- (3) In section 61(2A), after “(2)(c)”, insert “**or (2)(d)**”.

**10 Section 62 amended ( Causing injury or death in circumstances to which section 61 does not apply)**

- (1) In section 62(1)(b), after “1975”, insert “; or”.

- (2) In section 62(1), after paragraph (b), insert: 5

(c) if the oral fluid of the person driving, as ascertained from an analysis of an oral fluid specimen subsequently taken under **section 71B**, contains evidence of the use of a specified drug.

- (3) In section 62(1A), after “(1)(b)”, insert “**or (1)(c)**”.

**11 Section 64 amended (Defences)** 10

- (1) In section 64(1), after “blood”, insert “or oral fluid” in each place.

- (2) In section 64(1B),—

(a) after “60(1)(d)”, insert “or **(e)**”; and

(b) after “impairment test”, insert “or compulsory oral fluid test”.

**12 New section 71B inserted (Requirement to undergo compulsory random oral fluid test)** 15

After section 71A, insert:

**71B Requirement to undergo compulsory random oral fluid test**

- (1) An enforcement officer may require any of the following persons to undergo a compulsory random oral fluid test, or more than 1 compulsory random oral fluid test, given by an enforcement officer trained to give the test: 20

(a) a driver of, or a person attempting to drive, a motor vehicle on a road:

(b) a person whom the officer has good cause to suspect has recently committed an offence against this Act that involves the driving of a motor vehicle: 25

(c) if an accident has occurred involving a motor vehicle,—

(i) the driver of the vehicle at the time of the accident; or

(ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person whom the officer has good cause to suspect was in the motor vehicle at the time of the accident. 30

- (2) An enforcement officer may require a person specified under **subsection (1)** to—

(a) remain in the place where stopped, for a period of time that is reasonable in the circumstances, to undergo the compulsory oral fluid test; or 35

- (b) accompany an enforcement officer to another place to undergo the compulsory oral fluid test if it would enhance road safety, personal safety, the person's privacy, or the giving or taking of the test.
- (3) A person who has undergone a compulsory oral fluid test must remain at the place where the person underwent the test until after the result of the test is ascertained. 5
- (4) An enforcement officer may arrest a person without warrant if the person refuses or fails to comply with **subsection (2) or (3)**.
- (5) An enforcement officer may exercise the powers in **subsections (1) and (2)** in addition to any breath screening tests under section 68 or evidential breath tests under section 69 or compulsory impairment tests under section 71A and regardless of the outcome of any such tests. 10
- 13 Section 73A amended (Evidence of controlled drug in blood sample taken under section 72 or 73 may not be used as evidence of use of controlled drugs in prosecutions under Misuse of Drugs Act 1975)** 15
- (1) In the heading to section 73A, after "73", insert "**or in oral fluid sample taken under section 71B**".
- (2) In section 73A, after 73, insert "or in an oral fluid sample taken under **section 71B**".
- 14 New section 74A inserted (Procedure for dealing with oral fluid specimens)** 20
- An oral fluid specimen taken under **section 71B** must be dealt with in accordance with the oral fluid specimen collecting procedure.