Land Transport (Drug Driving) Amendment Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

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Hon Chris Bishop

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Land Transport (Drug Driving) Amendment Act **2024**.

2 Commencement

(1) This Act comes into force on a single date set by Order in Council.

(2) If this Act has not come into force by ~~the first anniversary of Royal assent~~ **1 April 2026**, it comes into force then.

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

3 Principal Act

This Act amends the Land Transport Act 1998.

Part 1
Amendments to Parts 1 and 2

Subpart 1—Amendments to Part 1 (preliminary provisions)

4 Section 2 amended (Interpretation)

(1) In section 2(1), repeal the following definitions:

(a) **oral fluid test**:

(b) **oral fluid testing device**.

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

elective oral fluid sample means a sample of oral fluid taken from a person under **section 71DC(2)**

family of qualifying drugs means a group of qualifying drugs that—

(a) share a substantially similar chemical structure (for example, benzodiazepines and amphetamine); or

(b) have a similar effect, including a pharmacological effect, if consumed, smoked, snorted, or injected by any person, or used in any other manner intended to have a pharmacological effect on the user (for example, opiates)

oral fluid sample means a sample of oral fluid taken from a person—

(a) by means of an oral fluid screening test that the person undergoes under any of sections 71A to 71C; or

(b) as an oral fluid sample under **section ~~71DA(1A)~~ 71DE(2)**

oral fluid screening device means a device of a kind approved by the Minister of Police under **section 71G** for the purpose of screening oral fluid for the presence of either or both of the following:

(a) 1 or more qualifying drugs specified in a notice made under that section:

(b) 1 or more families of qualifying drugs specified in a notice made under that section

oral fluid screening test means a test that is carried out by means of an oral fluid screening device

positive evidential threshold has the meaning given in **section 71GA(1)(b)**

positive screening threshold has the meaning given in **section 71G(2)(b)**

relevant standard has the meaning given in **section 71G(7A)**

specified family of qualifying drugs has the meaning given in **section 71G(2)(a)(ii)**

specified qualifying drug has the meaning given in **section 71G(2)(a)(i)**

(3) In section 2(1), replace the definition of **approved laboratory** with:

approved laboratory means a laboratory approved by the Science Minister, by notice (*see* subsection (6)), for either or both of the following purposes:

(a) analysing blood specimens taken for the purposes of this Act:

(b) analysing oral fluid samples taken for the purposes of this Act

(4) In section 2(1), definition of **first oral fluid test**,—

(a) replace "**first oral fluid test**" with "**first oral fluid screening test**"; and

(b) replace "oral fluid test" with "oral fluid screening test".

(5) In section 2(1), definition of **positive**, replace paragraph (b) with:

(b) in relation to the result of an oral fluid screening test, means the result of the test indicates either or both of the following:

(i) that the concentration level of a qualifying drug in the oral fluid of the person who underwent the test equals or exceeds the concentration level specified for that qualifying drug in a notice made under **section 71G**:

(ii) that the concentration level of a family of qualifying drugs in the oral fluid of the person who underwent the test equals or exceeds the concentration level specified for that family of qualifying drugs in a notice made under **section 71G**:

(c) in relation to the result of analysis of a person's oral fluid sample by an approved analyst, means the result of the analysis indicates that the concentration level of a listed qualifying drug in the oral fluid sample equals or exceeds the concentration level specified for that listed qualifying drug in a notice made under **section 71GA**

(6) In section 2(1), definition of **second oral fluid test**,—

(a) replace "**second oral fluid test**" with "**second oral fluid screening test**"; and

(b) replace "oral fluid test" with "oral fluid screening test".

(7) After section 2(1A), insert:

(2) **Subsection (2A)** applies to a reference in this Act to—

(a) the use of a family of qualifying drugs (or a specified family of qualifying drugs) by a person; or

(b) the presence of a family of qualifying drugs (or a specified family of qualifying drugs) in a person's oral fluid; or

(c) the concentration level of a family of qualifying drugs (or a specified family of qualifying drugs) in a person's oral fluid.

(2A) A reference of a kind set out in **subsection (2)** must be read as referring to 1 or more qualifying drugs from the relevant family of qualifying drugs (or specified family of qualifying drugs).

Subpart 2—Amendments to Part 2 (primary responsibilities of participants in land transport system)

5 Section 11A amended (Persons not to drive or attempt to drive while blood contains evidence of, or oral fluid indicates, use of qualifying drug)

(1) Replace the heading to section 11A with "**Persons not to drive or attempt to drive while blood contains evidence of use of qualifying drug or concentration level of qualifying drug in oral fluid equals or exceeds specified concentration level**".

(2) Replace section 11A(1) with:

(1) A person may not drive or attempt to drive a motor vehicle while the person's blood contains evidence of use of a qualifying drug (*see* sections 57A(1) and (2), 57B(1) and (2), and 57C(1) and (2)).

(3) Replace section 11A(3) with:

(3) A person may not drive or attempt to drive a motor vehicle if the concentration level of a listed qualifying drug in the person's oral fluid equals or exceeds the concentration level specified for that listed qualifying drug in a notice made under **section 71GA** (*see* sections **57A(3), 57B(3)**, and 57C(3) and (4)).

6 Section 13 amended (Drivers and other road users to comply with directions of enforcement officers, etc)

(1) In section 13(1),—

(a) after "71C,", insert "~~**71D, 71DA,**~~ **71DE,**"; and

(b) replace "oral fluid tests," with "oral fluid screening tests, laboratory analysis of oral fluid samples,".

(2) In section 13(2), after "71C,", insert "~~**71D, 71DA,**~~ **71DE,**".

Part 2
Amendments to Part 6 (driving offences involving drink or drugs, and penalties and procedures)

Subpart 1—Amendments to offences and penalties

6A New subpart 1 heading in Part 6 inserted

After the Part 6 heading, insert:

Subpart 1—Offences, defences, penalties, and blood test fee

7 Section 57A amended (Driving with blood that contains evidence of, or oral fluid that indicates, use of 1 qualifying drug)

(1) Replace the heading to section 57A with "**Driving offence: 1 qualifying drug**".

(2) Replace section 57A(3) and the heading above section 57A(3) with:

Infringement offence: driving while oral fluid contains evidence of use of 1 listed qualifying drug

(3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if analysis carried out by an approved analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

8 Section 57B amended (Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs)

(1) Replace the heading to section 57B with "**Driving offence: 2 or more qualifying drugs**".

(2) Replace section 57B(3) and the heading above section 57B(3) with:

Infringement offence: driving while oral fluid contains evidence of use of 2 or more listed qualifying drugs

(3) A person who drives or attempts to drive a motor vehicle on a road commits an infringement offence if analysis carried out by an approved analyst indicates that the person's oral fluid sample is positive for 2 or more listed qualifying drugs.

9 Section 57C amended (Driving while blood or breath contains alcohol and blood contains evidence of, or oral fluid indicates, use of 1 qualifying drug)

(1) Replace the heading to section 57C with "**Driving offence: alcohol and 1 qualifying drug**".

(2) Replace the heading above section 57C(3) with:

Infringement offence: driving while blood contains alcohol and oral fluid contains evidence of use of 1 listed qualifying drug

(3) Replace section 57C(3)(b) with:

(b) analysis carried out by an approved analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

(4) Repeal section 57C(3)(c).

(5) Replace the heading above section 57C(4) with:

Infringement offence: driving while breath contains alcohol and oral fluid contains evidence of use of 1 listed qualifying drug

(6) Replace section 57C(4)(b) with:

(b) analysis carried out by an approved analyst indicates that the person's oral fluid sample is positive for 1 listed qualifying drug.

(7) Repeal section 57C(4)(c).

10 Section 59 amended (Failure or refusal to remain at specified place or to accompany enforcement officer)

(1) Before section 59(1), insert:

Offence: failure or refusal to remain at specified place or to accompany enforcement officer

(2) In section 59(1)(b) and (c), delete "71A, 71B,".

(3) In section 59(1)(c)(i), delete "an oral fluid test,".

(4) In section 59(1)(d), delete “, an oral fluid test under a requirement under any of sections 71A to 71C,”.

(5) After section 59(2), insert:

Infringement offence: failure or refusal to remain at specified place or to accompany enforcement officer

(3) A person commits an infringement offence if the person,—

(a) having undergone an oral fluid screening test under any of sections 71A to 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; or

(b) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 71A, 71B, or ~~**71DA**~~ **71DE**; or

(c) having accompanied an enforcement officer to a place under a requirement under section 71A or 71B, fails or refuses to remain at that place until the person is required to undergo an oral fluid screening test under section 71A or 71B; or

(d) having accompanied an enforcement officer to a place under a requirement under **section** ~~**71DA**~~ **71DE**, fails or refuses to remain at that place until the person is required to provide an oral fluid sample under ~~**section 71DA(1A)**~~ that section.

11 New section 60A inserted (Failure or refusal to undergo oral fluid screening test or provide oral fluid sample)

After section 60, insert:

60A Failure or refusal to undergo oral fluid screening test or provide oral fluid sample

(1) A person commits an infringement offence if the person—

(a) fails or refuses to undergo an oral fluid screening test without delay after having been required to do so under any of sections 71A to 71C by an enforcement officer; or

(b) fails or refuses to provide an oral fluid sample after having been required to do so under **section** ~~**71DA(1A)**~~ **71DE(2)** by an enforcement officer.

(2) A person does not fail or refuse to undergo an oral fluid screening test or provide an oral fluid sample only because,—

(a) in the case of an oral fluid screening test, the person is unable to provide an oral fluid sample that is sufficient to carry out the oral fluid screening test; or

(b) in the case of an oral fluid sample required under **section** ~~**71DA(1A)**~~ **71DE(2)**, the person is unable to provide a sample that is sufficient for

~~both~~ an approved analyst ~~and a private analyst~~ to carry out analysis in accordance with this Act.

Subpart 2—Amendments to defences

12 Section 64 amended (Defences)

(1) In section 64(1AB), delete "the person's oral fluid indicates use of a qualifying drug and".

(2) In section 64(3A)(a), replace "or oral fluid test" with "or oral fluid screening test".

(3) Replace section 64(6) with:

(6) It is no defence to proceedings for an offence against this Act in respect of the proportion of a qualifying drug in a person's blood that there was or may have been an error in the result of an oral fluid screening test undergone by the person.

Subpart 3—Amendment to mandatory disqualification and assessment for repeat offences

13 Section 65 amended (Mandatory disqualification and assessment for repeat offences)

In section 65(3)(b), replace "section 59" with "section 59(1)".

Subpart 4—Amendments to blood test fee

14 Section 67 amended (Blood test fee)

(1) Replace section 67(1)(aa)(i) with:

(i) is required to undergo a blood test under section 72(1)**(e), (f)**, (g), or (h); and

(2) In section 67(1)(aa)(ii), delete "71A(5)(c), 71D(2), or".

Subpart 5—Amendment to enforcement procedures for offences involving intoxication

14A Cross-heading above section 68 replaced

Replace the cross-heading above section 68 with:

Subpart 2—Enforcement procedures for offences involving intoxication

15 Section 68 amended (Who must undergo breath screening test)

In section 68(6), replace "oral fluid test" with "oral fluid screening test" in each place.

Subpart 6—Amendments to enforcement procedures for offences involving use of qualifying drugs

15A Cross-heading above section 71A replaced

Replace the cross-heading above section 71A with:

Subpart 3—Enforcement procedures for offences involving use of qualifying drugs

15B New section 71AAA and cross-heading inserted

Before section 71A, insert:

71AAA Interpretation of this subpart

In **this subpart**,—

deliver includes to cause to be delivered, whether by courier or otherwise

post includes to cause to be posted.

71AAB Requirements for handling oral fluid samples

An enforcement officer must handle, retain, transfer, or dispose of an oral fluid sample obtained under **this subpart** in accordance with the applicable procedure prescribed in regulations.

Oral fluid screening tests

16 Section 71A amended (Who must undergo first oral fluid test)

(1) In the heading to section 71A, after "**fluid**", insert "**screening**".

(2) In section 71A(1) to (4) and (6), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) In section 71A(2)(a), replace "any such oral fluid test or tests" with "any such test or tests".

(4) Replace section 71A(5) with:

(5) An enforcement officer who requires a person to undergo a first oral fluid screening test under this section must, without delay, advise the person—

(a) that the person may be issued with an infringement notice if the person—

(i) fails or refuses to undergo an oral fluid screening test that is required under this section or section 71B or 71C; or

(ii) having undergone an oral fluid screening test under this section or section 71B or 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; and

(b) of the infringement fee payable for a breach of **section 59(3)(a)** or **60A(1)(a)**.

(5) Replace section 71A(7) to (9) with:

(7) An enforcement officer may not require a person who is in a hospital or medical centre as a result of an accident involving a motor vehicle to undergo an oral fluid screening test under this section.

(8) An enforcement officer must, without delay after the result of the first oral fluid screening test is ascertained, advise the person—

(a) of the result of the test; and

(b) if the test produces a positive result, of the following matters:

(i) that an oral fluid sample from the person will be subject to analysis carried out by an approved analyst in accordance with this Act:

(ii) that, if the analysis establishes that the person's oral fluid sample is positive for 1 or more listed qualifying drugs, the person may be issued with an infringement notice:

(iia) that, if the analysis establishes that the person's oral fluid sample is positive for 1 or more listed qualifying drugs, the person may, if they have provided an oral fluid sample that is sufficient for analysis, choose to have a private analyst analyse that sample at the person's own expense:

(iii) the infringement fee payable for a breach of section **57A(3), 57B(3)**, 57C(3), or 57C(4)~~:~~.

~~(iv) that, if the person is issued with an infringement notice, they may choose to have an oral fluid sample analysed by a private analyst.~~

(9) However, **subsection (8)(b)** does not apply if—

(a) the person has undergone a first oral fluid screening test; and

(b) the enforcement officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or

(ii) undergo a compulsory impairment test under section 71F.

17 Section 71B amended (Who must undergo second oral fluid test)

(1) In the heading to section 71B, after "**fluid**", insert "**screening**".

(2) Replace section 71B(1) with:

(1) An enforcement officer must require a person to undergo without delay a second oral fluid screening test if—

(a) the person has undergone a first oral fluid screening test; and

(b) the result of the first oral fluid screening test is positive.

(1AAA) *See* **section 71D(3) and (4)**, which relates to the sequence of testing required under this section and **section 71D**.

(1A) However, an enforcement officer must not require a person to undergo a second oral fluid screening test if— 5

(a) the person has undergone a first oral fluid screening test; and

(b) the officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or 10

(ii) undergo a compulsory impairment test in the circumstances described in section 71F(5).

(3) In section 71B(2) to (4), replace "oral fluid test" with "oral fluid screening test" in each place.

(4) Replace section 71B(5) with: 15

(5) An enforcement officer must, without delay after the result of the second oral fluid screening test is ascertained, advise the person of the result of the test.

(5) Repeal section 71B(6).

18 Section 71C amended (Person must undergo further oral fluid test if either first or second oral fluid test fails to produce result) 20

(1) In the heading to section 71C, after "**fluid**", insert "**screening**" in each place.

(2) In section 71C(1) and (2), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) Replace section 71C(3) to (6) with:

(3) A positive result of a further oral fluid screening test required under subsection (1) must,— 25

(a) if required following a first oral fluid screening test that failed to produce a result, be treated for all purposes under this Act as the result of the first oral fluid screening test; or

(b) if required following a second oral fluid screening test that failed to produce a result, be treated for all purposes under this Act as the result of the second oral fluid screening test. 30

(4) A person may be required to undergo only 1 further oral fluid screening test under subsection (1).

(5) An enforcement officer must, without delay after the result of a further oral fluid screening test is ascertained, advise the person of the result of the test. 35

19 Section 71D replaced (Person has right to elect blood test after 2 positive oral fluid tests)

Replace section 71D with:

~~**71D Laboratory analysis required if first oral fluid screening test produces positive result**~~

~~*Requirements if enforcement officer has obtained sufficient sample*~~

~~(1) **Subsection (2)** applies if—~~

~~(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and~~

~~(b) the test produces a positive result; and~~

~~(c) the enforcement officer obtains, from an oral fluid screening test, an oral fluid sample from the person that is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act (a **sufficient sample**).~~

~~(2) The enforcement officer must—~~

~~(a) deliver or post the person's oral fluid sample to an approved laboratory for its analysis in accordance with **section 71DB**; and~~

~~(b) handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.~~

~~*Requirements if enforcement officer has not obtained sufficient sample*~~

~~(3) **Subsection (4)** applies if—~~

~~(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and~~

~~(b) the test produces a positive result; but~~

~~(c) the enforcement officer has not obtained a sufficient sample.~~

~~(4) The enforcement officer must—~~

~~(a) apply **section 71DA** to obtain a sufficient sample; and~~

~~(b) then apply **subsection (2)**.~~

~~(5) However, an enforcement officer must not apply this section if—~~

~~(a) the person has undergone a first oral fluid screening test; and~~

~~(b) the officer requires the person to—~~

~~(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or~~

~~(ii) undergo a compulsory impairment test in the circumstances described in section 71F(5).~~

~~(6) In this section,—~~

~~**deliver** includes cause to be delivered, whether by courier or otherwise~~

~~**post** includes cause to be posted.~~

~~**71DA Person may be required to provide oral fluid sample for laboratory analysis**~~

~~(1) This section applies if **section 71D(4)(a)** applies.~~

~~(1A) The enforcement officer must—~~

~~(a) require the person to provide an oral fluid sample; and~~

~~(b) ensure that the oral fluid sample is sufficient for both an approved analyst and a private analyst to carry out analysis in accordance with this Act.~~

~~(1B) Before obtaining the oral fluid sample, the enforcement officer must, without delay, advise the person of the following matters:~~

~~(a) that the person may be issued with an infringement notice if the person fails or refuses to provide an oral fluid sample:~~

~~(b) the infringement fee payable for a breach of **section 60A(1)(b)**.~~

~~(2) If the enforcement officer requires the person to provide an oral fluid sample, the enforcement officer—~~

~~(a) may require the person—~~

~~(i) to remain in the place where the person most recently underwent an oral fluid screening test to provide the sample; or~~

~~(ii) if it is not practicable for the person to provide the sample at that place, to accompany an enforcement officer to a place where it is likely that the person can provide the sample; and~~

~~(b) must take the sample in accordance with the applicable procedure prescribed in regulations.~~

~~(3) If it is not practicable for the person to provide the oral fluid sample at a place to which the person has accompanied the enforcement officer under **subsection (2)(a)(ii)**, the enforcement officer may require the person to accompany the officer to any other place where it is likely that the person can provide the sample.~~

~~(4) A person who is required to provide an oral fluid sample must—~~

~~(a) accompany an enforcement officer to a place when required to do so under this section:~~

~~(b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to provide the sample.~~

~~71DAB Person may apply to have oral fluid sample analysed by private analyst~~

~~(1) This section applies if a person is served with an infringement notice in respect of an infringement offence under section **57A(3), 57B(3)**, 57C(3), or 57C(4).~~

~~(2) If the person (or the person's solicitor or counsel) wishes to have the oral fluid sample that resulted in the infringement notice analysed by a private analyst, the person may apply to the Commissioner in accordance with **subsection (5)**.~~

~~(3) If the application complies with **subsection (5)**,—~~

~~(a) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved laboratory to which the oral fluid sample taken from the person was delivered or posted under **section 71D**; and~~

~~(b) that laboratory must send the oral fluid sample by post, personal delivery, or delivery by courier to the private analyst specified in the application.~~

~~(4) If the application does not comply with **subsection (5)**, the Commissioner or authorised person may refuse to forward a copy of the application to the approved laboratory.~~

~~(5) An application under **subsection (2)** must—~~

~~(a) be made in writing to the Commissioner no later than 28 days after the date on which the person is served with an infringement notice in respect of the infringement offence; and~~

~~(b) state the full name and address and the occupation of the person and the date of the infringement offence; and~~

~~(c) identify the private analyst to whom the oral fluid sample is to be sent and the address of the private analyst.~~

~~71DB Requirements for approved analyst or private analyst in respect of oral fluid sample~~

~~(1) This section applies to—~~

~~(a) an approved analyst that receives an oral fluid sample delivered or posted to an approved laboratory in accordance with **section 71D(2)**; and~~

~~(b) a private analyst that receives an oral fluid sample delivered or posted to the analyst in accordance with **section 71DAB**.~~

~~*Requirements for approved analyst analysing and handling oral fluid sample*~~

~~(2) The approved analyst must—~~

~~(a) analyse the oral fluid sample for the purpose of testing the sample for the presence of 1 or more listed qualifying drugs specified in each notice made under **section 71GA**; and~~

~~(b) establish whether, for each listed qualifying drug, the concentration level of the drug in the person's oral fluid sample is at or above the concentration level specified in a notice made under **section 71GA**; and~~

~~(c) handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.~~

~~*Requirements for private analyst handling oral fluid sample*~~

~~(3) The private analyst must handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.~~

Process if first oral fluid screening test is positive

71D Process followed if first oral fluid screening test is positive

(1) **Sections 71DA to 71DG** apply if—

(a) an enforcement officer requires a person to undergo a first oral fluid screening test; and

(b) the result of that test is positive.

(2) The enforcement officer must follow one of the following processes:

(a) process A (*see* **section 71DA**, which applies if an oral fluid sample sufficient for both laboratory and private testing is obtained from an oral fluid screening test):

(b) process B (*see* **sections 71DB and 71DC**, which apply if an oral fluid sample sufficient only for laboratory testing is obtained from an oral fluid screening test):

(c) process C (*see* **sections 71DD and 71DE**, which apply if an oral fluid screening test does not provide an oral fluid sample sufficient for laboratory testing).

(3) The enforcement officer may apply the applicable process—

(a) after the person has undergone a first oral fluid screening test but before the person undergoes a second oral fluid screening test; or

(b) after the person has undergone a second oral fluid screening test.

(4) **Subsection (3)** overrides **section 71B(1)**.

(5) However, an enforcement officer must not apply **sections 71DA to 71DE** if—

(a) the person has undergone a first oral fluid screening test; and

(b) the officer requires the person to—

(i) accompany an enforcement officer to a place where it is likely that the person can undergo an evidential blood test under section 71E; or

(ii) undergo a compulsory impairment test in the circumstances described in section 71F(5).

(6) **Subsection (5)** overrides **sections 71DA to 71DE**.

Process A: sample sufficient for both laboratory and private testing obtained

71DA Process if sample sufficient for both laboratory and private testing obtained from oral fluid screening test

(1) This section applies if—

(a) **section 71D(2)** applies; and

(b) the enforcement officer obtains, from an oral fluid screening test, an oral fluid sample from the person that is sufficient for—

(i) an approved analyst to carry out analysis in accordance with this Act; and

(ii) a private analyst to carry out analysis.

(2) The enforcement officer must deliver or post the person's oral fluid sample to an approved laboratory for its analysis and retention in accordance with **section 71DG**.

Process B: sample sufficient only for laboratory testing obtained

71DB Process if sample obtained from oral fluid screening test is sufficient only for laboratory testing

(1) This section applies if—

(a) **section 71D(2)** applies; and

(b) the enforcement officer obtains, from an oral fluid screening test, an oral fluid sample from the person that is—

(i) sufficient for an approved analyst to carry out analysis in accordance with this Act; but

(ii) not sufficient for a private analyst to carry out analysis.

(2) The enforcement officer must advise the person that—

(a) the oral fluid sample the officer has obtained is—

(i) sufficient for an approved analyst to carry out analysis; but

(ii) not sufficient for a private analyst to carry out analysis; and

(b) if the person wishes to be able to have an oral fluid sample analysed by a private analyst at the person's own expense, they must choose to provide an elective oral fluid sample; and

(c) if they choose not to provide an elective oral fluid sample, they will not be able to have an oral fluid sample analysed by a private analyst.

(3) The person has the right, within 10 minutes of being advised by the enforcement officer of the matters specified in **subsection (2)**, to choose whether to provide an elective oral fluid sample.

(4) The enforcement officer must,—

(a) if the person chooses to provide an elective oral fluid sample, obtain an elective oral fluid sample in accordance with **section 71DC**; and

(b) deliver or post the person's oral fluid sample and, if applicable, the person's elective oral fluid sample to an approved laboratory for analysis and retention in accordance with **section 71DG**.

71DC Obtaining elective oral fluid sample

(1) This section applies if **section 71DB(4)(a)** applies.

(2) The enforcement officer must—

(a) request that the person provide an elective oral fluid sample; and

(b) in accordance with the applicable procedure prescribed in regulations, take a sample that, to the extent that is reasonably practicable, is sufficient for a private analyst to carry out analysis.

Process C: sufficient sample not obtained

71DD Process if sufficient sample not obtained from oral fluid screening test

(1) This section applies if—

(a) **section 71D(2)** applies; and

(b) the enforcement officer does not obtain, from an oral fluid screening test, an oral fluid sample from the person that is sufficient for an approved analyst to carry out analysis in accordance with this Act.

(2) The enforcement officer must—

(a) advise the person that their oral fluid sample is not sufficient for an approved analyst to carry out analysis in accordance with this Act; and

(b) obtain an oral fluid sample in accordance with **section 71DE**.

Oral fluid sample also sufficient for private analyst testing

(3) **Subsection (4)** applies if the oral fluid sample obtained under **section 71DE** is sufficient for—

(a) an approved analyst to carry out analysis in accordance with this Act; and

(b) a private analyst to carry out analysis.

(4) The enforcement officer must deliver or post the person's oral fluid sample to an approved laboratory for its analysis and retention in accordance with **section 71DG**.

Sample sufficient only for approved analyst testing

(5) **Subsection (6)** applies if the sample obtained under **section 71DE** is not sufficient for a private analyst to carry out analysis.

(6) The enforcement officer must apply the procedure for obtaining an elective oral fluid sample set out in **section 71DB(2) to (4)**.

71DE Obtaining oral fluid sample that is required to be provided

(1) This section applies if **section 71DD(2)** applies.

(2) The enforcement officer—

(a) must, to the extent that the officer considers reasonably necessary, require the person to provide 1 or more oral fluid samples; and

(b) must, in accordance with the applicable procedure prescribed in regulations, take an oral fluid sample or oral fluid samples that, to the extent that is reasonably practicable, are sufficient for an approved analyst to carry out analysis in accordance with this Act; and

(c) may take an oral fluid sample under **paragraph (b)** that is sufficient for a private analyst to carry out analysis.

(3) Before obtaining an oral fluid sample, the enforcement officer must advise the person of the following matters:

(a) that the person may be issued with an infringement notice if the person fails or refuses to provide an oral fluid sample requested by the officer:

(b) the infringement fee payable for a breach of **section 60A(1)(b)**.

(4) If the enforcement officer requires the person to provide an oral fluid sample, the enforcement officer may require the person—

(a) to remain in the place where the person most recently underwent an oral fluid screening test to provide the sample; or

(b) if it is not practicable for the person to provide the sample at that place, to accompany an enforcement officer to a place where it is likely that the person can provide the sample.

(5) If it is not practicable for the person to provide the oral fluid sample at a place to which the person has accompanied the enforcement officer under **subsection (4)(b)**, the enforcement officer may require the person to accompany the officer to any other place where it is likely that the person can provide the sample.

(6) A person who is required to provide an oral fluid sample must—

(a) accompany an enforcement officer to a place when required to do so under this section:

(b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to provide the sample.

Provisions following application of process A, B, or C

71DF Person may apply to have oral fluid sample analysed by private analyst

(1) This section applies if—

(a) a person is served with an infringement notice in respect of an infringement offence against section **57A(3), 57B(3)**, 57C(3), or 57C(4); and

(b) an approved laboratory holds an oral fluid sample from the person that is sufficient for a private analyst to carry out analysis.

(2) If the person wishes to have the oral fluid sample analysed by a private analyst, the person (or the person's solicitor or counsel) may apply to the Commissioner in accordance with **subsection (5)**.

(3) If the application complies with **subsection (5)**,—

(a) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved laboratory to which the oral fluid sample taken from the person was delivered or posted under **section 71DA(2), 71DB(4)(b), or 71DD(4)**; and

(b) that laboratory must deliver or post all or part of the oral fluid sample to the private analyst specified in the application.

(4) If the application does not comply with **subsection (5)**, the Commissioner or authorised person may refuse to forward a copy of the application to the approved laboratory.

(5) An application under **subsection (2)** must—

(a) be made in writing to the Commissioner no later than 28 days after the date on which the person is served with an infringement notice in respect of the infringement offence; and

(b) state the full name and address and the occupation of the person and the date of the infringement offence; and

(c) identify the private analyst to whom the oral fluid sample is to be delivered or posted and the address of the private analyst.

71DG Requirements for approved analyst or private analyst in respect of oral fluid sample

(1) This section applies to—

(a) an approved analyst who receives an oral fluid sample delivered or posted to an approved laboratory in accordance with **section 71DA(2), 71DB(4)(b), or 71DD(4)**; and

(b) a private analyst who receives an oral fluid sample delivered or posted to the analyst in accordance with **section 71DF(3)(b)**.

Requirements for approved analyst analysing and handling oral fluid sample

(2) The approved analyst must—

(a) analyse all or part of the oral fluid sample for the purpose of testing the sample for the presence of 1 or more listed qualifying drugs specified in each notice made under **section 71GA(1)(a)**; and

(b) if 1 or more listed qualifying drugs are present, establish whether, for each listed qualifying drug, the concentration level of the drug in the person's oral fluid sample is at or above the concentration level specified in a notice made under **section 71GA(1)(b)**; and

(c) handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.

Requirements for private analyst handling oral fluid sample

(3) The private analyst must handle, retain, transfer, or dispose of the oral fluid sample in accordance with the applicable procedure prescribed in regulations.

19A New cross-heading above section 71E inserted

After section 71D, insert:

Who may be required to undergo blood test

20 Section 71E amended (Person may be required to accompany enforcement officer to undergo blood test)

(1) Replace section 71E(1)(a) with:

(a) a person who, after having been required to ~~do so~~ undergo an oral fluid screening test by the officer under any of sections 71A to 71C, is unable to provide an oral fluid sample that is sufficient to carry out an oral fluid screening test:

(aa) a person who, after having been required to ~~do so~~ provide an oral fluid sample by the officer under **section ~~71DA~~ 71DE**, is unable to provide an oral fluid sample that is sufficient for ~~both~~ an approved analyst ~~and a private analyst~~ to carry out analysis in accordance with this Act:

(2) In section 71E(1)(b), replace "oral fluid test" with "oral fluid screening test" in each place.

(3) Repeal section 71E(1)(c).

20A New cross-heading above section 71F inserted

After section 71E, insert:

Who may be required to undergo compulsory impairment test

21 Section 71F amended (Who must undergo compulsory impairment test)

(~~2A~~1) Replace section 71F(5)(c) with:

(c) a first oral fluid screening test, regardless of the result of the test (or a failure of the test to produce a result):

(~~2B~~2) In section 71F(5)(d), replace "oral fluid test" with "oral fluid screening test".

(~~5~~3) Replace section 71F(6) with:

(6) An enforcement officer must not exercise the powers in subsections (1) and (2) in relation to a person who has undergone a second oral fluid screening test that produces a positive result.

22 Section 71G replaced (Approval of oral fluid tests and oral fluid testing devices)

Replace section 71G with:

Minister's powers to make notices

71G Minister may approve oral fluid screening devices for use in oral fluid screening tests

(1) The Minister of Police may, by notice, approve a kind of device that may be used as an oral fluid screening device.

What notice must specify

(2) The notice must specify—

(a) either or both of the following:

(i) 1 or more qualifying drugs in respect of which the approved device may be used for the purpose of screening oral fluid for the presence of that drug (a **specified qualifying drug**):

(ii) 1 or more families of qualifying drugs in respect of which the approved device may be used for the purpose of screening oral fluid for the presence of that family of drugs (a **specified family of qualifying drugs**); and

(b) for each specified qualifying drug or specified family of qualifying drugs, the concentration level of that specified qualifying drug or specified family of qualifying drugs in the person's oral fluid at or above which the result of the test will appear positive for that qualifying drug or that family of qualifying drugs (the **positive screening threshold**).

Minister must consult and consider certain matters before making notice

(3) Before making a notice, the Minister of Police must consult the Minister of Transport and the Science Minister.

(4) The Minister of Police may approve a device under **subsection (1)** only if the Minister of Police has considered the following matters:

(a) the accuracy of the device in light of the requirements for screening oral fluid specified in sections 71A to ~~**71DA**~~**71DG**:

(b) the extent to which the positive screening threshold used by the device for a specified qualifying drug or specified family of qualifying drugs indicates recent use of that specified qualifying drug or specified family of qualifying drugs.

(5) In considering—

(a) the matters specified in **subsection (4)**, the Minister of Police must take into account the desirability of—

(i) detecting a qualifying drug, including a family of qualifying drugs, that has recently been used by the driver of a motor vehicle; and

(ii) deterring a person from driving a motor vehicle if they have recently used a qualifying drug, including a family of qualifying drugs; and

(b) the matter specified in **subsection (4)(b)**, the Minister of Police must also have regard to any relevant standard.

Defining and identifying device as approved device

(6) A notice made under **subsection (1)** may define an approved device as a device that bears, or is associated by its manufacturer with, any trade name or number or other expression, or any combination of those things, that may be specified in the notice.

(7) In the absence of proof to the contrary, a device is to be treated as bearing or being associated with a particular trade name or number or other expression if that name or number or other expression—

(a) appears on the device, whether on a label or otherwise, or is shown on a display panel on the device; or

(b) is printed out by the device on a card or on paper; or

(c) appears on printed matter that—

(i) accompanies the device; and

(ii) is associated with the device or is intended by the manufacturer of the device to be associated with the device; and

(iii) is issued by or on behalf of the manufacturer.

(7A) In this section and in **section 71GA**, **relevant standard** means—

(a) Australian/New Zealand Standard AS/NZS 4760:2019 Procedure for specimen collection and the detection and quantification of drugs in oral fluid; or

(b) any Australian/New Zealand Standard or New Zealand Standard substituted for that standard.

(8) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

71GA Minister may specify listed qualifying drugs and concentration level to be tested for by approved analyst

(1) The Minister of Police may, by notice, specify—

(a) 1 or more listed qualifying drugs in respect of which an approved analyst may analyse an oral fluid sample for the purpose of testing the sample for the presence of that drug or those drugs; and

(b) for each listed qualifying drug, the concentration level of the drug in the person's oral fluid at or above which the result of the test will appear positive for that drug (the **positive evidential threshold**).

(2) Before making a notice, the Minister of Police must consult the Minister of Transport and the Science Minister.

(3) The Minister of Police may make a notice only if that Minister is satisfied that the positive evidential threshold proposed to be approved under **subsection (1)(b)** for use by an approved analyst to test for a listed qualifying drug indicates recent use of that listed qualifying drug.

(4) In determining whether a positive evidential threshold meets the requirement specified in **subsection (3)**,—

(a) the Minister of Police must have regard to any relevant standard; and

(b) it is sufficient to meet the requirement if the positive evidential threshold aligns with the applicable threshold specified in the relevant standard; and

(c) if the positive evidential threshold does not align with the applicable threshold specified in the relevant standard or if there is no applicable threshold specified in any relevant standard, the Minister of Police may nevertheless be satisfied that the requirement is met on the basis of other relevant information.

(5) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 7—Amendments to enforcement procedures involving taking of blood specimens

22A Cross-heading above section 72 replaced

Replace the cross-heading above section 72 with:

Subpart 4—Enforcement procedures involving taking of blood specimens

23 Section 72 amended (Who must give blood specimen at places other than hospital or medical centre)

(1) Replace section 72(1)(e) and (f) with:

(e) the person is unable to provide an oral fluid sample that is sufficient to carry out an oral fluid screening test after having been required to ~~do so~~ undergo an oral fluid screening test by an enforcement officer under any of sections 71A to 71C; or

(f) the person is unable, after having been required to ~~do so~~ provide an oral fluid sample by an enforcement officer under **section ~~71DA~~ 71DE**, to provide an oral fluid sample that is sufficient for ~~both~~ an approved analyst ~~and a private analyst~~ to carry out analysis in accordance with this Act; or

(2) In section 72(1)(g), (1B), and (1C), replace "oral fluid tests" with "oral fluid screening tests".

24 Section 73A amended (Purposes for which blood specimen taken under section 72 or 73 may be used as evidence)

Replace section 73A(2) with:

(2) None of the following may be used as evidence of the use of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975:

(a) a positive result of an oral fluid screening test taken under any of sections 71A to 71C:

(b) a positive result of an analysis of an oral fluid sample carried out by an approved analyst under **section ~~71DB~~ 71DG**:

(c) a blood specimen taken under section 72 or 73.

Subpart 8—Amendments to evidential provisions

24A Cross-heading above section 75 replaced

Replace the cross-heading above section 75 with:

Subpart 5—Evidential provisions

25 Section 77A amended (Presumptions relating to drug testing)

(1) Replace section 77A(2) with:

(2) For the purposes of proceedings for an infringement offence against section **57A(3), 57B(3)**, 57C(3), or 57C(4), it is to be conclusively presumed in the absence of proof to the contrary that a person's oral fluid contains a listed qualifying drug if analysis carried out by an approved analyst indicates that the person's oral fluid sample is positive for the drug.

(2) Repeal section 77A(3) and (4).

(3) In section 77A(5), replace "an oral fluid test" with "analysis of an oral fluid sample carried out by an approved analyst".

Part 3
Amendments to Parts 7, 9, 11, and 15 and Schedule 1

Subpart 1—Amendments to Part 7 (disqualification, demerit points, licence suspension, and vehicle impoundment)

26 Cross-heading above section 94A amended

In the cross-heading above section 94A, replace "*oral fluid tests*" with "*oral fluid screening tests*".

27 Section 94A amended (Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid tests are positive)

(1) Replace the heading to section 94A with "**Mandatory prohibition from driving for 12-hour period if results of 2 oral fluid screening tests are positive or person fails or refuses oral fluid screening test**".

(2) Replace section 94A(1) with:

(1) An enforcement officer must forbid a person to drive a motor vehicle for a 12-hour period if the person—

(a) has undergone 2 oral fluid screening tests and the results of both tests are positive; or

(b) fails or refuses to undergo an oral fluid screening test without delay after having been required to do so under any of sections 71A to 71C by an enforcement officer; or

(c) having undergone an oral fluid screening test under any of sections 71A to 71C, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained; or

(ca) fails or refuses to provide an oral fluid sample without delay after having been required to do so under **section 71DE** by an enforcement officer; or

(d) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 71A, 71B, or ~~**71DA**~~ **71DE**; or

(e) having accompanied an enforcement officer to a place under a requirement under section 71A or 71B, fails or refuses to remain at that place until the person is required to undergo an oral fluid screening test under section 71A or 71B; or

(f) having accompanied an enforcement officer to a place under a requirement under **section** ~~**71DA**~~ **71DE**, fails or refuses to remain at that place until the person is required to provide an oral fluid sample under ~~**section 71DA(1A)**~~ that section.

Subpart 2—Amendment to Part 9 (enforcement of responsibilities)

28 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)

In section 121(1)(a)(i)(D), replace "section 72(1)(a) or (e)" with "section 72(1)(a), **(e), or (f)**".

Subpart 3—Amendment to Part 11 (land transport secondary legislation)

29 Section 167 amended (Regulations)

After section 167(1)(l), insert:

~~(la) prescribing, for the purposes of **section 71DA(1A)**, the procedure for taking an oral fluid sample:~~

(la) prescribing the procedure for taking—

(i) an elective oral fluid sample, for the purposes of **section 71DC(2)(b)**; and

(ii) an oral fluid sample, for the purposes of **section 71DE(2)(b)**:

(lb) prescribing, for the purposes of ~~**sections 71D(2)(b) and 71DB(2) and (3)**~~ **sections 71AAB and 71DG(2)(c) and (3)**, the procedure for handling, retaining, transferring, or disposing of an oral fluid sample:

Subpart 4—Amendment to Part 15 (miscellaneous provisions)

30 Section 209A amended (Analysing oral fluid or blood specimens for statistical or research purposes related to use of drugs or alcohol)

In section 209A(1)(a), replace "any of sections 71A to 71C" with "any of sections 71A to 71C and ~~**71DA**~~**71DE**".

Subpart 5—Amendments to Schedule 1

31 Schedule 1 amended

(1) In Schedule 1, repeal Part 6.

(2) In Schedule 1,—

(a) insert the Part set out in the **Schedule** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Part 4
Related and consequential amendments

Amendment to Criminal Procedure Act 2011

32 Principal Act

Section 33 amends the Criminal Procedure Act 2011. 5

33 Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998)

In section 358(1)(f), replace "section 59" with "section 59(1)".

Amendments to Land Transport (Offences and Penalties) Regulations 1999

34 Principal regulations 10

Sections 35 and 36 amend the Land Transport (Offences and Penalties) Regulations 1999.

35 Schedule 1 amended

(1) In Schedule 1, item relating to section 57A(3) of the Land Transport Act 1998, replace the item in the second column with: 15

Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug	

(2) In Schedule 1, item relating to section 57B(3) of the Land Transport Act 1998, replace the item in the second column with:

Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved analyst positive for 2 or more listed qualifying drugs	

(3) In Schedule 1, item relating to section 57C(3) of the Land Transport Act 1998, replace the item in the second column with:

	Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug				

(4) In Schedule 1, item relating to section 57C(4) of the Land Transport Act 1998, replace the item in the second column with:

	Driving or attempting to drive with breath containing alcohol below specified alcohol limits and result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug				

(5) In Schedule 1, after the item relating to section 57C(4) of the Land Transport Act 1998, insert:

59(3)	Failing or refusing to remain at specified place or to accompany enforcement officer without delay	—	—	400	—
60A(1)(a)	Failing or refusing to undergo oral fluid screening test without delay	1000	—	400	—
60A(1)(b)	Failing or refusing to	1000	—	400	—

	provide oral fluid sample	

36 Schedule 2 amended

(1) In Schedule 2, item relating to section 57A(3) of the Land Transport Act 1998, replace the item in the third column with:

	Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug	

(2) In Schedule 2, item relating to section 57B(3) of the Land Transport Act 1998, replace the item in the third column with:

	Driving or attempting to drive with result of analysis of oral fluid sample carried out by approved analyst positive for 2 or more listed qualifying drugs	

(3) In Schedule 2, item relating to section 57C(3) of the Land Transport Act 1998, replace the item in the third column with:

	Driving or attempting to drive with blood containing alcohol below specified blood-alcohol limits and with result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug	

(4) In Schedule 2, item relating to section 57C(4) of the Land Transport Act 1998, replace the item in the third column with:

	Driving or attempting to drive with breath containing alcohol below specified alcohol limits and with result of analysis of oral fluid sample carried out by approved analyst positive for 1 listed qualifying drug	

(5) In Schedule 2, after the item relating to section 59(1) of the Land Transport Act 1998, insert:

59(3)	Failing or refusing to remain at specified place or to accompany enforcement officer without delay	75
60A(1)(a)	Failing or refusing to undergo oral fluid screening test without delay	75
60A(1)(b)	Failing or refusing to provide an oral fluid sample	75

Schedule
New Part 9 inserted into Schedule 1

s 31(2)

Part 9
Provisions relating to Land Transport (Drug Driving) Amendment Act **2024**

29 Review of amendments made by Land Transport (Drug Driving) Amendment Act **2024**

(1A) The Minister must appoint a reviewer to review the amendments made by the Land Transport (Drug Driving) Amendment Act **2024**.

(4) The reviewer may also consider amendments made by the Land Transport (Drug Driving) Amendment Act 2022.

(5) The reviewer must report to the Minister on the review no later than 5 years after the commencement of the Land Transport (Drug Driving) Amendment Act **2024**.

(6) The Minister must, within 60 working days of the day on which the reviewer reports to the Minister under **subclause (5)**, present to the House of Representatives—

(a) the report; and

(b) a response to the report.

Legislative history

29 July 2024	Introduction (Bill 69–1)
1 August 2024	First reading and referral to Transport and Infrastructure Committee
16 December 2024	Reported from Transport and Infrastructure Committee (Bill 69–2)
28 January 2025	Second reading
11 March 2025	Committee of the whole House (Bill 69–3)

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