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**The Royal Australasian College of  
Physicians' submission to the  
Transport and Infrastructure Select  
Committee**

**Land Transport (Drug Driving)  
Amendment Bill  
Paenga-whāwhā 2021**

## Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback to the Transport and Infrastructure Select Committee on the Land Transport (Drug Driving) Amendment Bill (the Bill).

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

## Drug Use as a Health Issue, and the Role of Enforcement

The RACP believes that the Bill as presented, represents a continued endorsement of our criminal justice system and its focus on punitive measures of justice. As the Bill is forthright in modelling much of its content on existing approaches to drink driving enforcement, such as the ability for a police officer to stop any driver of a motor vehicle without cause to suspect a driver has consumed drugs, we believe that this is a tacit endorsement of the existing system<sup>1</sup>.

Crashes with alcohol and drugs as a contributing factor have been steadily rising since 2016, as shown by data provided by the Ministry of Transport<sup>2</sup>. Further independent studies have found that from a low point in as early as 2013, the biggest contributor to increased crash rates has been alcohol<sup>3</sup>. A survey done in 2017 found that the most common drugs (other than alcohol) people had driven 'under the influence' of were strong painkillers (approximately 8 per cent), antidepressants (5 per cent), and anti-anxiety medication (around 3 per cent). Two per cent of people reported driving under the influence of cannabis, and 0.1 per cent reported driving under the influence of amphetamine or methamphetamine<sup>4</sup>.

While we acknowledge the need for public safety, and the place of drug control in our society, we believe that this is best accomplished through a system which helps people in need to access care. Drug driving is a concern for the public in Aotearoa NZ, and there are increases in the recreational use of prescription drugs<sup>5 6</sup>. It has been shown societally that there is greater acceptance towards

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<sup>1</sup> New Zealand Parliamentary Counsel Office. Land Transport (Drug Driving) Amendment Bill [Internet]. Wellington: New Zealand Parliamentary Counsel Office; 2021. Accessed 9 April 2021. Available from: <https://legislation.govt.nz/bill/government/2020/0317/latest/whole.html#LMS378859>.

<sup>2</sup> Ministry of Transport. Safety — Annual statistics — Alcohol and Drugs [Internet]. Wellington: Ministry of Transport. Accessed 9 April 2021. Available from: <https://www.transport.govt.nz/statistics-and-insights/safety-annual-statistics/sheet/alcohol-and-drugs>.

<sup>3</sup> Walton D, Jenkins D, Thoreau R, Kingham S, Keall M. Why is the rate of annual road fatalities increasing? A unit record analysis of New Zealand data (2010–2017). *J Safety Res* [Internet]. 2020; 72:67-74. Accessed 9 April 2021. Available from: <https://www.sciencedirect.com/science/article/abs/pii/S0022437519306486>.

<sup>4</sup> Charlton S, Starkey N. The prevalence and impairment effects of drugged driving in New Zealand [Internet]. Hamilton: University of Waikato; 2017. Accessed 19 April. Available from: <https://www.nzta.govt.nz/assets/resources/research/reports/597/597-The-prevalence-and-impairment-effects-of-drugged-driving-in-NZ.pdf>.

<sup>5</sup> NZ Drug Foundation. Survey reveals drug driving concern [Internet]. Wellington: NZ Drug Foundation; 2009. Accessed 9 April 2021. Available from: <https://www.drugfoundation.org.nz/news-media-and-events/survey-reveals-drug-driving-concern/>.

<sup>6</sup> Andrews S. Prescription drug misuse: a university-led harm reduction approach [Internet]. Wellington: NZ Drug Foundation; 2017. Accessed 9 April 2021. Available from: <https://www.drugfoundation.org.nz/news-media-and-events/misuse-of-prescription-medications/>.

driving under the influence of legal drugs (43.5 per cent), compared to illegal drugs (10.3 per cent)<sup>7</sup>. As the Bill covers driver impairment caused by legal and illegal drugs, comprehensive road user campaigns as to what constitutes drug driving is required. We support action to be taken on this, but we do not support the intent of the Bill as presented.

## Transformation: Real or Performative?

The Bill's explanatory note states that "our current approach is not effective in deterring drug driving on our roads". Persistent expansion of the punitive approach will be ineffective in deterring harm from impaired driving, and is only one approach that could be taken to reduce associated harm.

Aside from the ineffective nature of our existing criminal justice system in addressing and preventing dangerous behaviour, we must acknowledge the immeasurable harm that it inflicts upon whānau and wider communities across Aotearoa NZ. In the words of Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group), our justice system is failing to help those who are harmed, failing to stop harm and reoffending, failing Māori, racist, culturally blind and culturally biased, failing to meet diverse needs, confusing and alienating, and costly, especially in terms of the loss of human potential<sup>8</sup>.

Justice Minister Andrew Little responded to this, stating:

*"We need to change the course of our criminal justice system to ensure less offending, less reoffending, and fewer victims of crime who are better supported. 30 years of locking more people up for longer has not changed re-offending rates nor made communities safer."*<sup>9</sup>

The recent Mental Health and Addiction Inquiry report, He Ara Oranga states that across the country there was a clear call to adopt a policy and approach to drug use that minimised harm<sup>10</sup>. This Bill flies in the face of this commitment by again confirming that our Government is not invested in transformative change. A minimal commitment to referrals to drug rehabilitation and education schemes on second, third, and subsequent offences is not sufficient. Again, this Bill perpetuates and expands a system based upon the infliction of penalties, from fines at the lowest level, to prison sentences at the highest. This is not consistent with treating 'personal drug use as a health issue with more funding towards prevention, education and treatment'<sup>8</sup>.

## Police Autonomy: Impact on Māori and Pasifika

The Bill continues to provide total autonomy to individual police officers, in that they have the ability to stop any driver of a motor vehicle without cause to suspect a driver has consumed drugs. Provisions such as this will continue to perpetuate racism by ensuring that decisions are left in hands of individuals. Advice prepared by the Ministry of Justice references international evidence which concludes that police are known to disproportionately stop members of certain ethnic-minority groups (in Aotearoa NZ, primarily Māori and Pasifika), and that ethnic-minority groups are more

<sup>7</sup> Malhotra N, Starkey N J, Charlton S G. Driving under the influence of drugs: Perceptions and attitudes of New Zealand drivers. *Accid Anal Prev* [Internet]. 2017; 106:44-52. Accessed 9 April 2021. Available from: <https://pubmed.ncbi.nlm.nih.gov/28554064/>.

<sup>8</sup> Safe and Effective Justice Advisory Group. *Turuki! Turuki!* [Internet]. Wellington: Safe and Effective Justice Advisory Group; 2020. Accessed 9 April 2021. Available from: <https://www.safeandeffectivejustice.govt.nz/assets/Uploads/28ce04fd87/Turuki-Turuki-Report-Interactive.pdf>.

<sup>9</sup> New Zealand Government. *New direction for criminal justice reform* [Internet]. Wellington: New Zealand Government; 2019. Accessed 9 April 2021. Available from: <https://www.beehive.govt.nz/release/new-direction-criminal-justice-reform>.

<sup>10</sup> Government Inquiry into Mental Health and Addiction. *He Ara Oranga Report of the Government Inquiry into Mental Health and Addiction* [Internet]. Wellington: Government Inquiry into Mental Health and Addiction; 2018. Accessed 19 April 2021. Available from: <https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf>.

likely to be stopped multiple times<sup>11</sup>. While this research is not directly related to traffic stops, the same principles will apply in that individual officers have the autonomy to stop without cause. These impacts are acknowledged in related impact statements to the Bill, but have been ignored in the Bill itself<sup>12</sup>. Cannabis is used at a higher rate in the Māori population than that of non-Māori, and there is a risk that infringement penalties will escalate people into the criminal justice system.

In light of this, expanding this policy will only extend the legacy of colonisation, by continuing to criminalise and imprison Māori in Aotearoa NZ<sup>13</sup>. An appalling 52.9 per cent of our prison population are Māori, despite being only 16.5 per cent of our population<sup>14 15</sup>. Extending further into the next generation of rangatahi, it has been found that children of incarcerated parents are at significant risk of poor health outcomes due to untreated health and emotional problems<sup>16 17</sup>

This cannot continue. We must do all we can to create real and substantive change throughout our justice system to combat it.

## Discrimination Against Perceived Drug Users

In a similar manner, providing discretion has the potential to result in discrimination against those perceived as likely drug users by police. International evidence suggests that police regard drug users as different from what they consider to be normal. “They hide behind a mask very well”, but “you see that they are not normal people”<sup>18</sup>. Attitudes such as this, mean that any person who is identifiably different from that which is considered ‘normal’ (likely Pākehā, straight, and cis-gender), may become the target of errant attention from police officers. Particularly, the LGBT community have been the target of historical perceptions of substance abuse, which continue to prevail to this day, despite the presence of more nuanced understandings<sup>19</sup>. Targeting of communities such as this, when discretion is provided at the level proposed, is inevitable.

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<sup>11</sup> Ministry of Justice. Identifying and Responding to Bias in the Criminal Justice System: A Review of International and New Zealand Research [Internet]. Wellington: Ministry of Justice; 2009. Accessed 9 April 2021. Available from: <https://www.justice.govt.nz/assets/Documents/Publications/Identifying-and-responding-to-bias-in-the-criminal-justice-system.pdf>.

<sup>12</sup> Ministry of Transport. Updated Impact Statement: Enhanced drug driver testing [Internet]. Wellington: Ministry of Transport; 2020. Accessed 9 April 2021. Available from: <https://www.treasury.govt.nz/sites/default/files/2020-08/ria-transport-eddt-jul20.pdf>.

<sup>13</sup> ActionStation. They're Our Whānau – A community-powered and collaborative research report on Māori perspectives of New Zealand's justice system [Internet]. Wellington: ActionStation; 2018. Accessed 9 April 2021. Available from: <https://actionstation.org.nz/downloads/tow-report.pdf>.

<sup>14</sup> Department of Corrections. Prison facts and statistics - September 2020 [Internet]. Wellington: Department of Corrections; 2020. Accessed 9 April 2021. Available from: [https://www.corrections.govt.nz/resources/statistics/quarterly\\_prison\\_statistics/prison\\_stats\\_september\\_2020](https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_september_2020).

<sup>15</sup> Statistics New Zealand. Ethnic group summaries reveal New Zealand's multicultural make-up [Internet]. Wellington: Statistics New Zealand; 2020. Accessed 9 April 2021. Available from: <https://www.stats.govt.nz/news/ethnic-group-summaries-reveal-new-zealands-multicultural-make-up>.

<sup>16</sup> Gordon L. Causes of and solutions to the inter-generational crime: the final report of the study of the children of prisoners [Internet]. Auckland: Pillars; 2011. Accessed 19 April 2021. Available from: <https://www.pillars.org.nz/wp-content/uploads/2019/05/Year-2-report-2011.pdf>.

<sup>17</sup> Office of the Prime Minister's Chief Science Advisor. Using evidence to build a better justice system: The Challenge of Rising Prison Costs [Internet]. Wellington: Office of the Prime Minister's Chief Science Advisor; 2018. Accessed 21 April 2021. Available from: <https://www.pmcsa.org.nz/wp-content/uploads/Using-evidence-to-build-a-better-justice-system.pdf>.

<sup>18</sup> Bujalski M, Wiczorek L. Police and drug users: stereotypes as a barrier to treatment [Internet]. 2015. Accessed 19 April 2021. Available from: [https://www.researchgate.net/publication/298718871\\_Police\\_and\\_drug\\_users\\_stereotypes\\_as\\_a\\_barier\\_to\\_treatment/citation/download](https://www.researchgate.net/publication/298718871_Police_and_drug_users_stereotypes_as_a_barier_to_treatment/citation/download).

<sup>19</sup> Green K, Feinstein B. Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment. *Psychol Addict Behav* [Internet]. 2012; 26(2): 265-278. Accessed 19 April 2021. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3288601/>

## Lack of Evidence to Support Impairment Levels

The relationship between drug use and impairment is not straightforward, and at an individual level, many factors can influence the impairing effects of drugs. In many situations, there may be no relationship between a positive oral fluid test and the level of impairment<sup>20</sup>. The ability to detect specific drug levels is also limited by the accuracy and reliability of oral fluid testing devices. Evaluations of these devices find that they produce false positives up to 10% of the time. In the case that drivers are apprehended under the influence of drugs, we believe that they should be treated in line with the level of danger they have displayed, and not with arbitrary and unreliable measures such as those proposed. The extent to which this applies is prominent with the case of cannabis, as it has been estimated that when driving under its influence, the risk of a motor vehicle crash is multiplied by 2-3 times, in comparison with 6-15 times for the influence of alcohol<sup>21</sup>.

In other jurisdictions, the lack of evidence to support the establishment of impairment levels has prompted the implementation of what amounts to a zero-tolerance regime, in which any level of drug detected comprises an offence. We do not wish to see an inequitable scheme such as this in Aotearoa New Zealand.

## Unpredicted Effects of Prescription Drugs

To access the medical defence provided in the Bill, a person must have taken prescription drugs in accordance with their prescription and any instructions from a health practitioner, or from the manufacturer of the qualifying drug. This places a significant responsibility upon the health practitioner in question, to accurately predict the level of impairment caused by a given usage of the drug in question. Practitioners are likely to have difficulty fulfilling this role in all cases, as while many medications have been identified as impairing driving, there is little agreement on what should be labelled in this way, and whether this supports a change in prescribing behaviours<sup>22</sup>. This also reflects the reality that drugs can influence different people, in different ways.

Furthermore, the interaction of drugs with each other, such as in a polypharmacy situation, can create an effect that impairs driving, where individually they did not. Polypharmacy has been associated with significantly lower cognitive capacity, which in turn may influence the ability to drive without impairment<sup>23</sup>. Other situations, such as gradual increases in medication to therapeutic levels, and accidental increases in dosage may also contribute to impairment, where no impairment was predicted.

As such, it should be considered that practitioners will struggle to fill this key role, in providing reliable, and stable advice, on medication which may in many cases have unpredictable effects.

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<sup>20</sup> Toennes S, Kauert G, Steinmeyer S, Moeller M. Driving under the influence of drugs — evaluation of analytical data of drugs in oral fluid, serum and urine, and correlation with impairment symptoms. *Forensic Sci* [Internet]. 2005;152 (2-3):149-155. Accessed 19 April 2021. Available from: <https://www.sciencedirect.com/science/article/abs/pii/S0379073804004438>.

<sup>21</sup> Hall W, Homel R. Reducing cannabis-impaired driving: is there sufficient evidence for drug testing of drivers?. *Addiction* [Internet]. 2007; 102(12): 1918-9. Accessed 19 April 2021. Available from: <https://pubmed.ncbi.nlm.nih.gov/18031427/>.

<sup>22</sup> Hetland A, Carr D. Medications and Impaired Driving: A Review of the Literature. *Ann Pharmacother* [Internet]. 2014; 48(4): 494-506. Accessed 19 April 2021. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3965581/>.

<sup>23</sup> Cheng C, Chang W, Chiu Y, Sun Y, Lee H, et al. Association of Polypharmacy With Mild Cognitive Impairment and Cognitive Ability: A Nationwide Survey in Taiwan. *J Clin Psychiatry* [Internet]. 2018; 79(6). Accessed 19 April 2021. Available from: <https://pubmed.ncbi.nlm.nih.gov/30256550/>

## Pathways Forward

In our view, the approach proposed in the Bill is not fit for purpose and should be abandoned, in favour of an evidence-based approach which considers the challenges related to the relationship between drug levels and degree of impairment. This approach should prioritise a health-centred approach to drug (and alcohol) use and addiction, and view people as a whole through a focus on rehabilitation. Research has clearly shown that deterrence through punitive punishment does not work, and may even promote the behaviour it aims to reduce<sup>24</sup>.

In the words of Children’s Commissioner Andrew Becroft, *“All roads lead back to (1) child/youth poverty and material disadvantage, (2) early interventions and assistance, and (3) the enduring legacy of colonisation and modern day systemic bias.”*<sup>13</sup>.

This is where our focus must lay, and where real change will be found.

## Conclusion

As such, the RACP recommends that any further action:

- Focus on a health-based approach, building on the amendments made to the Misuse of Drugs Act in 2018<sup>25</sup>.
- Consider that, because of historical understandings of driving offences, legislation in this area has been classified as a transport matter and is therefore isolated from that of health and pro-equity justice approaches.
- Address the discriminatory practices that are likely to disproportionately affect Māori including by continuing to provide large areas of discretion to individual members of the police.

The RACP thanks the Transport and Infrastructure Select Committee for the opportunity to provide feedback on this consultation. To discuss this submission further, please contact the Aotearoa NZ Policy and Advocacy Unit at [policy@racp.org.nz](mailto:policy@racp.org.nz).

Nāku noa, nā



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**The Royal Austral**

<sup>24</sup> Wijeyesingha V. Reconsidering the Aotearoa New Zealand Criminal Justice Policy Model [Internet]. Auckland: The Salvation Army Social Policy & Parliamentary Unit; 2019. Accessed 9 April 2021. Available from: [https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile\\_field%3Atype%5D/20190812sppucriminal\\_justice\\_briefing\\_note\\_part\\_1.pdf](https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/20190812sppucriminal_justice_briefing_note_part_1.pdf).

<sup>25</sup> New Zealand Parliamentary Counsel Office. Misuse of Drugs Amendment Bill [Internet]. Wellington: New Zealand Parliamentary Counsel Office; 2019. Accessed 9 April 2021. Available from: <https://www.legislation.govt.nz/bill/government/2019/0119/latest/LMS167550.html>.