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Random Drug Driving Tests under the Transport Legislation and Another Act Amendment Bill 2006 (Qld)

*For several decades, road safety campaigns have focussed on the dangers of drink driving. While driving under the influence of alcohol would appear to pose a huge risk to road safety, disturbing findings are emerging about driving while under the influence of drugs – particularly illicit drugs. The **Transport Legislation and Another Act Amendment Bill 2006 (Qld)** seeks to provide police officers with the power to conduct random roadside drug testing to detect the presence of certain illicit drugs in the bodily fluids of drivers. The testing process will operate in a similar way to current random roadside breath testing for blood alcohol concentration.*

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EXECUTIVE SUMMARY

Similarly to drink driving, driving under the influence of drugs is against the law in all Australian jurisdictions, regardless of whether the drugs are legal or illegal. However, until the last few years, the ability of police officers to test for drug driving has been premised upon the officer first forming a reasonable suspicion or belief that a driver may be impaired by a drug. Unlike the case with drink driving, it has been only recently that reliable technology which is convenient to use has been developed to enable random roadside drug testing without there needing to be prior evidence of impairment. Testing for drugs other than alcohol requires the provision of a bodily fluid, such as saliva, or blood specimens. Accordingly, legislation to permit random drug testing is a quite recent phenomenon: **page 1**.

The link between the presence of drugs in the body and the risk of collision is difficult to establish and is undergoing considerable research at the present time: **pages 1-2**. However, a number of drugs have been identified by authorities as posing potential risks to road safety and these can be grouped under the headings of ‘**illicit drugs**’ (e.g. cocaine, ecstasy, speed, cannabis, LSD, and heroin) and ‘**prescription and over-the-counter medications**’: **pages 2-5**. The various **tests** and studies used to establish the connection between drug impairment and crash risk are described on **pages 5-6**. The **groups** that have been identified as most at risk of their driving being impaired by drugs are commercial drivers (e.g. long haul truck drivers), drivers on medication, as well as young and elderly drivers: **pages 7-8**.

The **nature and extent** of drug driving, as identified by various Australian studies and surveys, such as AAMI Insurance’s *Young Drivers Road Safety Index*, reveals some alarming results about driver attitudes to drug driving: **pages 8-9**.

The various problems with establishing a link between drug impairment and crash risk and the development of suitable technology for reliable roadside drug testing has meant that testing drivers for drug driving has relied on police officers applying **behavioural tests** to establish impairment. However, advances in technology have meant that **chemical screening** has become a viable option: **pages 9-11**.

Random roadside drug testing legislation has come into effect in Victoria (which had the world’s first random drug testing laws), New South Wales, South Australia and Tasmania. This will soon be followed by Western Australia and Queensland: **pages 12-20**.

In **Queensland**, the current relevant legislation relating to drug driving is the *Transport Operations (Road Use Management) Act 1995 (Qld)* (TORUM) ss 79, 79A and 80 of which create offences, outline police powers and provide for related matters. If a police officer reasonably suspects that a motorist’s driving ability has been impaired by drugs or alcohol because of external signs exhibited by the person, the officer may require the motorist to undergo a breath test or, in certain cases, a blood test: **pages 21-28**.

Following the *Drug Driving in Queensland Report*, tabled by the Queensland Parliamentary Travelsafe Committee in November 1999, and trials around the State

(pages 25-28), the Queensland Government introduced the **Transport Legislation and Another Act Amendment Bill 2006 (Qld)** into Parliament on 29 November 2006. It proposes to amend TORUM and the *Police Powers and Responsibilities Act 2000* (Qld) to give legislative support to the conduct of random roadside drug testing in Queensland: **pages 28-33**. The testing and screening process will be similar to that in other Australian jurisdictions.

1 INTRODUCTION

For several decades, road safety campaigns have focussed on the dangers of drink driving. While driving under the influence of alcohol would appear to pose a huge risk to road safety, disturbing findings are emerging about driving while under the influence of drugs – particularly illicit drugs. The [Transport Legislation and Another Act Amendment Bill 2006 \(Old\)](#) seeks to provide police officers with the power to conduct random roadside drug testing to detect the presence of certain illicit drugs in the bodily fluids of drivers. The testing process will operate in a similar way to current random roadside breath testing for alcohol concentration. While prescription medications and over-the-counter medicines may also impair driving, the proposed laws will allow screening only for illicit drugs.

2 BACKGROUND

It has not been until relatively recently that some jurisdictions have passed laws to provide a legislative basis for random testing of drivers for drugs other than alcohol. Random Breath Testing (RBT) for alcohol is relatively simple, has been in place for many years, and has general community acceptance.

Similarly to drink driving, driving under the influence of drugs is against the law in all Australian jurisdictions, regardless of whether the drugs are legal or illegal. However, until the last few years, the ability of police officers to test for drug driving has been premised upon the officer first forming a reasonable belief or suspicion that a driver may be under the influence of a drug.¹ Reliable and convenient technology for use in random roadside drug testing – which requires drivers to provide a saliva sample – has been difficult to develop but is finally being unveiled across the nation. It is envisaged that roadside tests of saliva samples using the new technology will allow drivers to be pulled over at random without there needing to be prior evidence of impairment. Accordingly, legislation to permit random roadside testing for the presence of drugs is beginning to emerge in many Australian states and territories.

At the outset, it should be noted that research is continuing about the relationship between some drugs (such as cannabis) and driver impairment. The mere fact that a drug is detected in a person's bloodstream or bodily fluids does not necessarily

¹ See Queensland Legislative Assembly, Parliamentary Travelsafe Committee, *Drug Driving in Queensland Report No 29*, October 1999, pp 27-28, <http://www.parliament.qld.gov.au/committees/view/committees/documents/TSAFE/reports/tsafe29.pdf>

mean that the person's driving was impaired by the drug. Unlike blood alcohol content, where the connection to the risk of having a collision is well known, the link between the presence of drugs in the body and the risk of collision is more difficult to establish. Thus, it could be argued that the detection of a drug in a person's bodily fluids does not necessarily mean that the person was not fit to drive.²

While alcohol might be the most common substance found in the systems of drivers involved in collisions (between 23% and 40%),³ some studies indicate that driving after taking certain drugs does pose some concern for road safety. A 2003 study undertaken by researchers at the Department of Forensic Medicine at Monash University considered the incidence of alcohol and drugs in 3,398 fatally injured drivers in Victoria, New South Wales and Western Australia from 1990 to 1999. Drugs (other than alcohol) were present in 26.7% of cases and psychotropic drugs in 23.5% of cases (comprising cannabis (13.5%), opioids (4.9%), stimulants (4.1%), benzodiazepines (4.1%) and other psychotropic drugs (2.7%)). The prevalence of drugs, particularly cannabis and opioids, in fatally injured drivers increased over the decade. Stimulants had a larger presence in truck drivers (23%).⁴

In order to fully appreciate the issue of drug driving, it is worthwhile to outline what drugs can affect driving, how driving can be affected, and the main 'at-risk' driver groups.

2.1 DRUGS THAT CAN AFFECT DRIVING

The main types of drugs that can cause problems for safe driving are set out under the headings below.⁵ The drugs considered have been identified by the Queensland Department of Transport (Queensland Transport) as being the main ones of concern due to their potential to impair driving and cause collisions.

² Australian Academy of Science, 'The dope on drug impaired driving', *Science in the News*, <http://www.science.org.au/nova/085/085print.htm>.

³ See Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 8.

⁴ OH Drummer, et al., 'The incidence of drugs in drivers killed in Australian road traffic crashes', *Forensic Science International*, 134(2-3), July 2003, pp 154-162 (Abstract).

⁵ Queensland Transport, *Drug Driving Fact Sheet*, http://www.roadsafety.qld.gov.au/qt/LTASinfo.nsf/index/rs_drugdriving_drugaffectedskills; and AAMI Insurance, 'Prescription for disaster – drivers ignore drug warnings', *Media Release*, 5 December 2006.

2.1.1 Illicit Drugs

These drugs include cocaine, ecstasy, speed, cannabis, LSD, and heroin.

It has been reported that cannabis is the most commonly found drug in drivers' systems, apart from alcohol.⁶ Some recent studies appear to suggest that if the active constituent of cannabis (THC) is present due to recent use, this is associated with increased crash risk but THC-acid, which is easier to detect, is not an indicator of increased crash risk.⁷

Drivers under the influence of cannabis may find complex driving tasks, such as coping with busy roads or uncontrolled intersections, more difficult to handle than drivers who are not.⁸ A Swinburne University of Technology study into the effects of legal and illegal drugs on driving behaviour found that cannabis consumption significantly increased vehicle lane weaving and created slower reaction to emergency situations.⁹ On the other hand, a joint project by the NSW Bureau of Crime Statistics and Research and the National Drug and Alcohol Research Centre found only limited evidence to support the claim that cannabis use increases accident risk. However, the latter study used a smaller sample (320 cannabis users in NSW) and took the form of face-to-face structured interviews.¹⁰

Although stimulants such as speed, cocaine and ecstasy are less commonly found in drivers involved in collisions compared with cannabis or alcohol, these drugs can cause fatigue which impacts on driving ability.¹¹ Long distance truck drivers have been found to use amphetamines for staying awake¹² and this use has recently

⁶ Australian Capital Territory Department of Road Transport, 'Drug Driving and Road Crashes – An Overview', September 2004, http://www.transport.act.gov.au/_data/assets/word_doc/14470/drugoverview.doc. The background provided drew heavily upon a report by the Commonwealth Department of Health and Ageing, *Drug Driving Among Police Detainees in Three States of Australia: Final Report*, National Drug Strategy Monograph Series No 50, August 2002.

⁷ ACT Department of Road Transport, 'Drug Driving and Road Crashes – An Overview.'

⁸ Australian Academy of Science, 'The dope on drug impaired driving'.

⁹ 'What are the effects of cannabis, amphetamines and benzodiazepines on driving ability?', *DrugInfo Clearinghouse*, Vol 2, No 3, February 2004, <http://www.druginfo.adf.org.au>.

¹⁰ NSW Bureau of Crime Statistics and Research and the National Drug and Alcohol Research Centre, 'Driving under the influence of cannabis: The problem and potential countermeasures', *Crime and Justice Bulletin*, 87, September 2005.

¹¹ ACT Department of Road Transport, 'Drug Driving and Road Crashes – An Overview.'

¹² ACT Department of Road Transport, 'Drug Driving and Road Crashes – An Overview.'

expanded to include the drug known as ‘ice’. Ice is a ‘party drug’ that can cause euphoria but it can also bring about aggression, anxiety, depression and psychosis.¹³

Hallucinogens, such as LSD, might cause the person taking them to react to imaginary obstacles.¹⁴

2.1.2 Prescription and Over-the-Counter Medications

The prescription and over-the-counter medications that may impair driving include:

- depressants such as benzodiazepines (e.g. Valium, Serapax, Mogadon) which can interfere with coordination and alertness, slow down reflexes, and cause fatigue and blurred vision;
- allergy medications (e.g. Avil) and antihistamines which can cause drowsiness, dizziness and lack of concentration;
- codeine-based pain killers and paracetamol which can cause dizziness and drowsiness. Some cough mixtures can also have similar effects;
- some cold and flu medications and decongestants containing substances such as pseudoephedrine (e.g. Sudafed, Codral Cold & Flu) speed up the brain and body and can cause people taking them to feel aggressive, hyperactive, and dizzy;
- some medications for anxiety (e.g. Valium, Xanax) can cause drowsiness, dizziness or clumsiness;
- some antidepressants (e.g. Prozac) can cause abnormal vision as well as dizziness and ringing in the ears.

Many medications enclose warning labels that alert the user about possible side-effects of drowsiness or decreased mental alertness. It is always important to read the information leaflets provided with medications and to follow the instructions about dosage.¹⁵

¹³ ‘On Thin Ice – A Users’ Guide’, University of New South Wales, Faculty of Medicine and the National Drug and Alcohol Research Centre, 2006, [http://www.med.unsw.edu.au/NDARCWeb.nsf/resources/Ice+Resource/\\$file/ICE+RESOURCE.pdf](http://www.med.unsw.edu.au/NDARCWeb.nsf/resources/Ice+Resource/$file/ICE+RESOURCE.pdf).

¹⁴ Australian Academy of Science, ‘The dope on drug impaired driving’.

¹⁵ Queensland Transport, *Drug Driving Fact Sheet*.

However, a recent survey of 2,384 Australians for AAMI Insurance reveals that 27% of all drivers nationally admit to ignoring medical advice not to drive after taking certain prescription medicines and more than twice as many people drive under the influence of prescription drugs as recreational drugs (27% as opposed to 11%).¹⁶ It was also found that 67% of drivers felt that illicit drugs posed more of a threat to road safety than prescription drugs but 72% of drivers aged 35-44 believed that prescription drugs were a hidden danger.¹⁷

2.2 HOW DRIVING CAN BE AFFECTED BY DRUGS

As noted above, drugs – whether legal or illegal – can affect a person’s driving ability in a variety of ways.¹⁸ Mixing drugs with other drugs or with alcohol can also impact on a person’s driving and some drugs can mask the effect of alcohol so a person may not realise that he or she is intoxicated.¹⁹

However, as mentioned earlier, the mere fact that a drug is detected in a person’s bodily fluids does not necessarily mean that the person’s driving was impaired by the drug or that the person is not fit to drive. The presence of a drug in the body and the risk of collision is more difficult to establish than is the case with the presence of alcohol. The influence of a particular drug upon a person depends on many factors such as the type of drug, past exposure to it, the ‘quality’ of the drug (especially if it is an illegal substance), individual reaction to the drug, and whether it is mixed with another drug or with alcohol.²⁰

¹⁶ AAMI Insurance, ‘Prescription for disaster – drivers ignore drug warnings’. Data was not obtained from Western Australia because AAMI does not operate there.

¹⁷ AAMI Insurance, ‘Prescription for disaster – drivers ignore drug warnings’.

¹⁸ Queensland Transport, Road Safety website,
http://www.roadsafety.qld.gov.au/qt/LTASinfo.nsf/index/rs_drugdriving_drugffects.

¹⁹ Queensland Transport, Road Safety website, Safety Tips,
http://www.roadsafety.qld.gov.au/qt/LTASinfo.nsf/index/rs_drugdriving_safetytips.

²⁰ Australian Academy of Science, ‘The dope on drug impaired driving’. See also Queensland Legislative Assembly, Parliamentary Travelsafe Committee, *Drug Driving in Queensland Issues Paper No 3*, November 1998,
<http://www.parliament.qld.gov.au/committees/view/committees/documents/TSAFE/other/TSIP3.pdf>.

2.2.1 Methods Used to Investigate the Effect of Drugs on Driving

Various methods have been used to investigate the effect of drugs on driving ability and crash risk. The main ones have been experimental studies; epidemiological studies; and culpability/responsibility analyses.

Experimental studies (including laboratory experiments, driving simulation experiments, and closed-road experiments) have been found to contain shortcomings. In particular, they fail to represent actual driving experience.²¹

Epidemiological studies link involvement in a road collision with the presence of drugs in the driver's blood. However, these studies are rarely undertaken because it is difficult to create a sufficiently large control group (which needs to be a group of drivers who have not been in a collision and who are willing to provide blood or urine samples) with which to compare the test group.²²

The best form of study has been found to be one that uses 'responsibility analysis'.²³ Each collision is assessed with reference to factors known to contribute to collisions (e.g. road conditions, condition of the vehicle, obedience of road rules, and fatigue). The effect of drugs on drivers in whom drugs are detected is investigated by calculating the ratio of drivers responsible for a collision to those not responsible. A culpability ratio higher in a drug group than in a control group (comprising drivers involved in a collision but who are drug free) may suggest that the drug contributed to the collision.²⁴ Past studies employing responsibility analysis have found some link between responsibility for a collision and the use of cannabis, amphetamines and benzodiazepines as well as the combination of drugs and alcohol or a mix of drugs.²⁵

²¹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 10, citing submission by Department of Transport and Main Roads, p 149.

²² Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 10.

²³ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 10, citing submission by Queensland Health, p 346.

²⁴ The Travelsafe Committee, *Drug Driving in Queensland Report No 29* noted (pp 10-11) that three Australian studies during the 1990s had used this type of analysis.

²⁵ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 13-14, citing OH Drummer, 'Involvement of drugs in accident causation', *Paper presented to the Australasian Conference on Drug Strategy*, Adelaide, 27-29 April 1999; OH Drummer, 'A Review of the Contribution of Drugs in Drivers to Road Accidents' in Victorian Parliamentary Road Safety Committee, *The Effects of Drugs (Other than Alcohol) on Road Safety – First Report Incorporating Collected Papers*, Parliament of Victoria Road Safety Committee, 1995; and other studies.

2.3 GROUPS AT MOST RISK

The following groups have been perceived as most at risk of ‘drug driving’.

2.3.1 Commercial Drivers

A recent study by the National Centre for Education and Training on Addiction at Flinders University found that bus, truck and taxi drivers are among the highest workforce users of amphetamines – particularly where the work entails long hours of needing to be alert.²⁶ Transport Workers Union (TWU) Secretary, Tony Sheldon, is reported as stating that unrealistic client deadlines and trip schedules had pushed drivers to use these drugs to stay awake.²⁷

The problem with amphetamines is that although they are stimulants, when the effect wears off, they can cause fatigue. Fatigue is a well known contributor to fatal collisions, particularly when combined with long driving hours.

A study by the University of NSW Injury Risk Management Research Centre in 2005, commissioned by the NSW Department of Health, surveyed 200 truck drivers at nine truck stops within 200 km of Sydney. It was found that more than half had used stimulants at some stage during their career and 25% had done so within the past six months.²⁸ When releasing the survey results, the NSW Minister for Health announced that a new taskforce would target the use of illicit drugs among truck drivers because of its association with a higher risk of fatal collisions. The Minister also noted that truck drivers who used stimulants were more likely to be paid per load or per trip.²⁹

2.3.2 Drivers on Medication

Generally, it would seem that many prescribed medications do not have adverse effects on driving but, as noted earlier, persons taking them, particularly in high

²⁶ Emily Dunn, ‘Workers hooked on party drug’, *Sydney Morning Herald Online*, 28 September 2006, citing Flinders University National Centre for Education and Training on Addiction, Findings Presented at the Australasian Amphetamine Conference, September 2006.

²⁷ Shelley Markham, ‘Union blames industry operators for truckie drug use’, *CCH News Headlines*, 28 September 2006.

²⁸ ‘One in five truckies on drugs’, University of New South Wales, Media, News and Events, 26 September 2006. The study referred to is not available.

²⁹ ‘One in five truckies on drugs’.

doses, should seek advice from their doctor or pharmacist and read the information brochure or warning label accompanying the medication.³⁰

2.3.3 Young Drivers

Young drivers have been found to be more likely to use both legal and illegal drugs for recreational use.³¹ Further information about young drivers in this context is found in the AAMI *Young Drivers Road Safety Index* (2005), discussed below.

2.3.4 Elderly Drivers

The main reason for concern about elderly drivers is that they may need to use medications at a higher rate than other age groups and are more likely to be on more than one medication. Elderly drivers also tend to lack the ability to eliminate drugs from their system as efficiently as other age groups, meaning longer lasting side effects.³²

3 NATURE AND EXTENT OF DRUG DRIVING

The AAMI *Young Drivers Road Safety Index* of November 2005 revealed some disturbing results about young drivers' (aged 18-24) attitudes to drug driving. AAMI publishes the Index to inform and educate the community about young driver issues and trends. The findings for 2005 are based on data collected from an independent survey of around 2,400 licensed drivers in various locations throughout Australia.³³

It was reported that, despite increased awareness of the dangers of driving while under the influence of recreational drugs (e.g. marijuana, cocaine, speed or ecstasy) and the introduction of random roadside drug testing in Victoria, young drivers still appear to be prepared to take the risk. It was found that –

³⁰ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 16.

³¹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, citing various studies including the 1995 OH Drummer study.

³² Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 16.

³³ AAMI, *Young Drivers Road Safety Index*, November 2005, http://www.aami.com.au/about_aami_insurance/aami_news_centre/pdf/special_reports/AAMI_CrashIndex06report_mediacentre.pdf.

- 13% of the young drivers and 6% of older drivers surveyed thought that using recreational drugs before driving did not really affect driving;
- 16% of young drivers and 8% of older drivers thought that driving after taking recreational drugs was safer than driving after drinking;
- 22% of young drivers and 13% of older drivers would admit to driving after using recreational drugs;
- 30% of young drivers and 25% of older drivers would drive after taking medicinal drugs or tablets, despite label warnings;
- 73% of young drivers and 64% of older drivers consider that recreational drugs pose more of a danger to road safety than prescription medication.³⁴

The Australian Institute of Health and Welfare's *2004 National Drug Strategy Household Survey* similarly found that of Australians aged 14 years and older who had used illicit drugs during 2004, 23.1% had driven while under the influence of illicit drugs.³⁵

In a recent submission to a Parliamentary Travelsafe Committee Inquiry, Queensland Transport noted that, on average, there have been around 166 drug driving offences recorded per annum in Queensland over recent years. Approximately 581 drug driving offences were detected between January 2002 and June 2005.³⁶

4 DRUG DRIVER TESTING METHODS

Australian states and territories have laws which provide that any driver found with a blood alcohol concentration (BAC) over a specified level (generally 0.05g per 100 ml, commonly expressed as 0.05, but often lower for inexperienced or learner drivers) is guilty of a drink driving offence. The BAC level is determined by the administration of a breath, blood or urine test. It has been argued that the legitimacy of drink driving legislation is based on there being a clear understanding of the link between alcohol use, BAC, driver impairment and crash risk. The

³⁴ *Young Drivers Road Safety Index*.

³⁵ Australian Institute of Health and Welfare, *2004 National Drug Strategy Household Survey*, p 89.

³⁶ Queensland Transport Submission to the Parliamentary Travelsafe Committee, 'Inquiry into Vehicle Impoundment for Drink Drivers', *Issues Paper No 10*, November 2005, pp 16-17, <http://www.parliament.qld.gov.au/committees/view/committees/documents/TSAFE/inquiry/vehicleImpoundment/submissions/44a%20-%20Queensland%20Transport.pdf>.

development and availability of technology to enable breath testing (such as the Breathalyser device) has enabled large numbers of driver tests to be undertaken and has opened the way for Random Breath Testing (RBT) operations.³⁷ This roadside alcohol testing has been regarded as accurate, quick, reliable and readily related to the degree of impairment.³⁸

On the other hand, the credibility of drug driving legislation has been more difficult to establish because of a number of issues, particularly of a technological nature, as discussed earlier. In particular, evidence of the presence of a drug in a driver's system may not indicate that his or her driving is impaired because of individual responses to the drug involved.³⁹

The foregoing problems have meant that, until recently, drug driving offences were detected by a police officer observing driver behaviour.

4.1 BEHAVIOURAL TESTING

The main types of **behavioural testing** methods have been –

- observational testing of driver behaviour which can be used in evidence to support a charge against the driver;⁴⁰
- the Standardised Field Sobriety Test consisting of three standardised tests⁴¹ which assess the driver's ability to pay attention, to follow simple instructions, and to divide his or her attention;
- the Drug Evaluation and Classification (DEC) Program developed overseas during the 1980s. It is a systematic, standardised post-arrest procedure to determine if a driver is impaired by a certain category of drug.⁴²

³⁷ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 27.

³⁸ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 33.

³⁹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 27-28.

⁴⁰ As described in the Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 28-29 referring to the then NSW police guide for use in cases of suspected drug and drink driving offences.

⁴¹ The Horizontal Gaze Nystagmus Test; Walk and Turn Test; One Leg Stand Test. These are described in detail in the Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 30.

⁴² Explained in detail in the Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 31-33.

The current practice in Queensland for detecting drug driving (both legal and illegal drugs) is observation of driver behaviour. If a police officer reasonably suspects that a person's driving ability has been impaired by drugs or alcohol because of external signs exhibited by the person, the officer may require the motorist to undergo a breath test. The process which then follows if the result does not explain the driver's external signs of impairment is explained later in this Brief.⁴³

4.2 CHEMICAL SCREENING

Reliable roadside chemical screening methods have been much more difficult and slower to develop than chemical screening for alcohol. There is such a wide range of drugs that potentially impair driving and not all drugs are able to be detected by a breath test. In addition, the drug may remain present in the body for some days or weeks beyond the time of impairment. However, progress is being made. Dr Jeremy Davey, Deputy Director of the Queensland University of Technology's Centre for Accident Research and Road Safety Queensland (CARRS-Q) is reported to have noted that the accuracy and reliability of tests have improved in recent years.⁴⁴ Dr Davey is reported as stating that a saliva swab can establish whether a driver had used marijuana within two hours, or heroin, cocaine or amphetamines within five hours.⁴⁵

Standards Australia is developing new procedures that enable the collection and testing of saliva samples for cannabis, cocaine and opiates to improve the effectiveness of random roadside tests.⁴⁶

When the Victorian Government introduced legislation for random roadside drug testing, it considered that technological advances had made it possible to screen for certain drugs using portable equipment at the roadside.⁴⁷

⁴³ Queensland Transport, 'Drug Driving Enforcement', Road Safety website, <http://www.roadsafety.qld.gov.au>. See also, ss 79 and 80 of the *Transport Operations (Road Use Management) Act 1995* (Qld).

⁴⁴ Malcolm Cole & Renee Viellaris, 'Trial "reward" for drugged drivers', *Courier Mail*, 29 November 2005, p 3.

⁴⁵ Malcolm Cole & Renee Viellaris.

⁴⁶ Standards Australia, 'Standards Australia working on new roadside cannabis test', *Media Release*, 26 October 2005.

⁴⁷ Hon P Batchelor MP, Victorian Minister for Transport, Second Reading Speech, Road Safety (Drug Driving) Bill 2003 (Vic), Legislative Assembly, 30 October 2003, *VicHansard*, pp 1418-1421, p 1418.

5 RANDOM ROADSIDE DRUG TESTING

In those jurisdictions that have passed legislation to authorise roadside drug testing, the administration of a drug test occurs similarly to RBTs for alcohol. Drivers are randomly pulled over for a drug test without a police officer needing to first form a reasonable belief that a driver is impaired by a drug.

The aim of RBTs for alcohol over the past few decades has been to achieve broad changes in driver behaviour by maximising exposure to random enforcement without necessarily needing to apprehend drivers.⁴⁸ It has been claimed that the success of alcohol RBTs in changing driver behaviour is largely attributable to the widespread belief in the community that one will be caught if one exceeds the blood alcohol limit.⁴⁹ Any perceived high risk of being caught for drug driving has been relatively absent among drivers, given the low level of observable enforcement activity.

RBTs for alcohol were introduced in Queensland in 1988, together with an extensive advertising campaign. It is reported that in the year after RBT began, 1 in 40 drivers tested positive to an illegal blood alcohol concentration but, by 2005, the number had decreased to 1 in 92 drivers tested.⁵⁰

The Australian Transport Safety Bureau's *Community Attitudes to Road Safety: Survey 2005* indicates almost universal community support for alcohol RBTs, with 98% of those surveyed agreeing with the practice. In addition, 76% of people surveyed have seen RBT operations being conducted and 32% reported being tested within the past six months.⁵¹

Recent AAMI Insurance research has found that 92% of drivers support random roadside drug testing and this includes 88% of young drivers. However, only 48% believe that the results of such tests are reliable. Interestingly, although young drivers were found to be more liberal in their attitude towards driving after taking

⁴⁸ ACT Department of Road Transport, *Drug Driving and Road Crashes – An Overview*.

⁴⁹ ACT Department of Road Transport, *Drug Driving and Road Crashes – An Overview*.

⁵⁰ Transport Legislation and Another Act Amendment Bill 2006 (Qld), *Explanatory Notes*, p 7.

⁵¹ D Pennay, *Community Attitudes to Road Safety: Community Attitudes Survey Wave 18, 2005*, The Social Research Centre, Australian Transport Safety Bureau, May 2006. The report forms part of a series of national surveys on community road safety attitudes and this survey was conducted in February and March 2005. Interviews with 1,690 persons aged 15 years and over were conducted.

recreational drugs, 57% were more likely to trust the results of roadside drug tests.⁵²

6 RANDOM DRUG TESTING LAWS IN OTHER JURISDICTIONS

6.1 VICTORIA

In December 2003, the Victorian Parliament passed the first Australian – and world first – laws that allow for an enforceable trial of roadside drug testing of motorists. Existing laws allowed for detecting and prosecuting persons found driving while impaired by a drug but were difficult to enforce in the absence of clear impairment.⁵³

On 13 December 2004, Victoria began a 12 month pilot program of random roadside testing for drug driving following findings that 31% of fatally injured drivers in 2003 had drugs other than alcohol in their system.⁵⁴ The [Road Safety Act 1986 \(Vic\)](#) was amended by the *Road Safety (Drug Driving) Act 2003* to provide for random trials and to create new offences for failing or refusing a drug test.

Although the legislative basis for roadside drug testing was due to cease on 1 July 2005 by virtue of the sunset provisions of the 2003 Act, the trial was extended, firstly until 1 July 2006.⁵⁵ Roadside drug testing was given permanent status in May 2006 following an evaluation of its operation.⁵⁶

The drugs originally covered by the legislation ('prescribed illicit drugs' in s 3) were methylamphetamines (commonly known as speed) and delta-9-tetrahydrocannabinol ('THC', the active component of cannabis). In his Second Reading Speech, the Minister for Transport, the Hon P Batchelor MP, explained that speed and cannabis were chosen initially because there was clear evidence that drivers using those drugs have an increased crash risk; those drugs are substances with the highest incidence, after alcohol, in the blood of drivers who are killed;

⁵² AAMI Insurance, 'Prescription for disaster – drivers ignore drug warnings'.

⁵³ See the Road Safety (Amendment) Act 2000 (Vic) and Hon P Batchelor MP, Second Reading Speech, Road Safety (Drug Driving) Bill 2003 (Vic), pp 1418-1421, p 1418.

⁵⁴ Victorian Government, 'Arrive Alive' Campaign, http://www.arrivealive.vic.gov.au/c_drugsAD.html.

⁵⁵ Road Safety (Further Amendment) Act 2005 (Vic).

⁵⁶ Road Safety (Drugs) Act 2006 (Vic).

neither drug is found in Australian prescription medication; and those drugs can be reliably detected in oral fluid samples at the crucial time.⁵⁷ From September 2006, ecstasy was included in the testing given that it too was considered to impair driving ability and an increasing number of fatally injured drivers had ecstasy in their system.⁵⁸ However, scientific research continues on the effect of ecstasy on driving behaviour.⁵⁹

A driver found with any concentration of a prescribed illicit drug in their blood or oral fluid is guilty of a drug driving offence under s 49 of the Act. There is no threshold limit because, as explained by the Minister for Transport, even low levels of concentration can impair driving ability.⁶⁰

The drug driving offences created by s 49 are driving or being in charge of a motor vehicle where any prescribed illicit drug is present in the blood or oral fluid of the person; and refusing to provide an oral fluid sample or to comply with a requirement regarding that provision. An offence is also created where a sample of blood or oral fluid tests positive to the drug within 3 hours of driving or being in charge of a vehicle.⁶¹ Penalties are also provided in this section while s 50 makes provision for cancellation of, and disqualification from obtaining, a licence for specified periods upon conviction of a drug driving offence.

Sections 55D and 55E enables specially trained police officers and other appropriately trained and authorised officers to carry out the random drug driving test process in the following manner –⁶²

- the police officer requests an oral fluid sample from drivers who are required to stop at a testing station for preliminary testing (similarly to pulling over at a

⁵⁷ Hon P Batchelor MP, Second Reading Speech, Road Safety (Drug Driving) Bill 2003 (Vic), p 1419.

⁵⁸ Road Safety (Drugs) Act 2006 (Vic), s 3 amending definition section (s 3) in the *Road Safety Act 1986*; Hon P Batchelor MP, Second Reading Speech, Road Safety (Drugs) Bill 2006 (Vic), Legislative Assembly, 1 March 2006, *VicHansard*, pp 389-390, p 390.

⁵⁹ Vanessa Burrow, 'Police roadside agony awaits the ecstasy driver', *Age Online*, 30 August 2006.

⁶⁰ Hon P Batchelor MP, Second Reading Speech, Road Safety (Drug Driving) Bill 2003 (Vic), p 1419.

⁶¹ See also the presumption created under s 48.

⁶² Victorian Government, 'Arrive Alive' Campaign. Also set out in V Tumini, 'Road Safety (Drugs) Bill 2006', *D-Brief No.1 2006*, Parliament of Victoria, Library Research Service, p 4, citing a Ministerial Media Release.

RBT station for alcohol). Drivers provide a saliva sample by placing an absorbent collector in their mouth, touching it on their tongue. The sample is then screened at the roadside and the result is produced in around five minutes;

- drivers returning a negative result will be allowed to go on their way. If the fluid sample tests positive to a prescribed illicit drug, the driver can be required to accompany police to a drug bus and required to provide further saliva samples, taking around 10 minutes (unless more than 3 hours have passed since the person last drove or was in or was in charge of a vehicle). A special procedure is specified in the Regulations for the taking of, and the device used for the taking of, the second sample of oral fluid. The person is provided with part of the sample of the fluid for independent testing while the other is tested in the bus;
- blood samples may also be taken (only by a medical practitioner or approved health professional) in certain situations, such as where the driver is unable to provide the oral fluid sample due to a medical problem or physical condition or the prescribed device is unable to test it. The driver is also entitled to request that a blood test be undertaken;
- where a positive result is returned on the second saliva sample, the driver will be interviewed according to normal police procedure and the sample sent off for laboratory analysis;
- once the above procedure has been completed, the driver is allowed to leave but not to drive their vehicle. At this stage no infringement notice is issued or charge laid. If the laboratory test result is positive and confirms the presence of an illicit drug, the driver is then charged. A first offence incurs a \$322 fine⁶³ and three demerit points are issued. If contested in court, the driver faces a \$644.70 fine and, if convicted, up to three months' licence cancellation and must undergo a drug education and assessment course before being eligible to have the licence reinstated. Refusing to provide a sample may make a driver liable to a \$644.70 fine and up to three months licence cancellation if a conviction is recorded. Subsequent offences incur harsher penalties in both cases.

The prescribed oral fluid testing device for the preliminary roadside test in Victoria is Securetec Drugwipe Twin or Securetec Drugwipe II Twin. The prescribed devices used in the follow-up screening (if the initial test gives a positive result) are the Securetec Drugwipe II Twin Combo and the Cozart RapiScan.⁶⁴ These

⁶³ The fines stated are as at January 2007. See the [Sentencing Act 1991 \(Vic\)](#) s 110(2) ('penalty unit' for 2006-2007 FY is \$107.43 – indexed for each financial year).

⁶⁴ [Road Safety \(General\) Regulations 1999 \(Vic\)](#).

devices are used in drug testing in other jurisdictions such as New South Wales and South Australia.

Pursuant to s 57B of the *Road Safety Act*, oral fluid samples can be admitted into evidence in certain specified categories of legal proceedings (driving offences) but not in others. Section 58B specifically prohibits the inclusion of information derived from analyses of samples on a DNA database.

The trial suffered a teething problem in its first year when two drivers tested positive for cannabis in both the roadside and the subsequent tests but further laboratory analyses returned negative results. The first driver instituted legal proceedings against the State Government, particularly as his initial positive results were given some media publicity.⁶⁵ Scientific advice has assisted police in adjusting the technology – during which period testing was put on hold. Since that time, it has been reported that over 95% of positive roadside tests have been confirmed by laboratory analysis.⁶⁶ A VicRoads spokesman said that while the rate of false positives could never be zero during the screening process, the laboratory tests were 100% accurate.⁶⁷ Charges are not laid until the laboratory analysis has returned a positive result.

The testing of 21,170 drivers between 13 December 2004 and 22 August 2006 revealed that 436 drivers tested positive to a prescribed illicit drug (equating to 1 in every 49 drivers). Laboratory tests found that 300 drivers tested positive to speed and 34 to cannabis, while 102 tested positive to both drugs. There were 5 recidivist offenders and 16 drivers who refused to be tested.⁶⁸

When introducing permanency for roadside drug testing in March 2006, the Minister for Transport stated that the testing operations had been very successful and had revealed a much higher level of illicit drug use than had been realised. The Minister commented that illicit drug use is more than four times as prevalent as the incidence of an illegal concentration of alcohol in drivers tested under the RBT program.⁶⁹ He also noted that there was a high level of accuracy of test results and that an evaluation by the Monash University Accident Research Centre

⁶⁵ Selma Milovanovic, 'Cleared drug test driver sues state', *Age Online*, 1 June 2005.

⁶⁶ Jason Dowling, 'One in 100 drivers found taking drugs', *Age Online*, 30 January 2005.

⁶⁷ Selma Milovanovic & Andrea Petrie, 'Driver tests for drugs will continue', *Age Online*, 23 December 2004.

⁶⁸ Victoria Police, 'Police to test drivers for ecstasy from Friday', *Media Release*, 29 August 2006.

⁶⁹ Hon P Batchelor MP, Second Reading Speech, Road Safety (Drugs) Bill 2006 (Vic), Legislative Assembly, p 389.

had found no evidence of any adverse effect of the trials upon the RBT alcohol program.⁷⁰ It has been reported that the Government has provided \$14.1 million to the drug driving program.⁷¹

6.2 NEW SOUTH WALES

Until recently, the legislation in NSW enabling police to test drivers for drugs applied only where there was a reasonable belief that a motorist may be under the influence of an illicit drug. However, if there was no evidence of impairment, these powers did not operate.

The findings of a Government commissioned report in 2003 indicate that 43% of a sample of NSW drug users admitted to driving while affected by drugs. Moreover, less than three in 10 of the drug drivers thought it was likely that police could detect them for drug driving.⁷²

On 15 December 2006, amendments to the [*Road Transport \(Safety and Traffic Management\) Act 1999*](#) (the Act) came into effect to give NSW Police new powers to detect drug driving and to create new drug driving offences, both of which are similar to powers and offences relating to drink driving.⁷³ The laws allow the conduct of random roadside saliva tests on drivers, persons attempting to drive, or persons supervising learner drivers without there first having to be any reasonable suspicion of drug impairment.

Similarly to the laws in Victoria, new ss 18A-18H of the Act allow police to randomly test drivers for the presence of speed, ecstasy and cannabis (or THC, the active ingredient in cannabis). As is the case in Victoria, the presence of the drug in any amount is sufficient to constitute an illegal concentration. The conduct of the initial saliva sample test and, if the driver tests positive, the second screening test in the police support vehicle at the scene is similar to the Victorian screening

⁷⁰ Hon P Batchelor MP, Victorian Minister for Transport, Second Reading Speech, Road Safety (Drugs) Bill 2006, Legislative Assembly, 1 March 2006, *VicHansard*, pp 389-390, p 390.

⁷¹ Vanessa Burrow.

⁷² Mr M Brown MP, Parliamentary Secretary (on behalf of Hon D Campbell MP), Second Reading Speech, Road Transport Legislation Amendment (Drug Testing) Bill 2006 (NSW), *NSW Legislative Assembly Hansard*, 19 September 2006, p 70.

⁷³ The Act also enables compulsory drug testing of drivers, riders, and supervising licence holders who have been involved in a fatal collision. Police will be able to require such persons to be taken to a hospital for the purpose of having a blood sample taken and analysed. It was proposed that a review of the legislation would be conducted after 12 months of operation.

process. This includes removing the person to a hospital for the taking of a blood sample in certain situations.

Under s 11B, it is an offence to drive, or attempt to drive, a motor vehicle or to sit next to a learner driver with any presence of any of the above illicit drugs in the driver's oral fluid, blood or urine.

A new offence is also created (s 11B(3)) for driving, attempting to drive, or sitting next to a learner driver while there is present in the driver's blood or urine any morphine or cocaine. It is a defence if the person can show that the presence of the morphine was due to consumption of a substance for medicinal purposes: s 11B(5), (6). However, the foregoing drugs will not form part of the random roadside testing process which applies only to prescribed illicit drugs.

A new s 33A provides that in proceedings for an offence under s 11B, the presence of the prescribed illicit drug in a person's oral fluid is taken to show the presence of the drug at the occurrence of drug driving etc. if the sample analysed was provided within 2 hours after the event. However, it is open for the defendant to prove the drug was absent at the time of the event.⁷⁴

The penalties imposed are the same as for drink driving: ss 11B, 18B, 18D. Contravention of the drug driving provisions incurs a current maximum \$1,100 fine for a first offence and loss of licence for up to six months (increasing with subsequent offences). Failure or refusal to undergo an oral fluid test will incur a fine of up to \$1,100 (unless the driver has a defence based on medical grounds) and failure to undertake the second screening test will attract a maximum fine of \$3,300 for a first offence and, for further offences, a fine of up to \$5,500 and/or imprisonment for 18 months.

The oral fluid drug screening devices selected for roadside testing are the same as those used in Victoria and in South Australia.⁷⁵ It is intended that the drug testing operations will be funded out of the NSW Department of Health drug budget and by increasing driver licence fees by \$2.00.⁷⁶

Section 18H makes it unlawful to include information derived from analysis of oral fluid samples or blood samples on DNA databases or to analyse it for any other purpose than determining if a prescribed illicit drug is present.

⁷⁴ See also s 33B re admissibility of police officer's and analyst's certificate evidence about oral fluid collection and analysis in proceedings for offences; s 33C re evidence about presence of an illicit drug, morphine or cocaine in blood or urine provided taken within 4 hours after event.

⁷⁵ Mr M Brown MP, Second Reading Speech, p 70.

⁷⁶ Mr M Brown MP, Second Reading Speech, p 70.

6.3 SOUTH AUSTRALIA

In December 2005, the South Australian Parliament passed legislation to allow for random roadside drug testing of drivers from 1 July 2006. This move followed close monitoring of the Victorian regime and the publication of statistics that indicated that from 2000 to 2004, 23% of drivers and motor cycle riders killed in collisions tested positive to THC and/or methamphetamine.⁷⁷ The [Road Traffic Act 1961 \(SA\)](#) contains a new Part 3 Division 5 which complements pre-existing drink driving and drug driving laws.⁷⁸ Penalties for drug driving include demerit points, fines of up to \$900 for a first offence (more for further offences), and disqualification from driving for two or more offences.

The procedures for undertaking the initial and second screening test and analysis are similar to those under the Victorian and NSW legislation. Evidentiary provisions relating to drug screening tests, oral fluid analyses or blood tests are covered by s 47K, including a provision that if the prosecution can prove that a prescribed drug was present in the blood or oral fluid at the time the sample was taken, it is conclusively presumed that the prescribed drug was present in the fluid or blood throughout the period of 3 hours immediately preceding the taking of the sample.

Samples of oral fluid or blood have to be destroyed after certain time periods and the samples must not be used for other purposes not contemplated by the drug screening laws, for example, inclusion on the DNA database: see Sch 1.

6.4 TASMANIA

The *Road Safety (Alcohol and Drugs) Amendment Act 2005* (Tas) amended the [Road Safety \(Alcohol and Drugs\) Act 1970 \(Tas\)](#), with effect from 1 July 2005. Sections 7B and 7C provide for random roadside drug testing for prescribed illicit drugs. A 'prescribed illicit drug' seems quite broadly defined in s 15A of the [Road Safety \(Alcohol and Drugs\) Regulations 1999](#) and includes drugs such as cocaine, THC, heroin, speed and ecstasy. However, if the drug was taken in accordance with the *Poisons Act 1971*, no drug driving offence is committed: s 6A(2). The initial oral fluid test can be followed up by a blood test if the oral fluid tests positive to a prescribed illicit drug or if the police officer reasonably believes that a

⁷⁷ Hon P F Conlon MP, Minister for Transport, Second Reading Speech, Road Traffic (Drug Driving) Amendment Bill 2005 (SA), *South Australian House of Assembly Hansard*, 14 September 2005, http://www2.parliament.sa.gov.au/hansard_data/2005/ha/wh140905.ha.htm.

⁷⁸ Similarly to Victoria and NSW, the legislation is due for review after 12 months of the operation of the random drug testing laws.

prescribed illicit drug may be present in the driver's blood. In any proceedings for a drug driving offence, if it is shown that a prescribed illicit drug was present in the blood of the driver at any time within 4 hours after last driving the vehicle, the drug is taken to have been present in the person's blood at that time, unless the contrary is proved.

The penalty for drug driving is a fine of up to \$200 and disqualification from driving for up to 3 months: s 6A.⁷⁹ The laws are to be reviewed after three years of operation.

6.5 WESTERN AUSTRALIA

In October 2006, the [Road Traffic Amendment \(Drugs\) Bill 2006 \(WA\)](#) was introduced into the Western Australian Parliament to insert drug driving provisions into the *Road Traffic Act 1974 (WA)* (amendments to ss 64AC, new ss 66C-66F, 69B). It has yet to be passed. The [Explanatory Memorandum](#) for the Bill explains that the laws are based on the report of an expert working group that was established in 2003 to review drug driving in Western Australia.

The Bill introduces random roadside drug testing in Western Australia. The proposed new laws will stand apart from those provisions focussed on prosecuting drivers who are observed to be impaired by drugs. Random drug testing will be integrated with the current RBT operations so that the driver will first undergo a breath test for alcohol concentration and then be asked to provide an oral fluid sample.

As in other jurisdictions, if the first sample tests positive to the prescribed drugs, the driver will have to undergo a second screening and provide another oral fluid sample in accordance with directions from an authorised drug tester (or a blood sample in some circumstances).⁸⁰ It will be an offence to drug drive and if it is proved that the driver had a drug in his or her body within 4 hours of the alleged drug driving, the driver is deemed to have had the drug in his or her body at the time of the alleged offence, unless the contrary is proved: new s 64AC. The penalties for drug driving or failing to provide an oral fluid sample will match those currently applying to driving with more than a .05 BAC and the penalties increase for subsequent offences.

The Bill contains amendments seeking to facilitate proof of the core offence of drug impaired driving: proposed new ss 66A-66F.

⁷⁹ [Penalty Units and Other Penalties Act 1987 \(Tas\)](#), s 4. Penalty unit = \$100.

⁸⁰ A proposed new s 71A will prohibit the use of fluid samples as the basis of a DNA test.

7 QUEENSLAND

Traditionally in Queensland, police officers have relied on behavioural tests supported by some form of chemical testing to assess driver impairment by drugs.⁸¹

The current relevant legislation relating to drug driving is the [Transport Operations \(Road Use Management\) Act 1995 \(Qld\)](#) (TORUM). Sections 79, 79A and 80 create offences, outline police powers and provide for related matters.⁸²

Under s 79(1) of TORUM, any person who drives whilst under the influence of liquor or a drug is guilty of an offence and liable (for a first offence) to a penalty of up to \$2,100⁸³ or imprisonment for up to nine months. Further subsections of s 79 prescribe certain maximum penalty units that are dependent upon the commission of the same previous offence or other motor vehicle offence or dangerous operation of a vehicle offence. Offences are also created for persons under 25 holding learners' permits or provisional licences who exceed the 'no alcohol limit'.

Section 80 specifies when breath tests and laboratory tests can be carried out to detect drugs and alcohol in motorists. Currently, s 80(2) enables the conduct of RBTs for alcohol merely on the basis of a police officer believing that a person is driving, or is in charge of, a motor vehicle. There is no need for the officer to first have a reasonable suspicion of driver impairment by alcohol as is presently the situation for drug driving.

If a police officer reasonably suspects that a motorist's driving ability has been impaired by drugs or alcohol because of external signs exhibited by the person, the officer may require the motorist to undergo a breath test. If the breath test result is negative or below the BAC limit but does not explain the driver's external signs of impairment, the police officer can detain the driver to undergo a further test or blood test or to provide a specimen of urine to identify the type and level of drugs in the driver's body. The results are analysed at a laboratory by a medical officer who, with the police officer's evidence of behavioural impairment, forms an opinion about the level of impairment. The test result and the evidence of the police officer who formed the initial assessment about the driver's impairment will be used to support a charge against the motorist.

⁸¹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 28.

⁸² Section 60 of the *Police Powers and Responsibilities Act 2000 (Qld)* provides power for a police officer to intercept a driver to conduct a breath test under s 80 of TORUM.

⁸³ See [Penalties and Sentences Act 1992 \(Qld\)](#), s 5. Penalty unit = \$75.

Queensland Transport began a public education campaign on drug driving in 1999. It was targeted at two categories of drivers: those who use recreational drugs and those who drive after taking prescription and other medications.

In July 2004, Queensland Transport embarked on a review of the impaired driving provisions of TORUM, given its current complexity and the fact that improved technology may provide more effective ways of managing impaired offenders.⁸⁴

7.1 PARLIAMENTARY TRAVELSAFE COMMITTEE REPORT

In November 1999 the Queensland Parliamentary Travelsafe Committee tabled the [*Drug Driving in Queensland Report*](#). The Report was in response to the Terms of Reference to inquire into the nature and extent of the road safety problem caused by drug driving in Queensland; the adequacy of existing measures to deal with the issue; and what additional measures should be taken.⁸⁵ The inquiry covered a broad range of ‘drugs’ – this term was taken to include any substance or article, apart from alcohol, that is capable of causing impairment.⁸⁶

At the time of reporting (1999), the Committee noted (from Australian studies considered by it)⁸⁷ that ‘drugs other than alcohol’ were detected in a greater proportion of road fatalities in Queensland than in other jurisdictions. Cannabis was found to be the most frequently detected drug in all jurisdictions and made up 18% of the Queensland fatalities.⁸⁸

The Committee considered that police had not, until the late 1990s, been trained to identify driver behaviour associated with being affected by drugs. Training had tended to focus on assessing alcohol impairment. In addition, police had become more reliant on technology (such as RBT devices for alcohol) and had lost the

⁸⁴ Queensland Transport Submission to the Parliamentary Travelsafe Committee, ‘Inquiry into Vehicle Impoundment for Drink Drivers’, *Issues Paper No 10*, p 8.

⁸⁵ Travelsafe Committee, *Drug Driving in Queensland Issues Paper No 3*.

⁸⁶ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 3. ‘Drug’ includes prescription medication, over-the-counter medications, illegal drugs and inhalants such as petrol, paint, butane gas and dry cleaning fluid.

⁸⁷ Including the 1998 research by a Masters student, LM Hadley, *A Survey of Queensland Road Fatalities from July 1996-June 1997 for Drugs and Alcohol*, Faculty of Science, Griffith University, 1998.

⁸⁸ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 8-9, citing a submission by the Queensland Department of Transport and Main Roads, p 157.

skills to recognise signs of impairment based on behaviour.⁸⁹ Thus, if the RBT showed a negative result, a driver might be impaired but could be allowed to go on their way if the police officer lacked the skill and knowledge to detect drug impairment that triggers the power to detain the driver for further evidential testing.

At the time the Committee reported (1999), there was no quick and reliable method of roadside chemical tests for drugs and the technology then available was expensive and its sensitivity open to question.⁹⁰ On that basis, the Committee believed that drug driving legislation and enforcement practices and procedures should be based on driver impairment, not the mere presence of a drug.⁹¹ Accordingly, police needed to be trained to have the skills and knowledge to identify and assess driver impairment.⁹² Given that, at the time of reporting, NSW had in place a successful system for roadside impairment observations, it was recommended that a similar system of guidelines for roadside impairment assessments should be trialled in Queensland before more expensive and complex options were considered.⁹³

7.2 DRUG TEST TRIAL

In 2004, the Queensland University of Technology's Centre for Accident Research and Road Safety conducted a drug driving trial in Townsville. Of the 752 drivers tested, it was found that 27 of the subjects had tested positive to drug driving.⁹⁴ Further parts of the trial are continuing in Brisbane and the Gold Coast.

7.3 TRANSPORT LEGISLATION AND ANOTHER ACT AMENDMENT BILL 2006

According to the Minister for Transport, the Hon Paul Lucas MP, Queensland should have "*the best possible mechanisms in place ... [to allow] the widest testing of*

⁸⁹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, pp 46-47.

⁹⁰ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 47.

⁹¹ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 53.

⁹² Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 47.

⁹³ Travelsafe Committee, *Drug Driving in Queensland Report No 29*, p 53.

⁹⁴ Hon PT Lucas MP, Minister for Transport and Main Roads, Second Reading Speech, Transport Legislation and Another Act Amendment Bill 2006 (Qld), *Queensland Parliamentary Debates*, 29 November 2006, pp 727-730, p 728.

illegal drug driving in Australia.” Mr Lucas pointed out that it was crucial to ensure the technology works before introducing it.⁹⁵

The [Transport Legislation and Another Act Amendment Bill 2006 \(Qld\)](#) (the Bill) amends TORUM to enable the introduction of random roadside drug testing of drivers.

In addition, **Part 3** of the Bill will amend the [Police Powers and Responsibilities Act 2000 \(Qld\)](#) (*PPR Act*) to allow a police officer to stop a motor vehicle under **s 60** for the purpose of conducting a saliva test to ascertain the presence of a relevant drug (under amendments to s 80 of TORUM, explained below).

Clause 55 of the Bill makes a number of amendments to s 79 of TORUM. First, it inserts a **proposed new s 79(2AA)** to make it an offence for a person to drive while a relevant drug is present in the person’s blood or saliva, irrespective of the concentration. A ‘relevant drug’ will be prescribed by Regulation and it is envisaged that it will prescribe THC (cannabis); methylamphetamine (speed); and MDMA (ecstasy).⁹⁶ The drug testing devices will only detect the active ingredient of the drugs when they are active as an impairing influence and will not detect drugs taken days or weeks earlier.⁹⁷

The applicable penalty is a fine not exceeding \$1,050 or imprisonment for up to 3 months. A person convicted of drug driving will be disqualified from driving for a certain time (the periods of disqualification dependent upon previous convictions). The court determines the disqualification period having regard to the presence of the relevant drug in the person’s system and the real or potential danger to the public in the circumstances of the case.⁹⁸

Secondly, **cl 55** inserts a **proposed new s 79(5)** into TORUM, which is similar to the existing s 79(4) that applies to driving under the influence of alcohol. It will provide that if the court hearing a drug driving charge is satisfied about all of the elements of the offence other than the element of the defendant’s being under the influence of liquor or a drug at the material time and that, at the material time, there

⁹⁵ ‘Qld prepares nation’s toughest drug driving tests’, *ABC News Online*, 17 September 2006.

⁹⁶ Hon PT Lucas MP, Second Reading Speech, p 728.

⁹⁷ Hon PT Lucas MP, Second Reading Speech, p 728.

⁹⁸ **Section 86** as amended by **cl 59**. Note also **cl 60** inserts a new s 87(5) to ensure that a restricted licence is not to be available to a person convicted of a drug driving offence if the person is one to whom the ‘no alcohol limit’ in s 79(2A), (2B), (2D), or (2J) would apply.

was a relevant drug in the defendant's blood or saliva, the court must convict the defendant.⁹⁹

Clause 56 proposes to amend **s 79B(1)** of TORUM so that if a person is charged under s 80(11) with failing to provide a breath or saliva for analysis or blood specimen for laboratory testing, his or her licence is immediately suspended and he or she is disqualified from holding a licence. Such immediate suspension or disqualification will also occur if a person has been charged with a drug driving offence and an earlier charge – as specified – is still pending.¹⁰⁰

Clause 57 seeks to amend **s 80** of TORUM to deal with drug driving tests and analysis, including the insertion of relevant definitions (s 80(1)). Section 80 currently sets out the process for detecting alcohol concentration in drivers' blood or breath. Many of the changes to s 80 sought to be made by the Bill regarding the detection of drugs in a driver's saliva or blood will complement the existing provisions for detecting the concentration of alcohol in a driver's system. Several of the new provisions for saliva tests and analysis mirror the current provisions for breath tests and analysis in relation to alcohol, so only some aspects of the drug testing process will be considered below.

The [Explanatory Notes](#) for the Bill state that it is envisaged that when a saliva test is administered to test for the presence of a relevant drug (using a device that is approved by Regulation) in a person's saliva, the saliva specimen will be divided into parts and placed in separate containers. One part will be used in a saliva analysing instrument (again approved by Regulation) to detect whether a relevant drug is present in that part of the specimen. If the saliva analysis indicates the presence of a relevant drug, then another part of the specimen will be analysed in a laboratory test approved by Regulation.¹⁰¹

In his Second Reading Speech on the Bill, the Minister for Transport said that the process will involve screening drivers at the roadside (as with RBTs for alcohol), taking between three and five minutes to administer. If the test returns a positive result indicating the active ingredient of a relevant drug is present, the driver will undergo a second test which will take around five minutes to administer. In both

⁹⁹ An amendment to s 79(6) provides that a court must not convict the defendant in certain circumstances – mainly where the defendant evinces an intention to refrain from driving while under the influence of a drug or while a relevant drug was present in the defendant's blood or saliva.

¹⁰⁰ A person can have his or her licence suspended for 24 hours under s 80(22AA) in circumstances outlined in s 80(22), as amended by cl 57(74)-(80) such as where a saliva analysis indicates the presence of a relevant drug in the person's saliva or there is a failure to provide a saliva specimen for analysis when required.

¹⁰¹ Transport Legislation and Another Act Amendment Bill 2006 (Qld), *Explanatory Notes*, p 29.

cases, the time taken may vary according to how long it takes a person to provide a sufficient amount of saliva to enable the test to be conducted. If the test result is positive, a laboratory analysis must confirm the presence of an active relevant drug before the person can be charged.¹⁰²

Proposed new s 80(2AA) will enable roadside drug tests to be conducted without a requirement for prior evidence of impairment. It will allow a police officer to require any person found by the officer, or who the officer suspects on reasonable grounds was, during the preceding 3 hours, driving or in charge of a motor vehicle to provide a specimen of saliva for a saliva test. While this is similar to the existing provision regarding alcohol breath tests, a longer time limit (3 hours rather than 2 hours) is provided.¹⁰³ It will be an offence under s 80(5A), as amended, for a person to fail to provide a specimen of saliva for initial testing, unless there are medical reasons for such failure, or the request was not lawfully made, or other reasons as set out in s 80(5B) apply. The penalty is a fine of up to \$3000 or up to six months imprisonment.

If it appears to a police officer in consequence of a saliva test that a relevant drug is present in the person's saliva, or the person fails to produce a specimen for testing, the police officer may take the person to a police station or a vehicle where there are instruments for analysing saliva and detain the person as necessary.¹⁰⁴ The officer may also require a second specimen of saliva for a saliva analysis and/or a specimen of blood for a laboratory test.¹⁰⁵ A **proposed new s 80(8FA)** sets out how a person must provide a saliva specimen for analysis by a saliva analysing instrument.

If a person has been detained or taken to another place for saliva analysis and the police officer believes on reasonable grounds that the person has exhibited external signs of being affected by a drug but the saliva analysing instrument indicates that

¹⁰² Hon PT Lucas MP, Second Reading Speech, p 728.

¹⁰³ See **cl 57(5)**. Amendments are also made to s 80(2A) to ensure that where the vehicle etc. is involved in an accident causing injury or death or property damage, drivers can be required to provide a saliva specimen; and to s 80(2B) and (2C) so that if a person is taken to not have provided the specimen or some other reason prevents the taking of the saliva, the person may be asked to provide a number of specimens of saliva. Changes are proposed to be made to s 80(3) regarding where the specimen may be obtained and relevant time limits (3 hours for saliva tests and 2 hours for breath tests).

¹⁰⁴ See amendments to s 80(6) and (8) by **cl 57(21)** to **(24)**.

¹⁰⁵ See also replacements to s 80(8C) regarding police officers requiring specimens if a person is at a hospital for treatment and the limitations on this power by amended s 80(D). See also s 80(10)-(10G), as amended by **cl 57(44)-(46)** regarding persons who are unconscious or otherwise unable to consent to taking of a blood specimen.

there was no relevant drug in the person's saliva, the person can be required to provide a blood specimen to a doctor or nurse or qualified assistant and, subject to the direction of a doctor or nurse, a urine specimen: **s 80(9)**, as amended by **cl 57(42), (43)**.

If a person must provide a specimen of saliva or blood under s 80(8), (8C) or (9), they can request the health care professional or police officer to give them a specimen as well: **s 80(20)**, as amended by **cl 57(71)-(72)**.

Failure to provide a specimen of saliva for analysis or blood for laboratory testing when a requisition is made to do so is deemed to be an offence against s 79(1) and the person liable to all of the same sanctions as if the person committed an offence under that provision: **s 80(11)**, as amended by **cl 57(47)**.

Proposed new s 80(15AB) establishes the process for recording the results of the saliva analysis and the provision of relevant notices to the police officer and the driver while **proposed new s 80(15AC)** sets out what information must be given to the driver.¹⁰⁶

Section 80(15F)-(19), as amended, concern delivering specimens to a laboratory where the prior analysis has indicated the presence of a relevant drug in the saliva of the person. The provisions, as amended, deal also with evidentiary matters, particularly in relation to analysts' certificates regarding the presence of a relevant drug or metabolite of a stated relevant drug in a person's blood or saliva. It is also provided that evidence by an analyst or by a certificate that a stated relevant drug is indicated in the blood or saliva of a person by a laboratory test is conclusive evidence of the presence of the stated relevant drug in the person's blood or saliva

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- at the time when the person provided the specimen; and
- at a material time in any proceedings if the specimen was provided not more than 3 hours after the material time, and
- at all material times in between.

The defendant may negative the evidence by proving that the result of the laboratory test was not a correct result. Amendments to s 80(24) will enable evidence of the presence of a relevant drug in the blood or saliva of a person to be admissible in the trial or summary hearing.¹⁰⁷

¹⁰⁶ **Clause 57(48)**.

¹⁰⁷ See **cl 57(84)**. Further amendments are made regarding challenges to evidence by the defendant dealt with in s 80(26), (28), and (29): see **cl 57(85), (86)**.

A **proposed new s 80AA** will be inserted into TORUM to set limits on the purposes for which saliva specimens provided for tests or analyses under s 80 may be used. Specimens must not be used for DNA analysis to help decide whether the person is a criminal suspect or to ascertain whether the person has transmitted a disease to a victim of a crime. If no relevant drug is detected in the specimen, it must be destroyed as soon as possible. If the presence of a relevant drug is detected, then the specimen must be destroyed as soon as possible after the results are no longer necessary for proceedings against the person, including an appeal about a conviction under TORUM or another Act: **cl 58**.

During 2006, media reports suggesting that the police may hold the results of analyses on the national DNA database raised some concerns, particularly among civil liberties groups. The national president of the Council of Civil Liberties, Mr Terry O’Gorman, reportedly stated that the Council supported roadside drug testing but was totally opposed to the swab tests being used on the DNA database. Mr O’Gorman believed that the saliva swab evidence should be deleted after being used for the testing purposes or any subsequent court challenge to a drug driving charge.¹⁰⁸

¹⁰⁸ Richard Finnila, ‘Driver DNA may be held – Fears over database of drug test results’, *Courier Mail*, 18 September 2006, p 5, referring to comments made by Terry O’Gorman.

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