



## NSW Legislative Council Hansard

### Road Transport Legislation Amendment (Drug Testing) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 18 October 2006.

#### Second Reading

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [5.21 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading incorporated in *Hansard*.

#### Leave granted.

The purpose of this bill is to provide New South Wales Police with new powers to detect drug drivers and create new drug driving offences. The bill introduces random roadside drug testing and provides for drug testing of any driver, rider or supervising licence holder involved in a fatal crash.

The bill amends the *Road Transport (Safety and Traffic Management) Act 1999* and other legislation to ensure that motorists who take drugs and drive can be detected and penalised just as those who drink drive.

The incidence of drug driving in New South Wales is alarming. A study on drug driving commissioned by the Roads and Traffic Authority in 2003 found that 43 per cent of a sample of drug users in New South Wales admitted to driving while affected by drugs. Less than 3 in 10 of these drug users thought it was likely that police could detect them for drug driving.

A 1999 report showed that 24 percent of drivers killed in New South Wales in the years 1997 and 1998 were found to have drugs in their system.

Random roadside drug testing is a road safety initiative designed to keep drug drivers off our roads.

The driving skills of motorists with active drugs in their system are affected. Drugs affect a driver's judgment, concentration, and ability to react quickly and appropriately. Stimulants like speed and ecstasy can also lead to aggressive driving and cause motorists to take risks they wouldn't normally take.

Drug driving and its resulting trauma cause grief and distress for not only the victims themselves but also to their families and friends. People who have active drugs present in their system should not be driving on our roads.

Existing New South Wales legislation allows Police to test for drugs in limited circumstances, where the police officer has a "reasonable belief" that a motorist may be under the influence of an illicit drug. This bill gives police the power to drug test drivers without prior evidence of impairment in two additional situations—randomly at the roadside or following a fatal crash.

Let me begin by discussing that part of the bill which allows random roadside drug testing.

Random roadside drug testing will be based on the successful model in place in New South Wales for random breath testing for alcohol. Following the introduction of random breath testing in New South Wales in 1982, the incidence of drink driving sharply declined, less people were killed on the roads and drink driving became socially unacceptable.

This bill aims to achieve similar outcomes for drug driving in New South Wales. I am confident that a reduction in road deaths and trauma will be achieved over time.

The bill allows police to randomly test drivers for the presence of three illicit drugs in oral fluid. These are speed, ecstasy and THC, the active ingredient in cannabis. These drugs are illegal, they are the most commonly used drugs in the community and they all affect the skills and sound judgment required for safe driving.

This bill will make New South Wales one of the first jurisdictions in the world to conduct random roadside drug testing. Victoria introduced random roadside drug testing for THC and speed in December 2004 and South Australia commenced in July this year.

In Victoria, Police have tested more than 21,000 drivers since random roadside drug testing began, with 436 drivers confirmed to be positive for drugs by the Victorian analytical laboratory. This represents 1 in 49 drivers testing positive for illegal drugs.

In Victoria, there was bipartisan support for the continuation and expansion of random roadside drug testing, which Parliament made permanent from July 2006. Victoria began testing for ecstasy from September and is increasing the penalties for driving with the presence of THC, speed or ecstasy. South Australia has also announced it will now test for ecstasy as well.

Recent advances in technology mean that police can now screen for certain drugs in saliva or oral fluid in a roadside environment. The Government undertook a rigorous Expression of Interest process for the selection of the most reliable oral fluid drug screening devices to be used at the roadside. Only devices which met the strict selection criteria were chosen for use in New South Wales. The devices chosen for use here are the same as those used in Victoria and South Australia.

The bill gives Police the authority to test anyone driving, attempting to drive, or supervising a learner licence holder.

Police will conduct the random roadside drug test through the window of the driver's car. The driver will be required to "lick" the test pad of the preliminary testing device. An indicative result will be known within a few minutes. Based on the experience in Victoria and South Australia, most drivers will test negative and will be able to drive away.

Any drivers who test positive to this preliminary test will be required to undergo a second screening test in the Police drug testing support vehicle at the scene. If this test is positive, the driver will be prohibited from driving for 24 hours by Police and the remaining oral fluid sample from this second test will be sent to the Government's analytical laboratory for confirmatory analysis.

Police can prosecute the driver for the new offence of driving with the presence of one or more of the three illicit drugs, if the result from the laboratory is positive. There will be no need for Police to prove that a person's driving was impaired. It need only be proved that the drug was present in the person's sample. This sends a clear message to motorists that driving with any amount of these illegal drugs in the body is not tolerated in New South Wales.

The bill also creates offences for failure to cooperate in tests and refusal to submit to tests. These are similar to the offences that already exist in relation to the drink driving scheme.

A person who is physically unable to produce an oral fluid sample as directed by Police, for example because of medical inability, may be taken to hospital by Police to have a blood sample taken by medical professionals. The blood sample will be analysed at the Government's laboratory for the presence of THC, ecstasy and speed. A person who has a blood sample taken in lieu of an oral fluid sample will be subject to the same penalties.

The primary focus of Police operations will be heavy vehicle drivers and locations where police intelligence indicates there may be drug use. A purpose built New South Wales Police drug testing support vehicle will initially be used to conduct random testing across the state. The introduction of the drug testing bus is the first step in a planned rollout of random drug testing.

Let me now turn to the second major part of the bill which enables compulsory drug testing of drivers, riders, and supervising licence holders following fatal traffic crashes.

A fatal road crash is a very serious matter and often involves dangerous or illegal actions by one or more of the drivers involved. If drivers involved in fatal crashes have alcohol or drugs in their system when they crash, police should be able to gather that evidence and present it for consideration by a court when determining the driver's culpability for the crash.

The bill permits Police to require any driver, rider or supervising licence holder involved in a fatal traffic crash to be taken to hospital for the purpose of having a blood sample taken and tested for drugs. The blood sample will automatically be tested for drugs whether the person is injured or not. Police will not need to form any sort of 'reasonable belief' that the driver is under the influence of drugs, before proceeding with a blood test for drugs. The bill gives Police a period of four hours from the time of the crash to obtain these samples.

The analytical laboratory will analyse the sample for alcohol and a wide range of legal and illegal drugs known to impair driving. Based on the results of the drug analysis the driver may be charged with driving under the influence of drugs. The penalty for this offence is a maximum fine of \$2,200, at least 6 months licence disqualification, and gaol for a maximum of nine months. If a driver is charged with driving under the influence of drugs, the evidence can be used to support a further charge of dangerous driving occasioning death.

The bill also creates the new offence of driving with the presence of cocaine or morphine (if identified as resulting from heroin administration) in blood or urine. The penalty for this offence is a maximum fine of \$1,100, and three to six months licence disqualification. This offence is consistent with the other aspects of this bill

which take a clear zero tolerance approach to drug driving. This additional drug presence offence can be used to detect and prosecute drivers who have been blood tested and found to have one of these other two illicit substances in their system when driving.

During the consultation process on this important Bill, consideration was given to minimising the impact of the additional blood sampling after fatal crashes on hospital emergency departments. I must emphasise that the number of extra blood samples to be taken at any one hospital will be minimal. To ensure this is the case, the bill will allow *prescribed sample takers* to take blood samples from uninjured arrested drivers. The Government will contract private pathology service providers to come to hospitals and take samples.

The Government will pay for the new drug testing arrangements by using funding from the New South Wales Health Drug Budget 2 and by increasing driver licence fees by two dollars. This is a small price to pay to remove drug drivers from our roads.

The Government will conduct a review of the legislation after 12 months, to ensure the legislation is achieving its objectives and that these objectives remain valid. A report on the review will be tabled in both Houses of Parliament.

Drug drivers are a threat to everyone using New South Wales roads and these tough new powers are about removing this threat from New South Wales roads. The new laws will allow the lemma Government to be as tough on drug drivers as it is on drink drivers.

The bill is consistent with the lemma Government's commitment to law and order and to ensuring that New South Wales roads are safe for all road users.

I commend the bill to the House.