

OC220449

23 June 2022

Josiah Spackman
Skyman Industries
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Tēnā koe Josiah,

I refer to your email of 27 May 2022 to the Minister of Health, requesting information under the Official Information Act 1982 (the Act).

Parts 5 and 9 of your request were transferred to Te Manatū Waka Ministry of Transport (the Ministry) on 30 May 2022, under section 14(b)(ii) of the Act. These were:

“[...] 5. The Independent Expert Panel on Drug Driving (April '21) report notes that only Sativex and Tilray products were available containing THC at the time of writing the report. Since the report was released, half a dozen further products (from tea leaves to dried flower for vaping) have met the NZ Minimum Quality Standards under the under the Misuse of Drugs (Medicinal Cannabis) Regulations 2019, and are available for patients. What feedback has the Minister of Health provided to the Minister of Transport, as part of the upcoming Land Transport (Drug Driving) Amendment Bill 2020, to ensure that patients consuming these products will not be unjustly criminalized / fined under the upcoming legislative amendments?”

“[...] 9. Has the Minister been briefed on any alternative methods / means for testing inebriation / impaired driving, aside from the aforementioned blood / oral swabs? If so, please describe these.”

Feedback on the Land Transport (Drug Driving) Amendment Bill 2020

I am refusing part 5 of your request under section 18(e) of the Act, that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found. Neither the Ministry nor the Minister of Transport holds the information you have requested. We have also confirmed that the Ministry of Health does not hold this information.

The Land Transport (Drug Driving) Bill was passed into law in March 2022, with the new regime coming into effect 12 months later. As you may know, there will be two medical defence pathways available for drivers with prescription medications under the new regime, one as a result of a failed blood test and one as a result of a failed oral fluid test.

For a failed blood test, the medical defence will apply if:

- the driver has consumed the drug in accordance with a current and valid prescription and they have complied with any instructions from a health practitioner or drug manufacturer, including advice on whether they are allowed to drive, or
- the drug was administered by a health practitioner and the driver complied with instructions from the health practitioner, including advice on whether they are allowed to drive after consuming the drug.

For a failed oral fluid test, the medical defence will apply if:

- the driver can produce evidence that have a current and valid prescription for the qualifying drug and they have complied with any instructions from a health practitioner or drug manufacturer, including advice on whether they are allowed to drive after consuming the prescribed drug, or
- the drug was administered by a health practitioner and the driver complied with instructions from the health practitioner, including advice on whether they are allowed to drive after consuming the drug.

To prepare for the new regime coming into effect, New Zealand Police is working with the Ministry, Waka Kotahi, Ministry of Health and other relevant agencies on implementation of the new roadside drug testing regime. This will include development of processes and guidance for how the medical defence pathways will work.

Alternative methods for testing impaired driving

I am refusing part 9 of your request under section 18(d) of the Act, that the information is publicly available.

You can find information on the options considered for an enhanced drug driver testing regime on the Ministry's website, at <https://www.transport.govt.nz/area-of-interest/safety/drug-driving-testing/>. This includes Cabinet papers on the final proposal, a regulatory impact assessment, and the discussion document published in May 2019 for public consultation.

The discussion document considers options for drug testing, including new technologies, as well as blood and urine testing. The document notes that new technologies such as blood spot analysis, fingerprints, pupillometry or breath testing may be viable options for screening drug use, but that these technologies are not sufficiently developed for use now. It also notes that blood and urine testing are invasive procedures to impose on drivers who may not have consumed any drugs and are considered impractical options for roadside screening. There are also significant privacy issues involved with urine testing.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'M. Skinner', with a stylized flourish at the end.

Matt Skinner
Acting Manager, Mobility and Safety