Towards a national approach to drug driving
Information paper
May 2018
# Report outline

<table>
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<th>Title</th>
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<tr>
<td>Type of report</td>
<td>Information paper</td>
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<td>Purpose</td>
<td>For consideration by the National Drug Driving Working Group</td>
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| Abstract | The aim of this information paper is to identify collective opportunities to optimise drug testing regimes and associated drug driving program activities, with a focus on improving cost-efficiency and deterrent effectiveness. The main objective is to provide nationally harmonised guidance to road authorities about:  
  - the key factors and strategies that promote optimal deterrence against drug driving  
  - legislative frameworks that can support operational efficiency of drug testing and enforcement procedures  
  - strategies to improve cost-efficiency of drug testing regimes  
  - new developments in detection and deterrence to identify potential future strategies. |
| Key words | Drug, drug driving, deterrence, drug testing, zero tolerance |
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Executive summary

Context

The National Road Safety Action Plan 2018–2020 supports the implementation of the National Road Safety Strategy 2011–2020 (Australian Transport Council, 2011) and details a range of priority national actions to be taken by governments over its final three years. The fourth priority area is to ‘Increase roadside drug testing significantly in all states and territories’.

The National Transport Commission (NTC) has developed recommendations to support a best-practice approach to roadside drug testing that recognises police operational and resourcing differences. We have also made recommendations related to developing a national approach to address drug driving in Australia more broadly.

This report will be considered by the National Drug Driving Working Group.

Issues

Australia’s current legislative frameworks and law enforcement programs are relatively mature. There is no evidence to suggest a viable alternative to the ‘zero tolerance’ position currently adopted by all states and territories in relation to illicit drugs.

While the NTC believes the zero tolerance approach should continue for the illicit drugs currently tested for, we also recommend a broader road safety ‘impairment’ approach be taken to address road safety risks caused by taking drugs (those illicit drugs tested for, other illicit drugs, prescription and over-the-counter medications) and potentially mixing those drugs with alcohol and even fatigue.

In 2016, around 3.1 million Australians reported using an illicit drug. The most common illicit drug was cannabis, followed by misuse of pharmaceuticals, cocaine and then ecstasy (Australian Institute of Health and Welfare, 2016).

Drug use affects (directly or indirectly) all Australian communities, families and individuals. Its impacts include health, social and economic harms and is also associated with social and health determinants such as discrimination, unemployment, homelessness, poverty and family breakdown (Department of Health, 2017).

Our recommendations are designed both to improve the current roadside drug testing practices and frameworks but also to facilitate development of a national, coordinated plan to address drug-impaired driving.

The NTC believes we need to refine the current testing and penalty framework for driving with ‘prescribed illicit drugs’ present in certain bodily fluids and reform the offence and penalties associated with driving under the influence of drugs.

In this paper, the term ‘prescribed illicit drugs’ is used to describe illicit drugs that are stipulated within state and territory drug driving regulations and tested for in roadside testing. At present, Australian roadside oral fluid testing targets three illicit drugs – tetrahydrocannabinol (THC), methamphetamine and methylenedioxymethamphetamine (MDMA). New South Wales will soon include cocaine.

Next steps

The NTC will submit this report to the National Drug Driving Working Group for consideration at its meeting on 11 May 2018. The working group members will discuss the report’s recommendations and determine which of the recommendations to include in its forward work program and which to refer to relevant agencies for action.
1 Context

Key points
- The National Road Safety Action Plan 2018–2020 supports the National Road Safety Strategy 2011–2020 and details a range of priority national actions to be taken by governments over its final three years.
- The fourth priority area is to ‘Increase roadside drug testing significantly in all states and territories’.
- The National Transport Commission is developing advice to refine the testing and penalty framework for driving with prescribed illicit drugs present in certain bodily fluids and reform the offence and penalties associated with driving under the influence of drugs.
- This will be considered by the National Drug Driving Working Group.

Drug use affects (directly or indirectly) all Australian communities, families and individuals. Its impacts can include health, social and economic harms and is also associated with social and health determinants such as discrimination, unemployment, homelessness, poverty and family breakdown (Department of Health, 2017).

In 2016, around 3.1 million Australians reported using an illicit drug. The most common illicit drug was cannabis (tetrahydrocannabinol (THC) is the active ingredient in cannabis), followed by misuse of pharmaceuticals, cocaine and then ecstasy (which may contain methylenedioxymethamphetamine or ‘MDMA’) (Australian Institute of Health and Welfare, 2016). Society is also changing; for example, all jurisdictions have now legalised medicinal cannabis under certain conditions, yet currently if a person is prescribed cannabis for medicinal purposes, it remains illegal to drive with any trace of cannabis in your system. In 2016 the proportion of road deaths from crashes involving drug-impaired drivers or motorcycle riders increased by 60 per cent since 2012 across five jurisdictions (Draft National Road Safety Action Plan 2018–2020). Therefore, it's imperative that we evaluate the effectiveness of the current drug driving regulatory framework to ensure it remains fit for purpose.

1.1 Objectives

The National Transport Commission (NTC) is preparing this report for consideration by the National Drug Driving Working Group to develop a best-practice approach to roadside drug testing, recognising police operational and resourcing differences. We are also making recommendations to facilitate development of a national, coordinated plan to address drug-impaired driving more generally.

1.2 Background

1.2.1 National Road Safety Strategy 2011–2020

The National Road Safety Strategy (NRSS) 2011–2020 (Australian Transport Council, 2011) represents the commitment of federal, state and territory governments to an agreed set of national goals, objectives and action priorities. It is guided by the vision that no person should be killed or seriously injured on Australia’s roads and has a key objective to reduce annual numbers of both deaths and serious injuries on Australian roads by at least 30 per cent.
The NRSS is overseen by the Transport and Infrastructure Council (‘the council’), which was established by the Council of Australian Governments (COAG). The council brings together Commonwealth, state, territory and New Zealand ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association.

1.2.2 National Road Safety Action Plan 2018–2020

The National Road Safety Action Plan 2018–2020 supports the implementation of the NRSS and details a range of priority national actions to be taken by governments over the final three years of the NRSS, from 2018 to 2020.

The action plan was developed cooperatively by Commonwealth, state and territory transport agencies and endorsed by the Transport and Infrastructure Council ministers during May 2018. The action plan supports the broader 10-year agenda of the NRSS by ensuring that national efforts in the final three years of the NRSS are focused on strategically important initiatives.

The NRSS and the supporting action plan reflect the commitment of the Australian Government and state and territory governments to an agreed set of road safety goals, objectives and action priorities.

In 2011, when the NRSS was developed, deaths from road crashes in Australia were occurring at the rate of 6.5 people per 100,000 population (based on the NRSS baseline of 1427). Good progress was made until early in 2015; however, there were increases in deaths in 2015 (1205) and 2016 (1293). There has been a slight decrease in fatalities in 2017 (provisional total 1225). This equates to a death rate (at the end of December 2017) of 5.0 deaths per 100,000 population, after previously falling to 4.8 deaths per 100,000 population in March 2015.

The increases in deaths in 2015 and 2016 highlight the difficulty we are facing to reach the 30 per cent reduction target for deaths. There is currently no nationally agreed measure or definition of serious injuries from road crashes, but available data suggests they have been increasing. As set out in the action plan, there are around 36,000 people hospitalised every year due to road crashes, causing ongoing pain and suffering, and an enormous economic loss to Australia.

The action plan contains eight priority actions that all jurisdictions have agreed must be completed to meet the targets for road trauma reduction contained in the NRSS.

The fourth priority area is to ‘Increase roadside drug testing significantly in all states and territories’. The key outcome this action is seeking to achieve is to reduce trauma from drug driving though increasing levels of roadside drug testing across Australia, with individual jurisdictions aiming for a 50–100 per cent increase where commensurate increases have not already been applied in recent years.

A national working group has been established to progress coordinated efforts to mitigate drug driving and will report to the Transport and Infrastructure Council in November 2018.

1.2.3 National Drug Driving Working Group

The council, with significant input from senior police, has identified drug-impaired driving as a priority area to address.

Australia has a longer history of testing of drivers for illicit drugs than any other country. Roadside drug testing is now well established, though it is still conducted at much lower levels than random breath testing for alcohol. In contrast to alcohol testing, the positive test rate for drugs has been increasing strongly in the past few years, showing the scope for further benefits to be achieved with much higher rates of testing. There are a number of issues to be
resolved, including the cost of drug testing and the time taken at the roadside (Draft National Road Safety Action Plan 2018–2020).

The Centre for Accident Research and Road Safety – Queensland (CARRS-Q) conducted a scoping study on drug-impaired driving and cost-effective approaches to roadside drug testing in 2017. After considering the research results, the council agreed to form the National Drug Driving Working Group to develop options to address the problem.

1.3 Method

The National Drug Driving Working Group has developed a work plan that includes the following key deliverable:

*Ongoing development of a best practice approach to roadside drug testing, recognising police operational and resourcing differences. This will include research into development of a national harmonised regulatory framework.*

Activities the group proposes under this deliverable include developing research proposals and building an understanding of the current regulatory frameworks across Australia.

The NTC has mapped the current jurisdictional processes using the roadside drug testing scoping study completed by CARRS-Q in June 2017, together with consultation with each state and territory police agency. This has helped us to identify:

- current drug testing policies and procedures in each state and territory
- views about the most effective and efficient approach to roadside drug testing
- what drugs they are currently testing for
- whether they believe there are additional drugs we should be testing for
- current cut-off levels in each jurisdiction.

We have provided an analysis at Appendix 1 of the current approaches across Australia and globally.

Some of our recommendations are designed to move towards a nationally harmonised, best-practice approach to roadside drug testing in Australia, based on the ‘zero tolerance’ approach to prescribed illicit drug presence adopted by all states and territories.

We have also made some further recommendations with respect to developing a nationally coordinated plan to address drug driving more generally.

We believe that the National Drug Driving Working Group should provide a report to the Transport and Infrastructure Council in November 2018 that addresses both:

1. the steps it has taken towards a best-practice approach for roadside drug testing for the presence of prescribed illicit substances
2. the steps it believes could be taken to develop a nationally coordinated approach to address drug driving.
2 Drug driving – what’s the problem?

There is a growing concern around the world about drug use and road safety. The risk to road safety caused by alcohol are well studied. However, the link between drug concentration and crash risk, appropriate threshold limits in blood, effective legislation and enforcement of effective measures to prevent drug driving are less well known (World Health Organization, 2016a).

In 2013, illicit drug use was estimated to be responsible for just over 39,600 road traffic deaths worldwide. Amphetamine use was estimated to cause around half of these deaths, while cannabis was estimated to cause one-fifth of them (World Health Organization, 2016b).

Drug driving is a contributing factor in 10–30 per cent of road fatalities in Australia (CARRS-Q, 2016). A 10-year evaluation of road crashes in Australia estimated that one in four drivers killed in road crashes tested positive to drugs other than alcohol (Drummer et al., 2003).

A psychoactive drug is any substance that affects the functioning of the central nervous system and in turn alters behaviour (Wolff, 2013). There are several groups of psychoactive drugs relevant to road traffic injury risk. These include illicit drugs, prescription and over-the-counter licit drugs and new substances (for example, synthetic substances that are synthesised for non-medical purposes). Psychoactive drugs may lead to impaired driving by delaying reaction time and information processing, reducing attention level, road-tracking and vehicle control (World Health Organization, 2016a). Table 1 shows the different ways these drugs can affect brain functioning.

Table 1. Ways that different drugs affect brain functioning

<table>
<thead>
<tr>
<th>Drug class</th>
<th>Drug</th>
<th>Impairment</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Drowsiness</td>
</tr>
<tr>
<td>Illicit drugs</td>
<td>Cannabis</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Cocaine</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Amphetamines</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>MDMA*</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Hallucinogens</td>
<td>-</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>Benzoazepines</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Opioids</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Other depressants</td>
<td>-</td>
</tr>
<tr>
<td>New psychoactive substances</td>
<td>Synthetic cannabinoids</td>
<td>-</td>
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<tr>
<td></td>
<td>Synthetic cathinones</td>
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Source: Couper & Logan, 2014, as cited in World Health Organization, 2016a

Road safety risks are not limited to illicit drug taking. There are also risks associated with ‘licit drugs’ – including medicines prescribed by a doctor and even those purchased over the counter. While medicine labels contain directions and warnings and doctors and pharmacists can provide advice about whether medicines will affect driving, everyone is affected differently.

Like alcohol, the impact of drug taking (both licit and illicit) depends on a range of factors including the person’s size, weight and health, the regularity with which the drug is taken and
if it is consumed in combination with other drugs or alcohol. To further complicate the issue, somebody with a drug in their system may not be impaired at the beginning of their drive or even during the roadside test, but may show symptoms later.

The International Council on Alcohol, Drugs and Traffic Safety (ICADTS) compared medications with an equivalent blood alcohol concentration (BAC) for their effect on driving ability. While drugs affect people differently, especially in combination with other drugs or alcohol, this can be used as a guide to understand the equivalent level of impairment, noting the legal BAC is 0.05 per cent for most drivers across Australia. A BAC of 0.05 means you have 0.05 grams (50 milligrams) of alcohol in every 100 millilitres of blood and your risk of being involved in a road crash is about double compared with a BAC of zero (VicRoads, 2018).

Table 2 lists specific medications and their estimated BAC equivalent.

Table 2. Medications: Estimated BAC equivalent

<table>
<thead>
<tr>
<th>Drug class</th>
<th>Generic name</th>
<th>Estimated BAC equivalent</th>
</tr>
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<tbody>
<tr>
<td>Antihistamines</td>
<td>Chlorpheniramine</td>
<td>0.08%</td>
</tr>
<tr>
<td></td>
<td>Promethazine</td>
<td>0.08%</td>
</tr>
<tr>
<td>Antidepressants</td>
<td>Sertraline</td>
<td>0.05–0.08%</td>
</tr>
<tr>
<td></td>
<td>Escitalopram</td>
<td>0.0–0.08%</td>
</tr>
<tr>
<td></td>
<td>Amitryptiline</td>
<td>0.08%</td>
</tr>
<tr>
<td></td>
<td>Doxepin</td>
<td>0.08%</td>
</tr>
<tr>
<td>Hypnotics</td>
<td>Temazepam</td>
<td>0.08%</td>
</tr>
<tr>
<td></td>
<td>Nitrazepam</td>
<td>0.08%</td>
</tr>
<tr>
<td></td>
<td>Diazepam</td>
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</tr>
<tr>
<td></td>
<td>Oxazepam</td>
<td>0.08%</td>
</tr>
<tr>
<td>Tranquillisers</td>
<td>Olanzapine</td>
<td>0.08%</td>
</tr>
<tr>
<td></td>
<td>Haloperidol</td>
<td>0.08%</td>
</tr>
</tbody>
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Source: ICADTS, 2007

In summary, drug-impaired driving is more complex than alcohol-impaired driving for many reasons:

- Hundreds of different drugs can impair drivers.
- Some drugs that can impair driving are illegal to use, some are legal under certain conditions and some are freely available over the counter.
- For many drugs, the relationship between a drug’s presence in the body, its effect on driving and its effects on crash risk are complex, not well understood and vary from driver to driver.
- Data on drug presence in crash-involved drivers are incomplete and inconsistent.

2.1 Community expectations

The NTC contributes to achieving national reform priorities agreed by the council. One important challenge in legislative reform is the process of changing and updating laws so that they remain fit for purpose and reflect the current values and needs of modern society. To do this, we must identify and study shifts in values, behaviours and community
expectations. Above all, laws must serve the needs of the people. A law based on outdated or irrelevant values does not adequately work to serve and protect the community.

Support for implementing interventions that reduce drug driving is generally strong. Evidence suggests that the prevalence of prescription drugs in road trauma is disproportionate, and the use of these drugs in combination with alcohol increases the risk of collision (Austroads, 2017).

There is nothing special about alcohol. If you drive a motor vehicle when you are under the influence of any drug that is impairing your driving you should also lose the privilege of having a driver’s licence…. But NSW Police are spending millions of dollars and countless hours of scarce police time setting up roadside drug testing that isn’t even checking for some of the most commonly used drugs that impair driving, like painkillers and anti-depressants. They only look for three illegal drugs, testing for trace elements of those drugs at levels that have no connection at all to impaired driving … Meanwhile, police at roadside tests are routinely waving through drivers who are highly medicated on prescription drugs that they don’t even bother to check for. Some of these drivers will be on doses of drugs that are severely impairing their driving ability. In short, what we have in NSW is an evidence-free mess (Sydney Morning Herald, 2015).

The law must also be able to respond to situations and scenarios thrown up by a changing society such as new technologies and new forms of criminal activity. Western countries, including Australia, have seen a substantial increase in the availability and use of drugs over the past 30 years. This applies to both medicines and illicit substances (Drummer, 2008). There are also emerging drug testing technologies that could be used to support identification of drug drivers, as well as a stated road safety priority to increase roadside drug testing in all states and territories across Australia. It is therefore important that we investigate the current frameworks for identifying, educating and prosecuting offenders across Australia to determine a nationally consistent, best-practice approach.

Currently across Australia, police conduct roadside tests for a limited group of illicit drugs with a zero tolerance approach and do not test for licit drugs that can also impair driving ability.

Drug driving laws are grossly unfair. They are not based on data or scientific knowledge … We base our drink driving laws on … demonstrably correct data and accordingly allow for some alcohol in the bloodstream for full drivers licence holders, so long as it is below a blood alcohol content of 0.05 per cent.

But not so with other drugs such as cannabis. Here we take the prohibitionist stance and apply it to driving without bothering to undertake the rigorous analysis that accompanied and underpinned drink driving law development … Australian courts are, literally on a daily basis, dealing with drug driving cases and criminalising individuals who represent no risk to other road users. This is making a mockery of the law as a tool for ensuring that risk in a community is managed reasonably.

Drug driving laws must be reformed and this can only be done by governments spending money on pursuing rigorous analysis of the impact of drugs on driving.

The only offence which ought to be on the statute books is one based, as is the case in respect of drink driving laws, where there is a strong research consensus on causation between the substance in a person’s blood stream and impairment (ABC News, 2016).
The NTC believes we need to refine the testing and penalty framework for driving with prescribed illicit drugs present in certain bodily fluids and reform the offence and penalties associated with driving under the influence of drugs. These ideas are discussed in the chapters that follow.

2.2 Impaired driving legislation – zero tolerance and threshold approaches

Illegally manufactured drugs vary in strength and purity. This makes it difficult to predict the extent to which a person’s driving skills will be impaired. Often drugs are consumed in combination (‘poly-drug use’), or with alcohol, which makes the impairment to driving ability much greater (CARRS-Q 2016).

Largely, drug driving enforcement practices around the world are predominately determined by the varied types of impaired driving legislation enacted by particular jurisdictions (Beirness et al., 2010). These are further discussed in Chapter 3. There are three main types of impaired driving legislation globally:

- statutes that require drugs to render a driver ‘incapable of driving safely’
- statutes that require drugs to impair a driver’s ability to operate a vehicle, or the driver is ‘under the influence’ or ‘affected by an intoxicating drug’
- ‘zero tolerance per se laws’, which make it an offence to have a drug (or drug metabolite) in certain bodily fluids while operating a motor vehicle (Walshe et al., 2004).

Laws and penalties across Australia apply not only when people are under the influence of, or impaired by, drugs but also when they have any trace of prescribed illicit drugs present in certain bodily fluids, regardless of the impact on their driving. As result charges can relate to:

- driving with a prescribed illicit substance present in certain bodily fluids (zero tolerance) – for this offence, a prescribed illicit drug only needs to be detected in certain bodily fluids, regardless of whether or not they are still affected by it, or
- driving while impaired by/under the influence of drugs – for this offence, a person must be affected or impaired by the drug.

Notably, the first offence only applies to illicit drugs, whereas the second offence could apply to either illicit or licit drug use. Australian roadside oral fluid testing targets three illicit drugs – THC, methamphetamine and MDMA. New South Wales will soon include cocaine. Licit drugs, or ‘medicines’, are not part of the roadside oral fluid screening process; however, if impairment by a licit drug is proven (for example, through hospital blood tests), a person could still be charged with driving while impaired by drugs in some states and territories.

The zero tolerance approach that Australia currently subscribes to for illicit drugs eliminates the need to provide a large amount of behavioural evidence of impairment. This makes the scheme simpler to implement and administer but also limits the roadside testing scheme to a small group of prescribed illicit drugs.

There is debate about whether a ‘drug threshold’ approach may be more relevant to today’s society. It is now legal to use cannabis in all Australian jurisdictions under certain conditions; THC is the active component in cannabis and is included in Australian roadside testing.

Currently, those people who use cannabis legally, including with a doctor’s prescription, cannot drive with any trace of the drug in their system anywhere in Australia. This is not the case in some other countries. Drug threshold legislation is currently the most significant emerging trend in the global drug policy arena (Davey, Armstrong, Freeman and Sheldrake, 2017). This type of legislation prohibits drivers from operating a vehicle if they have consumed a substance to a level that exceeds defined limits. It is more consistent with other
drug-related charges such as possession, trafficking and importation, for which the offences are historically based on quantity.

Norway, Canada, the United Kingdom (UK) and the United States have implemented versions of drug driving threshold laws, which is discussed further in Chapter 3. Preliminary evidence indicates that Norway’s laws appear to have increased detections with little impact on general deterrence. The main benefit has been the significant reduction in the need for expert testimony to support charges (Schulze et al., 2012). Based on this, more evidence is required to determine the best approach for drug driving policy (CARRS-Q, 2017).

According to Assistant Professor Andrea Roth of Berkeley University, the few single-car crash and case-control studies that have been conducted have found no relationship between THC blood levels and an increased relative crash risk. Properly understood, the history of drunk driving jurisprudence offers what is still the only valid scientific framework for criminalising chemical impairment (Roth, 2015).

However, a 10-year Australian study of driver culpability published in 2003 showed a number of strong but statistically insignificant positive associations between the use of some psychoactive drugs and responsibility for a crash. A psychoactive drug is any substance that affects the functioning of the central nervous system and in turn alters behaviour (Wolff, 2013). It also proposed that the use of THC alongside alcohol enhances impairment. The study investigated the involvement of drugs in 3398 drivers killed in road traffic crashes across Victoria, New South Wales and Western Australia. It found positive for psychotropic drugs (equivalent term to a psychoactive drug described previously), drivers were significantly more likely to be culpable than drug-free drivers. Drivers with THC in their blood had a significantly higher likelihood of being culpable than drug-free drivers. For drivers with a blood THC concentration of 5 ng/mL or higher, the odds ratio was greater and more statistically significant and greater than that for drivers with a blood alcohol concentration of 0.10–0.15 per cent. Strong associations were also seen for stimulants, particularly in truck drivers (Drummer et al., 2003).

We need to do more research to understand the level of driving impairment caused by drugs (both licit and illicit) and drugs mixed with alcohol or other drugs. While the previous work completed, including by Roth, Drummer et al. and ICADTS is valuable, there has not been a holistic study of impairment levels associated with licit and illicit drugs and their flow-on effect on road safety risks.

There is no evidence that we believe justifies a shift away from the ‘zero tolerance’ position currently adopted by all states and territories. There is also no technology currently available that can accurately detect the level of impairment caused by drug taking.

2.3 Inconsistency in testing policies and procedures

A 2017 report by CARRS-Q provides a comprehensive review of the roadside drug driving policy and procedural frameworks used across each state and territory in Australia. When comparing procedures, the report was limited to comparing the roadside oral testing used in all jurisdictions. It did not compare the ‘driving under the influence’ policy frameworks.

The scope of this NTC report is to contribute to an ongoing development of a best-practice approach to roadside drug testing, recognising police operational and resourcing differences.

We are proposing improved and more consistent methods for roadside drug testing based on the current zero tolerance per se approach. However, we also believe that to address drug driving effectively, we also need to develop a national plan to address drug-impaired driving.

Chapter 3 provides a comparison of the Australian state and territory testing practices and drug driving policies and describes the drug driving approaches used globally. Our proposed
best-practice improvements, recommendations for a nationally consistent approach to drug driving and identified research needs are outlined in Chapter 4.
3 Drug driving regulation and practice in Australia and overseas

Key points

- The Australian drug driving legislative frameworks and enforcement programs are relatively mature in comparison with other countries.
- Legislation in all Australian states and territories creates offences and provides for police roadside testing in relation to ‘drug driving’. Between 2003 and 2015, all Australian states and territories moved to legislate against drug driving and create offences based on the ‘presence’ of any quantity of specified illicit drugs, with random oral fluid testing powers.
- There is less consistency across Australia when it comes to the offences associated with driving while impaired or under the influence of drugs.
- Australia would benefit from having a nationally agreed, coordinated plan to address both roadside drug testing for prescribed illicit drugs and drug driving more generally.

3.1 National comparison of drug driving regulations and procedures

The Australian drug driving legislative frameworks and enforcement programs are relatively mature in comparison with other countries. The combination of laws based on impairment and collision risk provide an effective legislative framework to mitigate the drug driving risk (Austroads, 2017).

The CARRS-Q (2017) report provided a comparison summary of the roadside drug testing processes and penalties across Australian states. This is presented at Table 3. There have been some updates to state and territory policy and procedures since the report was released in 2017. These are explained in sections 3.1.1 and 3.1.2 and detailed in Appendix 1.
Table 3. Summary of Australian roadside testing procedures and penalties

<table>
<thead>
<tr>
<th>Source: CARRS-Q, 2017</th>
</tr>
</thead>
</table>

| Source: CARRS-Q, 2017 |

<table>
<thead>
<tr>
<th>Per se legislation</th>
<th>QLD</th>
<th>NSW</th>
<th>VIC</th>
<th>TAS</th>
<th>SA</th>
<th>WA</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadside testing process</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Two-step oral fluid (confirmed by lab)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Roadside drugs tested</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>THC</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Methylamphetamine</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MDMA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>License disqualification</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1st offence</td>
<td>1-9 months</td>
<td>Min. 3 months</td>
<td>Min. 3 months</td>
<td>3-12 months</td>
<td>Min. 6 months</td>
<td>X</td>
<td>X</td>
<td>6-36 months</td>
</tr>
<tr>
<td>2nd or subsequent offence</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Education and treatment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1st offence</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>Under 25 only</td>
<td>✓</td>
<td>&lt;&gt;</td>
<td>X</td>
<td>Drug awareness course†</td>
</tr>
<tr>
<td>2nd or subsequent offence</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>&lt;&gt;</td>
<td>X</td>
<td>X</td>
<td>Drug awareness course†</td>
</tr>
</tbody>
</table>

† Tasmania – charging not tied to results of roadside oral fluid test, person suspected of having drugs present required to submit to providing a blood sample for testing
‡ NSW – roadside testing for cocaine being added in November 2017
* with court discretion. Note minimum 24 months on 3rd offence
† Under 25’s must complete accredited driver education program
◊ Magistrates have the discretion to issue a Community Based Order (CBO) in lieu of fine. CBO can require completion of a treatment program, education or community service.
- Can be done as an additional penalty or as an alternative to license disqualification
<> Offenders must demonstrate they are not drug dependent to regain licence
3.1.1 The regulatory frameworks

Legislation in all Australian states and territories creates offences and provides for police roadside testing in relation to ‘drug driving’. These laws are motivated by the same road safety objectives and impairment risks as drink driving laws; however, drug driving laws adopt a significantly different ‘zero tolerance’ approach (Quilter & McNamara, 2017).

There are four broad categories of offences that relate to drug driving in state and territory legislation:

1. It is an offence in all states and territories to drive (or attempt to drive or accompany a learner driver) while a prescribed illicit drug is present in certain bodily fluids (blood/urine/oral fluid).

2. It is an offence in Tasmania, the Australian Capital Territory and the Northern Territory to drive (or attempt to drive or accompanying a learner driver) while under the influence of an illicit drug.

3. It is an offence in New South Wales, Victoria, Queensland, Western Australia and South Australia to drive (or attempt to drive or accompany a learner driver) while under the influence of any drug (licit or illicit).

4. It is an offence in Victoria and Western Australia to drive (or attempt to drive or accompany a learner driver) while impaired by any drug (licit or illicit).

Table 4 summarises the regulatory frameworks that apply to drug driving across Australian states and territories (see Appendix 1 for a more complete summary). Appendix 2 explains the difference between driving while impaired and driving under the influence in Western Australia and Victoria.

Driving with a prescribed illicit drug present

Between 2003 and 2015, all Australian states and territories moved to legislate against drug driving and create offences based on the ‘presence’ of any quantity of specified illicit drugs, with random oral fluid testing powers. Victoria was first to introduce legislation in 2003, with Tasmania following in 2005 and the remaining jurisdictions following after that.

There is clear national agreement to a zero tolerance towards driving with prescribed drugs in a person’s system – that is, THC, methamphetamine and MDMA. New South Wales is soon to include cocaine within the definition of ‘prescribed illicit drug’.

There is also a consistent application of a graduated penalty framework based on the number of offences. However, the penalty levels within that framework vary widely across Australia.

The fine for driving with a prescribed illicit drug present varies widely across states and territories:

- first offence: a minimum of $318 in Tasmania to a possible maximum of $1,902.84 in Victoria
- second offence: a minimum of $500 in Western Australia to a possible maximum of $9,514.20 in Victoria
- third or subsequent offence (noting some states limit penalties to two or more offence): a minimum of $1,500 in South Australia to a possible maximum of $19,028.40 in Victoria.

Victoria and the Northern Territory issue an infringement notice to first-time offenders. These offenders may choose to pay the fine associated with the notice or they can elect to go to court at the risk of paying a larger fine. In the Northern Territory he penalty is imprisonment.
of up to three months. This reduces the burden on the court system and, given that no level of impairment or influence must be proven, is simple to administer.

When it comes to licence suspension, the penalties range as follows:

- first offence: no disqualification in Western Australia, to up to three years in the Australian Capital Territory
- second or subsequent offence: a possible minimum disqualification of three months in Queensland and up to 60 months in the Australian Capital Territory.

Furthermore, New South Wales and Queensland (and soon Western Australia) immediately and automatically prohibit a driver who has been arrested for driving with a prescribed illicit drug present from driving for 24 hours. Other states and territories have the ability to do so, but it is not an automatic consequence.

Queensland, Tasmania, the Australian Capital Territory and the Northern Territory can imprison offenders who drive with a prescribed illicit drugs present. The periods of imprisonment range between three and 24 months.

Victoria is the only state where a drug driver education program is mandatory for offenders who drive with a prescribed illicit drug present. In the Australian Capital Territory and Western Australia, these programs may be imposed for certain offenders.

Increased penalties for driving with an illicit drug present will come into effect on 30 April 2018 in Victoria. The current penalties are outlined in Appendix 1, but in summary the changes are:

- For a first offence, the mandatory licence suspension will increase from three months to six months when dealt with through an infringement notice.
- For a first offence, the penalty will increase from licence cancellation and a minimum three-month disqualification to licence cancellation and a minimum six-month disqualification when dealt with through the courts.
- The penalty for a repeat offence increases from licence cancellation and a minimum six-month disqualification to licence cancellation and a minimum 12-month disqualification.
- All drug-drivers must complete a behaviour change program and will also incur a fine.

**Driving while under the influence of, or impaired by, drugs**

There is less consistency across Australia when it comes to the offences related to driving while impaired or under the influence of drugs. Victoria and Western Australia have offences and penalties related to both driving under the influence and driving while impaired by drugs. In Western Australia, the penalties are identical for both offences, whereas in Victoria, there are steeper penalties for driving under the influence than for driving while impaired. An explanation of the difference between the charges in both states is included at Appendix 2.

The graduated penalty framework based on the number of offences is again consistent for this group of offences across Australia.

Furthermore, in general, all states and territories apply stronger penalties to impairment offences than to driving with a prescribed illicit drug present. This would suggest there is agreement among the states and territories that driving under the influence of, or impaired by, drugs is a more serious offence than driving with a prescribed illicit drug present.
### Table 4. Offences relating to impairment/influence

<table>
<thead>
<tr>
<th>Offence to drive (or attempt to drive/accompany a learner driver) while...</th>
<th>Under the influence of an illicit drug</th>
<th>Under the influence of any drug</th>
<th>Impaired by any drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>✔️</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vic.</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Qld</td>
<td></td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td></td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Tas.</td>
<td></td>
<td></td>
<td>✔️</td>
</tr>
<tr>
<td>ACT</td>
<td></td>
<td></td>
<td>✔️</td>
</tr>
<tr>
<td>NT</td>
<td></td>
<td></td>
<td>✔️</td>
</tr>
</tbody>
</table>

Fines for driving while under the influence of *illicit* drugs include:
- first offence: between a minimum of $770 and $4,620, both in Tasmania
- second or subsequent offence: between a minimum of $1,540 in Tasmania and $3,060 in the Northern Territory.

Licence suspension for driving while under the influence of *illicit* drugs ranges from six months for a first offence to three years for a second or subsequent offence.

Imprisonment terms range between six and 36 months, again showing a wide range of penalties for the same offence. In the Australian Capital Territory, education programs can be imposed by a magistrate as an additional penalty or in place of a different penalty. There are no education programs required in the Northern Territory or Tasmania.

Fines for driving while under the influence of *any* drugs include:
- first offence: between a minimum of $900 in Western Australia and a maximum of $3,964 in Victoria
- second offence: between a minimum of $1,900 in South Australia and a maximum of $19,028.40 in Victoria
- third or subsequent offence: between a minimum of $2,100 in Western Australia and a maximum of $28,542.60 in Victoria.

Licence suspension can range from six months for a first offence to permanent licence disqualification in Western Australia for a third or subsequent offence. Imprisonment for this offence can range between three and 30 months and, in Queensland, for a third or subsequent offence, a magistrate must impose a prison sentence. Education is not mandatory in any states and territories; however, some have the ability to impose a drug driver education course on offenders.

Fines for driving while *impaired* by any drugs include:
- first offence: between a minimum of $900 in Western Australia and a maximum of $1,902.84 in Victoria
second or subsequent office: between a minimum of $2,100 in Western Australia and a maximum of $19,028.40 in Victoria.

Licence suspension ranges from 12 months for a first offence to permanent licence disqualification in Western Australia for a third or subsequent offence. Imprisonment terms can also range between nine and 18 months for a second or subsequent offence. In Victoria, offenders are required to complete a driver education program; this is discretionary in Western Australia.

**Recommendations:**

In relation to the offence of driving with a prescribed illicit drug present, we recommend the National Drug Driving Working Group considers:

- using common terminology within overarching legislation and regulation – for example, ‘prescribed illicit drug’
- whether all states and territories could adopt an infringement notice approach for first-time offenders
- adopting a national 24-hour prohibition for drivers who have been arrested for having a prescribed illicit drug present
- reviewing and aligning penalties including fines, licence suspension periods and imprisonment periods.

In relation to driving while under the influence of, or impaired by, drugs we recommend the National Drug Driving Working Group consider:

- national adoption of a single common approach to regulating this area to accompany the common zero tolerance approach to prescribed illicit drugs, perhaps by national agreement of a single offence – for example, ‘the offence to drive (or attempt to drive or accompany a learner driver) while under the influence of any drug’.
- once a common approach has been decided, considers reviewing and aligning the penalties for that offence including fines, licence suspension periods and imprisonment periods.

We also recommend that the National Drug Driving Working Group considers adopting a consistent approach to drug driver education programs for offenders in both categories.

**3.1.2 The testing procedure for prescribed illicit drugs**

In summary, all states and territories currently have (or in the case of Tasmania, are transitioning to) a two-stage roadside oral fluid test to detect the presence of illicit drugs. This means if an initial oral fluid test indicates a driver is positive to drugs, the driver is arrested and a second oral fluid test is undertaken. If the second sample is positive, then the two samples are sent to the laboratory for analysis. If the analysis proves the presence of illicit drugs, then the driver is charged with an offence.

There is consensus among all states and territories that the current practice is costly and time consuming, at approximately $35 per roadside test and taking up to 30 minutes to undertake the two-stage test. There are also logistic challenges in transporting samples to laboratories and further costs associated with laboratory testing.

Australian roadside oral fluid testing targets three illicit drugs:

- THC (Delta-9 tetrahydrocannabinol)
- methamphetamine
- MDMA.

New South Wales will soon include cocaine.
There is consensus among states and territories that the frequency of testing should increase and that highly visible testing units are necessary; however, the current costs associated with a roadside test, as well as the multistage steps to obtain evidence, are preventing this (CARRS-Q, 2017).

A roadside drug test costs approximately $35, compared with about 10 cents for a random breath test, and usually involves two oral fluid samples, taking about 15 minutes. Costs are not limited to the equipment and policing hours involved. Laboratory costs, in particular, are on the increase due to the rising number of positive roadside screening samples being sent for analysis.

All states and territories believe that more efficient roadside testing technology, particularly technology that reduces the time taken to administer the test, would have a national collective benefit.

Currently, a preliminary oral fluid test is conducted via a drug swipe stick such as the Securetec Drug Wipe Twin or the Securetec Drug Wipe II Twin. These technologies involve the driver wiping their tongue along the testing stick.

If the test is positive, the driver is taken to a roadside testing bus or police station to provide a second saliva sample, commonly tested by the Drager Drug Test 5000, or the Cozart Drug Detection System (DDS).

If that test is also positive, a direction is normally given to the driver to prohibit them from driving and the sample is then sent to the laboratory for testing by an analyst to confirm the presence of drugs. An analyst’s certificate confirming the presence of the relevant drug(s) is admissible as evidence in prosecuting a driver and charges are laid (Quilter & McNamara, 2017).

Through the NTC’s discussions with police representatives, we understand that there is no formal ‘targeting’ of roadside testing for drugs; however, due to the high cost and inefficient procedures, testing tends to be more targeted than random. This can help to explain the high rate of positive test results when compared with random breath testing for alcohol (CARRS-Q, 2017). In the absence of a clear technology solution to reduce the cost of roadside drug testing, the NTC has suggested in section 4.2.4 that we develop a nationally consistent method to optimise the selection of roadside testing times and locations.

It may also be of benefit to investigate a national approach to purchasing drug testing equipment and to consider developing a national guideline that sets out both the roadside drug testing and the laboratory testing procedures that produce accurate test results and admissible evidence in court.

3.1.3 Community education

There is also consensus among all states and territories that there should be a national approach to community education about the risks associated with drug driving. This should include a common language, purpose, messages to be considered and national delivery (CARRS-Q, 2017). Police have stated that while they support this, education is not their primary role, so resourcing of national strategy would need to be considered. There are many other opportunities to include education about the impact of drug driving, including preventative strategies through, for example, licensing and registration training programs.

As stated previously, laws and penalties across Australia apply not only when people are under the influence of drugs but also when they have any trace of drugs present in their system, regardless of the impact on their driving. As a result, charges can relate to either:

- driving with an illicit substance present (zero tolerance) – for this offence, an illicit drug only needs to be detected in a person’s system, regardless if they are still affected by it or not, or
driving while impaired by drugs – for this offence, a person must be affected or impaired by the drug.

A 2017 survey completed in the United States found that many drivers do not understand how various drugs can increase their risk of crashing, and they believe that driving after drinking is more dangerous than driving after taking drugs (NHTSA, 2017).

Much of the community messaging in Australia has been around the zero tolerance to illicit drugs tested for during roadside drug testing. While this remains relevant, we believe there is a need to broaden the message to focus on road safety risks caused by drug-impaired driving from both illicit and licit drugs, and to educate the community about the further risks caused by mixing drugs and/or alcohol and fatigue.

There may also be benefit in providing guidelines to road agencies and police services, similar to those developed in the United States (see section 3.2.4), that summarise the current state of knowledge on drug-impaired driving, including information on the cost and effectiveness of certain actions and actions that states and territories can take to reduce drug-impaired driving.

### 3.2 International comparison of methods to address drug driving

There is no consistent global approach to address drug driving. In Europe in 2016, 10 countries had impairment laws, 10 countries had zero tolerance laws, two countries had a per se limit for some drugs and four countries had impairment laws for some drugs and zero tolerance laws for other drugs (European Monitoring Centre for Drugs and Drug Addiction, 2017). More detailed information is provided in this section for the UK, Norway, Canada and the United States.

#### 3.2.1 United Kingdom

Currently in the UK, it’s illegal to drive if either:

- you’re unfit to do so because you’re on legal or illegal drugs
- you have certain levels of illegal drugs in your blood (even if they haven’t affected your driving), or
- if you have more than the specified limits of certain drugs in your blood and you haven’t been prescribed them.

Police can stop a vehicle with suspicion and require a ‘field impairment assessment’, which is a series of tests such as asking the driver to walk in a straight line. They can also use an oral fluid roadside drug kit to screen for cannabis and cocaine.

If a person is suspected to be unfit to drive because of taking drugs, they will be arrested and undertake a blood or urine test at a police station (United Kingdom Government, 2018).

Legal limits were discussed in the Wolff report, *Driving under the influence of drugs*, which was completed for the UK Government in 2013. The report considered the degree of risk associated with specific drugs in relation to road safety and made recommendations for thresholds in relation to certain drugs.

An expert panel was established to lead the report’s development. They investigated drug driving to establish world’s best practice tests for drug-impaired driving. The panel’s terms of reference included:

- to discern which compounds should form part of the statutory instrument in the UK related to a specific offence of driving while under the influence of drugs
- to consider different sources of evidence to help to establish the degree of risk associated with specific drugs in relation to road safety
• to establish whether it is possible to identify (for average members of the adult population) concentrations of the drugs identified that would have an impairment effect broadly equivalent to a BAC of 80 mg / 100 mL
• to establish whether in some specific circumstances different concentrations of these drugs (broadly equivalent to a BAC of 50 mg / 100 mL and 20 mg / 100 mL) may be deemed necessary for road safety
• to consider in cases where such concentrations can be identified (for an average member of the adult population) the degree of variability across the population, including for habitual users of these substances
• to establish the likelihood of whether these concentrations would be exceeded through prescribed or otherwise legally obtained drugs (as distinct from illicit drugs)
• to consider the evidence relating to poly-substance use, such as the interactions between the drugs listed and alcohol, to determine the effects of such interactions and the prevalence of impairment (risk in relation to road safety) due to such causes.

The report found that cannabis impairs driving at a blood concentration level of 5 mcg/L. Because cannabis and alcohol interact to increase impairment, they also found that when both drugs are present the safe level of cannabis reduces to 3 mcg/L. The safe level of alcohol also reduces when in combination with cannabis from a blood alcohol level of 0.05 to 0.02 (Wolff, 2013).

The Wolff report found that benzodiazepines, such as valium, are the most common medicines detected in drivers involved in motor accidents and, where the driver died in the accident, the second most commonly detected drug after alcohol.

They also recommended that BAC limits should be lowered in combination with the presence of certain drugs (Wolff, 2013).

In July 2013 the UK Department for Transport published a consultation document on the regulations that would provide for the specified limits that would apply to this offence. They offered two options:
• a ‘zero tolerance’ approach to the eight drugs most associated with illegal use
• a ‘road safety risk approach’ to eight drugs most associated with medical use.

In March 2014 the UK Government published a reply to the feedback it received and presented its preferred option to set a ‘lowest accidental exposure limit’ for the drugs most associated with illegal use and road safety risk based limits.

Limits currently in place are listed in Table 5.
Table 5. Specific limits for controlled drugs in England and Wales

<table>
<thead>
<tr>
<th>Controlled drug</th>
<th>Limit (microgrammes per litre of blood)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamine</td>
<td>250</td>
</tr>
<tr>
<td>Benzoylcgonine</td>
<td>50</td>
</tr>
<tr>
<td>Clonazepam</td>
<td>50</td>
</tr>
<tr>
<td>Cocaine</td>
<td>10</td>
</tr>
<tr>
<td>Delta-9-Tetrahydrocannabinol</td>
<td>2</td>
</tr>
<tr>
<td>Diazepam</td>
<td>550</td>
</tr>
<tr>
<td>Flunitrazepam</td>
<td>300</td>
</tr>
<tr>
<td>Ketamine</td>
<td>20</td>
</tr>
<tr>
<td>Lorazepam</td>
<td>100</td>
</tr>
<tr>
<td>Lysergic Acid Diethylamide</td>
<td>1</td>
</tr>
<tr>
<td>Methadone</td>
<td>500</td>
</tr>
<tr>
<td>Methylamphetamine</td>
<td>10</td>
</tr>
<tr>
<td>Methyleneoxyamphetamine</td>
<td>10</td>
</tr>
<tr>
<td>6-Monoacetylmorphine</td>
<td>5</td>
</tr>
<tr>
<td>Morphine</td>
<td>80</td>
</tr>
<tr>
<td>Oxazepam</td>
<td>300</td>
</tr>
<tr>
<td>Temazepam</td>
<td>1000</td>
</tr>
</tbody>
</table>


Each offence comes with a minimum one-year licence suspension (unlimited maximum) and an unlimited fine range. A person guilty of an offence can be imprisoned for up to six months, or up to 14 years if there is a fatality associated (European Monitoring Centre for Drugs and Addiction, 2018). A person could also be separately charged with using illicit drugs (even if they are under the legal drug driving limit).

3.2.2 Norway

Norway was the first country to set legal and sentencing limits for substances other than alcohol on 1 February 2012. Twenty narcotic substances and potentially intoxicating drugs (both illicit and licit) were identified, and sentencing limits have been set for 13 substances: benzodiazepines, alprazolam, diazepam, flunitrazepam, clonazepam, nitrazepam, oxazepam, zolpidem, zopiclone, THC, GHB, ketamine and morphine (CARRS-Q, 2017).

Sentencing limits have been adopted that are proposed to correspond to the intoxication normally associated with a BAC level of 0.05 and 1.2 mg/mL, respectively. This legislation is grounded on the premise that intoxication becomes more pronounced at higher concentrations of these substances, although it is noted there is no published literature regarding how the link between threshold level and impairment was validated.

Additionally, the legislation seeks to ensure greater agreement between the road traffic Act for drink driving and the regulation of driving under the influence of other intoxicating or narcotic substances. Higher levels of intoxication are proposed to negatively influence a motorist’s ability to safely operate a vehicle. However, it should be noted that these limits are currently linked to one individual drug, THC, and not to combinations of drugs.
3.2.3 Canada

Impaired driving is the leading criminal cause of death and injury in Canada, and drug-impaired driving is increasing (Canadian Government, 2018). The Canadian Government is also moving towards legalising and strictly regulating cannabis, so they see a need to strengthen impaired driving laws.

Canada’s Criminal Code currently prohibits driving while impaired by any drug. Police officers are currently able to conduct ‘standardised field sobriety tests’ if they suspect a driver has a drug in their body. If an individual is suspected of being impaired by a drug, a blood test must currently be overseen by a doctor, which is time consuming and often requires transportation to a hospital. Current penalties for drug-impaired driving range from CAD1000 fine on a first offence to 120 days of imprisonment on a third or subsequent offence. Drug-impaired driving that results in death could result in life imprisonment.

On 13 April 2017, the Canadian Government introduced legislation that would strengthen impaired driving laws and help ensure the public is better protected from both alcohol and drug-impaired driving. This legislation would also help to better deter and detect drug-impaired driving. The proposed legislation would make testing and prosecution easier. The new legislation would allow police to demand an oral fluid sample at the roadside if they suspect a driver has a drug in their body. A positive reading would assist in developing reasonable grounds to believe that an offence has been committed. Once the officer has reasonable grounds to believe an offence has been committed, they could demand a drug evaluation by an ‘evaluating officer’, or a blood sample. This is intended to save valuable time when testing for drugs, such as THC, that leave the blood very quickly.

Police officers would be able to provide opinion evidence in court as to whether they believe a driver was impaired by a drug at the time of testing, without the need for an expert witness in each trial. This will mean that cases are prosecuted more efficiently and more successfully.

The legislation would create three new offences for having specified levels of a drug in the blood within two hours of driving. The penalties would depend on the drug type and the levels of drug or the combination of alcohol and drugs. These elements were included in the proposed legislation after careful consideration of the available scientific evidence on cannabis and driving. The levels would be set by regulation. For THC the proposed levels would be:

- 2 nanograms (ng) but less than 5 ng of THC: Having at least 2 ng but less than 5 ng of THC per millilitre of blood within two hours of driving would be a separate summary conviction criminal offence, punishable only by a fine. This lower level offence is a precautionary approach that takes into account the best available scientific evidence related to cannabis. This offence would be punishable by a maximum fine of up to CAD1000.
- 5 ng or more of THC: Having 5 ng or more of THC per millilitre of blood within two hours of driving would be a hybrid offence. Hybrid offences are offences that can be prosecuted either by indictment, in more serious cases, or by summary conviction, in less serious cases.
- Combined THC and alcohol: Having a blood alcohol concentration of 50 mg of alcohol per 100 mL of blood, combined with a THC level greater than 2.5 ng/mL of blood within two hours of driving would also be a hybrid offence.
- Both hybrid offences would be punishable by mandatory penalties of CAD1000 for a first offence and escalating penalties for repeat offenders (for example, 30 days’ imprisonment on a second offence and 120 days on a third or subsequent offence).

The maximum penalties would mirror the existing maximum penalties for impaired driving. These would be increased to two years less a day on summary conviction (up from 18
months) and to 10 years on indictment (up from five years). The latter would make a dangerous offender application possible in appropriate circumstances (Canadian Government, 2018).

3.2.4 United States

Drug-impaired driving is an increasingly critical issue for states and highway safety offices. In 2015, drugs were present in 43 per cent of fatally-injured drivers with a known test result – more frequently than alcohol was present (FARS, 2016).

The United States has found that the best data available to understand the frequency of the presence of drugs is fatal crash data because these drivers are tested more frequently than those drivers involved in non-fatal crashes.

Figure 1 shows the frequency of drugs present in drivers in the United States using data from 2015.

**Figure 1. Frequency of drugs present in drivers, United States, 2015**

*Cannabis may be used in many states for medicinal purposes, with some states also allowing recreational use. Congress identified drug-impaired driving as a priority in the 2015 *Fixing America’s Surface Transportation (FAST) Act. One of the directions in the Bill was for the National Highway Traffic Safety Administration (NHTSA) to develop education campaigns to increase public awareness about the dangers associated with drug-impaired driving. The Act also required the NHTSA investigate the impairment caused by cannabis and identify methods to detect cannabis-impaired drivers (NHTSA, 2017).

The NHTSA’s *Drug-impaired driving* report summarised the current state of knowledge on drug-impaired driving, including information on the cost and effectiveness of certain actions and actions that states can take to reduce drug-impaired driving.

On 25 January 2018 the NHTSA launched a new initiative to combat drug-impaired driving. The strategy’s goals include:

- starting a national dialogue and developing strong policies
- launching a public awareness and education initiative to stigmatise drug-impaired driving
- exploring and leveraging innovative approaches to prevent drug-impaired driving.
As a first step, the NHTSA held a summit during March that brought together key stakeholders including safety agencies, elected officials, data and policy experts, law enforcement and criminal justice professionals, toxicologists, and drug recognition experts.

Two expert panels described the nature of the problem and discussed ways to address it. Law enforcement leaders shared their experiences from the streets. Scientists reported the types of drugs detected in drivers and explained how various drugs impair driving functions. Policy experts reviewed programs and resources and discussed their experience with state laws.

A number of best practices were presented, demonstrating the potential for making near-term progress while new tools are developed to identify and measure impairment by a new and rapidly changing array of drugs. The NHTSA has identified several steps it will take over the next year to better understand and address drug-impaired driving. They include:

- research to improve understanding of drug-impaired driving – this will be led by the NHTSA in partnership with law enforcement and scientists
- examining the operation of new oral fluid screening devices that could be used by law enforcement to screen drivers for drugs in a matter of minutes
- updating its fatality data collection system to get more detailed data on drug-related fatal crashes for calendar year 2018
- educating people about unsafe driving behaviours, including broadening understanding that drug-impaired driving is illegal and dangerous
- working with its partners to develop robust and effective public education tools and campaigns, including an advertising campaign that focuses on the message that impaired driving relates to both alcohol and drugs
- pilot-testing a training course for prosecutors and toxicologists to help them understand each other’s roles and how to work together when presenting evidence in court
- launching an online introductory training course to help highway safety professionals understand drug-impaired driving and how it differs from alcohol-impaired driving
- developing guidance to help states strengthen their foundation for drug-impaired driving programs, including potential legislative changes to test, track and inform enforcement and prevention efforts
- exploring and leveraging innovative approaches to prevent driving under the influence of drugs through improved tools for law enforcement
- continuing efforts to develop a field test for law enforcement to assist officers in detecting and recognising signs of cannabis impairment.

The NTC believes it may be beneficial to develop an action plan similar to this for the National Drug Driving Working Group to address over the next 12 months with the assistance of relevant agencies. A summit similar to that run by the NHTSA could be beneficial to help develop a strategy suitable to the Australian context.
4 The ideal future state – an analysis

Key points

- With some exceptions, Australian drug driving laws are heavily focused on detecting and punishing drivers who have used one or more of three drugs – cannabis, methamphetamine and ecstasy – the use of which in itself is a crime in all jurisdictions.
- The NTC recommends that the National Drug Driving Working Group adopts a road safety ‘impairment’ approach to develop strategies to reduce drug driving in Australia.
- The NTC believes we need to refine the penalty framework for driving with prescribed drugs present and reform the offence and penalties associated with driving under the influence of drugs.
- The NTC also recommends that the National Drug Driving Working Group monitors and investigates the adoption of emerging drug testing technologies, including fingerprint testing, which could reduce the cost and time taken to administer roadside drug testing.

4.1 Policy and regulation

With some exceptions, Australian drug driving laws are heavily focused on detecting and punishing drivers who have used one or more of three drugs – THC, methamphetamine and MDMA. This is due to a range of factors, including that these are the most commonly used illicit drugs in Australia, the available technology and the adoption of the Victorian approach pioneered in 2003 (Quilter & McNamara, 2017).

The NTC believes there is a need for more research to understand the level of driving impairment caused by drugs (both licit and illicit) and drugs mixed with alcohol or other drugs. While previous work, including that of Roth (2015), Drummer et al. (2003) and ICADTS (2007) is valuable, there has not been a holistic study of impairment levels and their impacts on road safety.

Quilter and McNamara (2017) investigated whether the current drug driving laws and roadside drug testing practices are consistent with an evidence-based impairment framework.

They identified reform options that would allow drug driving laws to share the combination of social acceptance, evidence-based legitimacy and effectiveness that are widely regarded as the hallmarks of drink driving laws.

They found that contemporary drug driving practices and laws have three characteristics that mean they don’t align strongly with the impairment framework underpinning drink driving laws:

1. They rely on the presence of any detectable quantity, rather than a threshold concentration.
2. Drug testing is evidenced via oral fluid testing rather than blood testing (except for the current practice in Tasmania).
3. Police routinely test for only three illicit substances (soon to be four in New South Wales) rather than all drugs with the capacity to impair driving ability (Quilter & McNamara, 2017).
The *Crime Justice Journal* published an article in 2017 titled, ‘Zero tolerance drug driving laws in Australia: A gap between rationale and reform’. The article examined Australia’s criminalisation of drug driving and found that the approach has a weak association to the road safety objective of deterring substance-impaired driving. It argues that policy about use of illicit drugs should be treated separately to policy on drug-impaired driving. It recommends that drug driving laws in all Australian jurisdictions should be brought back into line with drink driving laws via legislation and testing practices that turn on substance-specific prescribed concentrations for all drugs (illicit and licit) that have the potential to impair drivers (Quilter & McNamara, 2017).

In addition, the Law Reform, Road and Community Safety Committee (2017) recently released the report on its Inquiry into Drug Law Reform to the Parliament of Victoria. The Committee wishes to note that while the original terms of reference (ToR) for the inquiry specifically requested the Committee to review the effectiveness of roadside drug testing, the ToR were later refined and this ToR was removed to ensure completion of the inquiry in the agreed timeframes. Consequently, the Committee was not in a position to explore drug driving in a comprehensive manner … the Committee agrees that it requires closer examination as another area of drug policy where law reform could be beneficial.

To be clear, we are not suggesting a move away from the current zero tolerance approach to driving with illicit drugs present. Rather, we are suggesting that we also need to focus efforts to reduce driving while under the influence of any drugs – illicit or licit. Our recommendation that the National Drug Driving Working Group considers national adoption of an offence related to driving while impaired by drugs is based on this premise.

We also recommend that the National Drug Driving Working Group adopts a road safety ‘impairment’ policy view to guide their development of strategies to reduce drug driving in Australia. A road safety impairment approach does not change our zero tolerance approach to illicit drugs. It builds upon it. That is, our strategy to tackle drug-impaired driving in Australia is two-fold, addressing:

- driving with an illicit substance present – this is the zero tolerance approach that is already quite advanced in Australia. For this offence, an illicit drug only needs to be detected in a person’s system, regardless if they are still affected by it or not, or
- driving while under the influence of drugs – for this offence, a person must be affected or impaired by the drug. This offence does not relate only to an illicit drug and it is here where we could see a significant deterrence impact through, for example, community education and national guidelines for reducing drug-impaired driving (see section 3.1.3).

So the NTC believes we need to refine the penalty framework for driving with prescribed drugs present and reform the offence and penalties associated with driving under the influence of drugs. Our recommendations are aimed at commencing this process.

### 4.2 Testing procedures for prescribed illicit drugs

The effectiveness of a testing device is summarised by three measures:

- **sensitivity** – the proportion of drug-positive drivers who were correctly identified (if sensitivity is low, many drug-positive drivers will not be detected)
- **specificity** – the proportion of drug-negative drivers who were correctly identified (if specificity is low, many drug-negative drivers will be arrested and required to provide a second sample, only to have their charges dismissed when no drugs are detected by further analysis)
accuracy – the overall proportion of tests that were correct, both positive and negative (NHTSA, 2017).

Several oral fluid devices are now available, the American report, Drug-impaired driving (NHTSA, 2017), states that the tests cost approximately USD20 and produce results in less than five minutes. An evaluation of eight devices found that three had sensitivity and specificity of more than 80 per cent (Schulze et al., 2012). Police have told us they believe that this is the best possible option at this point in time and that oral fluid testing remains current best practice.

4.2.1 Testing body fluids

The detection time for substances is generally longest in hair, followed by urine, sweat, oral fluid and then blood. Illicit drugs and their metabolites can be detected in urine for up to four days after a single dose and for weeks, or even months in exceptional cases, following chronic use of cannabis (Verstraete, 2004). In oral fluid, drugs of abuse are typically detected for 12–48 hours, although methamphetamine has been detected for 72 hours following four doses and cocaine has been detected for up to nine days in chronic users (Verstraete, 2004).

For accuracy and reliability, the testing method used should be appropriately matched with the desired detection window.

If the last dose of the drug occurred outside of the detection window (whether the usage was far in the past, or even too recent), some drug testing methods will return a ‘negative’ result regardless if the drug was used or not.

Generally, it is easiest on the roadside to test either oral fluids as is currently the case or sweat. Urine would likely be considered too invasive and difficult to administer and blood requires a visit to a hospital or laboratory.

4.2.2 Emerging testing technologies

We also believe there is a need to monitor and investigate emerging technologies, with a view to reducing the cost and time taken to administer roadside drug testing and the associated penalty framework. Any selected technology would need to be validated and suitable for use on the roadside.

The NTC also supports Recommendation 18 of the 2017 Austroads report, Mitigating the growing drug driving and driver distraction risk (Austroads, 2017) that Austroads partners with the Alertness CRC to investigate the potential of fatigue testing technologies to have application to testing for drug presence and drug impairment.

DIOS – a portable illicit drug detection device

During April, the NTC met with Professor Nicolas Voelcker, who is both the science leader for CSIRO Manufacturing and a professor at Monash University’s Institute of Pharmaceutical Sciences. Professor Voelcker has led a team to develop a portable illicit drug detection device that can detect drugs from body fluids including plasma, urine, saliva, sweat (including fingerprints) and breath. The technology is known as Desorption Ionisation on Silicon (DIOS) and is based on nanostructured chips that Professor Voelcker manufactured at the Melbourne Centre for Nanofabrication.

DIOS requires less than 10 microliters of fluid and it is able to detect amphetamines, cocaine, benzodiazepines and opiates at levels below ng/mL. It also offers improved THC detection compared with current methods, with approximately 100 ng/mL able to be detected. The technology is also able to detect poly-drug use, and is confirmatory.

Each chip used to conduct a roadside test costs approximately $5 per unit. Once a test is conducted, the chip needs to be inserted into a MALDI mass spectrometry benchtop
instrument to undertake the analysis (see Figure 2). The benchtop instrument weighs approximately 63.5 kg and would fit into a standard light commercial van (48 cm wide × 66 cm deep × 134.62 cm high). The cost of the benchtop unit is currently approximately $150,000.

DIOS is able to provide a confirmatory analysis with one test, with the analysis taking less than one minute per sample. The analysis provides quantification of each drug identified. There is also limited expertise required to conduct the testing.

DIOS technology is quantitative, which has the ability to facilitate a graded or threshold approach if ever that was supported in Australian regulation. The technology has already been successfully tested on licit drugs such as oxycodone, ibuprofen and nicotine.

The mass spectrometry approach means that the testing schedule can be rapidly expanded to include new drugs as long as their basic chemical properties are known. In addition, the poly-drug testing means that the presence of combinations of licit drugs leading to impairment can be detected.

Figure 2. Results obtained with through DIOS testing in the benchtop MALDI

The accuracy of this testing technology may enable consideration of a one-step confirmatory test on the roadside, which may also negate the need for further laboratory testing.

The unit is yet to be tested for roadside use. Professor Voelcker is looking to undertake testing and would welcome involvement from interested members of the National Drug Driving Working Group. The NTC recommends that the National Drug Driving Working Group invites Professor Voelcker to present to them about this developing technology and its potential to apply to Australian roadside testing conditions.

Intelligent fingerprinting

The NTC has also been told that fingerprint testing by a UK-based company (Intelligent Fingerprinting) has an approximate per unit/test cost similar to the oral fluid testing at around $28–35 per test cartridge. We have been informed that the equipment may be suitable for the roadside after further investigation of the required specifications. The benefits of using fingerprint testing technology instead of the current saliva tests are reportedly many, including:

- It is less invasive and non-hazardous and it does not generate glass shards like the drug wipe.
- It is faster to collect a sample (five seconds) and potentially faster to get a first indicative result (90 seconds may be possible).
- The result is definitive in that the portable Reader 1000 unit used to call the result says positive or negative, leaving no room for interpretation by the officer.
- The tests can be easily stripped down and plastic recycled (~95 per cent of its parts) unlike the oral fluid tests which may form clinical waste.
- The test cartridge is smaller, weighing 11 g, not around 40 g for a drug wipe, so should be easier to ship, store and dispose of.

On a longer timeframe, the company is examining the possibility of creating methods that may facilitate confirmation testing, perhaps within minutes on a drug bus.

### 4.2.3 Drugs tested

The National Drug Strategy Household Survey (NDSHS) 2016 collected information on illegal drug use and alcohol and tobacco consumption among the general population in Australia. The key findings for the survey included (Australian Institute of Health and Welfare, 2016):

- In 2016, around 3.1 million Australians reported using an illicit drug.
- In 2016, the most common illicit drug was cannabis, followed by misuse of pharmaceuticals, cocaine and then ecstasy (which may include MDMA).
- While overall use of methamphetamine has decreased, use of crystal methamphetamine (‘ice’) continues to be a problem.
- People who are using ice are using it more frequently, which increases the risks and harms.

While THC, MDMA and methamphetamine are currently tested for, only New South Wales is planning to introduce roadside drug testing for cocaine use. Given it is one of the most prevalent drugs in Australia, there would be merit in other states expanding their test regimes to cover cocaine as well.

Overall, there was no significant change identified through the NDSHS in the use of any illicit drug, but changes were evident among certain age groups.

More people in their 40s used illicit drugs in 2016 than in 2013 (increased significantly from 13.6 per cent to 16.2 per cent), particularly among males in their 40s (increased from 15.4 per cent to 20 per cent).

Females aged 18 or older reported a significant increase in recent use of any illicit drug between 2013 and 2016 (from 12.1 per cent to 13.2 per cent), mainly driven by an increase among females in their 30s (from 12.1 per cent to 16.1 per cent). Females in their 30s were significantly more likely to have recently used cannabis, ecstasy and cocaine in 2016 than in 2013.

Generally, people under 40 have reported a decrease in recent illicit drug usage since 2001, while people 40 or older have reported an increase, particularly in recent years. This may reflect an ageing of the existing population of drug users (Figure 3).
Figure 3. Recent use(a) of selected illicit drugs, by age, 2001 to 2016 (per cent)

Source: NDSHS, 2016

4.2.4 Optimising random roadside drug testing strategies

The data within the NDSHS, together with data held by road agencies and police, could be used to develop a risk matrix to identify the most likely offender groups within the community for the drugs tested at the roadside.

While deterrence methods often rely on the random nature of testing, it may be possible to develop a better understanding of where and when to expend limited resources when undertaking ‘random testing’. Some of the questions that could be considered include:

- What time of day are drugs most likely to be prevalent?
- Are drugs more prevalent on weekdays or weekends?
- What demographic and geographic differences are there? For example, the NDSHS found that some groups in the community disproportionately experienced drug-related risks.

This information could then be further developed to introduce a framework for police to assess the most efficient and effective locations and times to deploy roadside testing and assist to provide training and resources to police in the locations that need it the most.

When police pull a driver over, they are also able to assess physical factors of the driver’s behaviour, such as balance and coordination, and make an assessment as to whether the driver may be impaired by a drug. Guidelines for undertaking this assessment could also be included in the optimisation strategy.
5 Conclusions and recommendations

Key points

- While Australia’s current legislative frameworks and law enforcement programs are relatively mature, more evidence is required to determine the best-practice approach for drug driving policy more generally.
- The zero tolerance approach should continue for the illicit drugs currently tested for, and a broader road safety ‘impairment’ approach should be taken to address road safety risks caused by taking drugs (those illicit drugs tested for, other illicit drugs, prescription and over-the-counter medications).
- Our recommendations are designed to improve the current roadside testing practices and frameworks but also to facilitate development of a national plan to address drug-impaired driving.

The NTC has been asked to make recommendations to the National Drug Driving Working Group about:

- the key factors and strategies that promote optimal deterrence against drug driving
- legislative frameworks that can support operational efficiency of drug testing and enforcement procedures
- strategies to improve the cost-efficiency of drug testing regimes
- new developments in detection and deterrence to identify potential future strategies.

5.1 Conclusions

While Australia’s current legislative frameworks and law enforcement programs are relatively mature, more evidence is required to determine the best approach to drug driving policy more generally. This is a global issue. There is no evidence available that suggests there is a viable alternative to the current ‘zero tolerance’ position currently adopted by all states and territories. There is also no technology currently available that can accurately detect the level of impairment caused by drug taking.

While we believe the zero tolerance approach should continue for the illicit drugs currently tested for, we also recommend a broader road safety ‘impairment’ approach be taken to address road safety risks caused by taking drugs (those illicit drugs tested for, other illicit drugs, prescription and over-the-counter medications).

The following recommendations are designed to improve the current roadside testing practices and frameworks but also to develop a national plan to address drug-impaired driving.

5.2 Recommendations

5.2.1 Key factors and strategies that promote optimal deterrence against drug driving

The NTC recommends that the National Drug Driving Working Group:

1. considers the recommendations of the current Austroads project ‘Optimising drug driving deterrence regimes’
2. develops a public education strategy that stigmatises impaired driving and includes reference to both alcohol and drugs as sources of impairment

3. considers hosting a national summit with stakeholders from safety agencies, data and policy experts, law enforcement and criminal justice professionals, toxicologists, and drug recognition experts.

5.2.2 Legislative frameworks that can support operational efficiency of drug testing and enforcement procedures

The NTC recommends that the National Drug Driving Working Group:

4. In relation to the offence of driving with a prescribed illicit drug present, considers:
   ▪ using common terminology within overarching legislation and regulation – for example, ‘prescribed illicit drug’
   ▪ whether all states and territories could adopt an infringement notice approach for first-time offenders
   ▪ adopting a national 24-hour prohibition for drivers who have been arrested for having a prescribed illicit drug present
   ▪ reviewing and aligning penalties including fines, licence suspension periods and imprisonment periods.

5. In relation to driving while under the influence of, or impaired by, drugs we recommend that the National Drug Driving Working Group considers:
   ▪ national adoption of a single common approach to regulating this area to accompany the common zero tolerance approach to prescribed illicit drugs – perhaps by national agreement of a single offence with consistent and agreed terminology such as ‘driving while impaired’ or ‘driving under the influence’
   ▪ once a common approach has been decided, considers reviewing and aligning the penalties for that offence including fines, licence suspension periods and imprisonment periods.

6. Considers adopting a consistent approach to drug driver education programs for offenders in both categories.

7. Adopts a road safety ‘impairment’ approach in developing strategies to reduce drug driving in Australia.

8. Identifies the datasets in each state and territory that detect the presence/level of drugs in Australian drivers and determines statistics that could be analysed at the national level to inform future policy and legislative reform.

9. Considers advising all states and territories to expand their roadside drug testing regimes to include cocaine as Australia’s third most prevalent illicit drug in 2016.

5.2.3 Strategies to improve cost-efficiency of drug testing regimes

The NTC recommends that the National Drug Driving Working Group:

10. Supports Recommendation 18 of the 2017 Austroads report *Mitigating the growing drug driving and driver distraction risk* that Austroads partners with the Alertness CRC to investigate the potential of fatigue testing technologies to have application to testing for drug presence and drug impairment.

11. Oversees development of national drug-impaired guidelines, similar to those developed in the United States, as guidance for states and territory road agencies and police services to reduce drug-impaired driving.
12. Facilitates development of guidelines for police to assess the most efficient and effective locations and times to deploy their roadside testing unit for random drug testing. This will require an analysis of data within the NDSHS, together with data held by road agencies and police (see Recommendation 8) to develop a national risk matrix that identifies the most likely offender groups within the community for the drugs tested at the roadside.

13. Investigates a national approach to purchasing drug testing equipment and considers developing a national guideline that sets out both the roadside drug testing and the laboratory testing procedures that produce accurate test results and admissible evidence in court.

5.2.4 New developments in detection and deterrence to identify potential future strategies

14. The NTC recommends that the National Drug Driving Working Group:
   - invites Professor Nicolas Voelcker from the CSIRO and Monash University to present to them about DIOS technology and its potential to apply to Australian roadside testing conditions
   - monitors and investigates the adoption of emerging drug testing technologies, including fingerprint testing, which could reduce the cost and time taken to administer roadside drug testing.

5.3 Next steps

The NTC will present this report to the National Drug Driving Working Group meeting on 11 May 2018. The working group members will discuss the report’s recommendations and determine which of the recommendations to include in their forward work program, or refer on to other relevant agencies for action.
**Appendix 1: Summary of state and territory regulatory frameworks for drug driving**

**New South Wales**

**Road Transport Act 2013**

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
</tr>
</thead>
</table>
| **S. 111(1) Presence of prescribed illicit drugs in person’s oral fluid, blood or urine** | First offence: Maximum penalty of $1,100 (10 penalty units)  
Second or subsequent offence: Maximum penalty of $2,200 (20 penalty units) | Part 7.4 Division 1 Licence disqualification  
S. 205(2)(a) Disqualification if no previous major offence  
The person is automatically disqualified for 6 months from holding a driver’s licence; or  
If the court that convicts the person thinks fit to order a shorter period (but not shorter than 3 months) of disqualification. |
| **S. 111(3) Presence of morphine or cocaine in person’s blood or urine** | First offence: Maximum penalty of $1,100 (10 penalty units)  
Second or subsequent offence: Maximum penalty of $2,200 (20 penalty units) | Part 7.4 Division 1 Licence disqualification  
S. 205(3)(a) Disqualification if previous major offence  
The person is automatically disqualified for 12 months from holding a driver’s licence; or  
If the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or a longer period of disqualification. |
| **S. 112 Use or attempted use of a vehicle under the influence of alcohol or any other drug** | First offence: Maximum penalty of $2,200 (10 penalty units) or imprisonment of up to nine months  
Second or subsequent offence: Maximum penalty of $3,000 (30 penalty units) or imprisonment of up to 12 months, or both | Part 7.4 Division 1 Licence disqualification  
S. 205(2)(b) Disqualification if no previous major offence  
The person is automatically disqualified for 12 months from holding a driver’s licence; or  
If the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or a longer period of disqualification.  
S. 205(3)(b) Disqualification if previous major offence  
The person is automatically disqualified for 3 years from holding a driver’s licence; or  
If the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or a longer period of disqualification. |
| **S. 148G Power to prevent driving by persons who failed an oral fluid test or refused or failed to undergo an oral fluid test or refused to provide an oral fluid sample** | A police officer may prohibit a person from driving a motor vehicle for a period of 24 hours. | |
| **S. 148H Power to prevent persons who have failed an oral fluid test or refused or failed to undergo an oral fluid test or refused to provide an oral fluid sample supervising a learner driver** | A police officer may prohibit a person from occupying a seat in a motor vehicle next to a holder of a learner’s permit for a period of 24 hours. | |

**Notes:**  
- In accordance with the *Crimes (Sentencing Procedure) Act 1999*, unless the contrary intention appears, a reference in any Act or statutory rule to a number of penalty units (whether fractional or whole) is taken to be a reference to an amount of money equal to the amount obtained by multiplying $110 by the number of penalty units.
<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
<th>Infringement notice</th>
</tr>
</thead>
</table>
| S. 49(1) A person is found guilty of an offence if he or she –  
(a) drives a motor vehicle or is in charge of a motor vehicle while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor vehicle. | First offence: A fine of not more than $3,964.25 (25 penalty units) or imprisonment for a term of not more than 3 months  
Second offence: A fine of not more than $19,028.40 (120 penalty units) or imprisonment for a term of not more than 12 months  
Subsequent offence: A fine of not more than $28,542.60 (180 penalty units) or imprisonment for a term of not more than 18 months | First offence: Minimum 2 years  
Second offence: Minimum 4 years | |
| S. 49(1) A person is found guilty of an offence if he or she –  
(ba) drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug | First offence: A fine of not more than $1,902.84 (12 penalty units)  
Second offence: A fine of not more than $19,028.40 (120 penalty units) or imprisonment for a term of not more than 12 months  
Subsequent offence: A fine of not more than $28,542.60 (180 penalty units) or imprisonment for a term of not more than 18 months | First offence: Minimum 12 months  
Subsequent offence: Minimum 2 years | |
| S. 49(1) A person is found guilty of an offence if he or she –  
(bb) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid, or (bc) drives a motor vehicle or is in charge of a motor vehicle while both— | First offence: A fine of not more than $1,902.84 (12 penalty units)  
Second offence: A fine of not more than $9,514.20 (60 penalty units)  
Subsequent offence: A fine of not more than $19,028.40 (120 penalty units) | First offence: Minimum 6 months  
Subsequent offence: Minimum 12 months | Road Safety (General) Regulations 2009  
Schedule 7 Traffic infringements  
3 penalty units |

Towards a national approach to drug driving

May 2018
<table>
<thead>
<tr>
<th>the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; and</th>
<th>imprisonment for a term of not more than 12 months</th>
<th>breach of the offender as specified in Column 1 of that Schedule; and</th>
</tr>
</thead>
<tbody>
<tr>
<td>the prescribed concentration of drugs or more than the <strong>prescribed concentration of drugs</strong> is present in his or her blood or oral fluid…</td>
<td><strong>Subsequent offence:</strong> A fine of not more than $42,813.90 (270 penalty units) or imprisonment for a term of not more than 18 months</td>
<td>In the case of a subsequent offence, the period specified in Column 3 of Schedule 1AB ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule.</td>
</tr>
</tbody>
</table>

**Notes:**
- The **Road Safety Act 1986** also contains offence and penalty provisions for refusal or failure to undergo testing and refusal or failure to provide samples.
- The **Road Safety Act** contains sections that require in some circumstances a person whose driver’s licence or learner’s permit has been cancelled, or who is disqualified from obtaining a driver’s licence or learner’s permit, on conviction, or on being found guilty, of an offence, to complete an accredited driver education program.
- In accordance with the **Monetary Units Act 2004**, a penalty unit for the financial year commencing 1 July 2017 is $158.57.
### Queensland

**Transport Operations Road Use Management Act 1995**

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
</tr>
</thead>
</table>
| S. 79 Vehicle offences involving liquor or other drugs | S. 79(1) Offence of driving etc. while under the influence (or a liquor or a drug)  
First offence: A person is guilty of an offence and liable to a penalty not exceeding $3,532.20 (28 penalty units) or imprisonment for a term not exceeding 9 months  
Second offence: If within the period of 5 years before conviction for an offence the offender has been previously convicted of a previous relevant offence, the person is liable for that offence to a maximum penalty of $7,569 (60 penalty units) or 18 months’ imprisonment  
Third offence: If within the period of 5 years before conviction for an offence the offender has been twice previously convicted of a relevant offence — the justices must for that offence impose, as the whole or part of the punishment, imprisonment | S. 86 Disqualification of drivers of motor vehicles for certain offences  
First offence: A person who is convicted of an offence in relation to a motor vehicle against s. 79(1) is, if during the period of 5 years before conviction the person has not been previously convicted — disqualified by such conviction and without any specific order for a period of 6 months from the date of such conviction from holding or obtaining a Queensland driver’s licence  
Second offence: If within the period of 5 years before such conviction the person has been previously convicted of an offence under s. 79(1), the person is disqualified by such conviction and without any specific order for a period of 1 year from the date of such conviction from holding or obtaining a Queensland driver’s licence  
Third offence: If within the period of 5 years before such conviction the person has been previously convicted more than once of an offence under s. 79(1), the person is disqualified by such conviction and without any specific order for a period of 2 years from the date of such conviction from holding or obtaining a Queensland driver’s licence |

| S. 79(2AA) Any person who, while a relevant drug is present in the person’s blood or saliva—  
(a) drives a motor vehicle, tram, train or vessel; or | First offence: Liable to a penalty not exceeding $1,766.10 (14 penalty units) or to imprisonment for a term not exceeding 3 months | S. 80(22) Application of subsection (22AA)  
Subsection (22AA) applies if a required specimen of saliva indicates that a relevant drug is present in the person’s saliva or if a person required to provide a specimen fails to do so.  
S. 80(22AA) Suspension of driver licence for 24 hours in particular circumstances  
The person’s driver’s licence is suspended for 24 hours in accordance with the requirements set out in s. 80(22). | S. 86 Disqualification of drivers of motor vehicles for certain offences  
First offence: For a period of not less than 1 month and not more than 9 months from the date of such conviction from holding or obtaining a Queensland driver’s licence |
(b) attempts to put in motion a motor vehicle, tram, train or vessel; or
(c) is in charge of a motor vehicle, tram, train or vessel; is guilty of an offence.

**Second offence:** If within the period of 5 years before conviction the offender has been previously convicted of a related offence the person is liable for that offence to a penalty not exceeding $2,523 (20 penalty units) or to imprisonment for a term not exceeding 6 months.

**Third offence:** If within the period of 5 years before conviction for an offence the offender has been twice previously convicted of a related offence the person is liable for that offence to a penalty not exceeding $3,535.20 (28 penalty units) or to imprisonment for a term not exceeding 9 months.

**Second offence:** If within the period of 5 years before such conviction the person has been previously convicted of an offence under a relevant section the person must be disqualified by such conviction for a period of not less than 3 months and not more than 18 months from the date of such conviction from holding or obtaining a Queensland driver’s licence.

S. 80(22) Application of subsection (22AA)
Subsection (22AA) applies if a required specimen of saliva indicates that a relevant drug is present in the person’s saliva or if a person required to provide a specimen fails to do so.

S. 80(22AA) Suspension of driver licence for 24 hours in particular circumstances
The person’s driver’s licence is suspended for 24 hours in accordance with the requirements set out in s. 80(22).

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**Note:**
- In accordance with the *Penalties and Sentencing Regulation 2015*, the penalty unit value in Queensland is $126.15 (current from 1 July 2017).
## Western Australia

### Road Traffic Act 1974

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty / imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
</tr>
</thead>
</table>
| **S. 63 Driving under the influence of alcohol etc.**  
A person who drives or attempts to drive a motor vehicle — while under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle; or while under the influence of alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle, commits an offence, and the offender may be arrested without warrant. | **First offence:** A fine not less than $900 (18 penalty units) and not more than $2,500 (50 penalty units)  
**Second offence:** A fine of not less than $2,100 (42 penalty units) or more than $3,500 (70 penalty units) or to imprisonment for 9 months  
**Third or subsequent offence:** A fine of not less than $2,100 (42 penalty units) or more than $5,000 (100 penalty units) or to imprisonment for 18 months | **First offence:** The court convicting that person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 10 months  
**Second offence:** The court convicting that person shall order that he be disqualified from holding or obtaining a driver’s licence for a period of not less than 30 months  
**Third or subsequent offence:** The court convicting that person shall order that he/she be permanently disqualified from holding or obtaining a driver’s licence. |
| **S. 64AB Driving whilst impaired by drugs**  
A person who drives or attempts to drive a motor vehicle while impaired by drugs commits an offence, and the offender may be arrested without warrant. | **First offence:** A fine of not less than $900 (18 penalty units) or more than $2,500 (50 penalty units)  
**Second offence:** A fine of not less than $2,100 (42 penalty units) or more than $3,500 (70 penalty units) or to imprisonment for 9 months  
**Third or subsequent offence:** A fine of not less than $2,100 (42 penalty units) or more than $5,000 (100 penalty units) or imprisonment for 18 months | **First offence:** The court convicting that person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 10 months  
**Second offence:** The court convicting that person shall order that he/she be disqualified from holding or obtaining a driver’s licence for a period of not less than 30 months  
**Third or subsequent offence:** The court convicting that person shall order that he/she be permanently disqualified from holding or obtaining a driver’s licence. |
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>S. 71B Preventing use of vehicle by alleged offender – police powers</strong></td>
<td>If a police officer has reason to suspect that a person (the offender) is driving, is attempting to drive, has driven or has attempted to drive a motor vehicle in contravention of s. 64AB the police officer may require the offender to immediately hand over all keys to any motor vehicle that are there and then in the offender’s possession.</td>
</tr>
<tr>
<td><strong>S. 71C Disqualification by police officer</strong></td>
<td>The disqualification notice must contain a statement to the effect that the alleged offender is disqualified from holding or obtaining a driver’s licence for a period commencing on receipt of the notice and ending on the day that is 2 months after the day the notice is received.</td>
</tr>
<tr>
<td><strong>S. 71D Disqualification notice</strong></td>
<td>A person who is given a disqualification notice is disqualified from holding or obtaining a driver’s licence for the period set out in the notice unless the notice is sooner revoked.</td>
</tr>
<tr>
<td><strong>S. 64AC Driving with prescribed illicit drug in oral fluid or blood</strong></td>
<td>A person who drives or attempts to drive a motor vehicle while a prescribed illicit drug is present in the person’s oral fluid or blood commits an offence.</td>
</tr>
<tr>
<td><strong>First offence:</strong></td>
<td>A fine of not more than $500 (10 penalty units)</td>
</tr>
<tr>
<td><strong>Second or subsequent offence:</strong></td>
<td>A fine of not less than $500 (10 penalty units) or more than $1,000 (20 penalty units)</td>
</tr>
<tr>
<td><strong>Second offence:</strong></td>
<td>The court convicting the person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less than 6 months</td>
</tr>
</tbody>
</table>

**Note:**
- In accordance with the *Road Traffic (Administration) Act 2008* a reference to a number of PU is a reference to an amount (in dollars) that is that number multiplied by 50.
### South Australia

#### Road Traffic Act 1961

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
<th>Infringement notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 40K Direction to leave vehicle</td>
<td>S. 40K(5) Maximum penalty $5,000</td>
<td>S. 40K(4) A police officer may do one or more of the following if the officer believes on reasonable grounds that the driver is not fit to drive the vehicle because of the consumption of alcohol or drugs – (a) direct the driver to secure the vehicle and surrender to the officer all keys to the vehicle that are in the person’s immediate possession or in the vehicle; (b) immobilise the vehicle; (c) direct the driver not to drive any other vehicle until permitted to do so by a police officer.</td>
<td></td>
</tr>
<tr>
<td>S. 40K(5) A person commits an offence if – (a) the person is subject to a direction under this section; and (b) the person engages in conduct that results in a contravention of the direction.</td>
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</tr>
<tr>
<td>S. 47 Driving under the influence</td>
<td>S. 47(1) A person must not – (a) drive a vehicle; or (b) attempt to drive a vehicle in motion, while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle.</td>
<td>S. 47(3) If a court convicts a person of an offence against s. 47, the court must order that the person be disqualified from holding or obtaining a driver’s licence.</td>
<td>S. 47(1) A person must not drive a vehicle, or attempt to drive a vehicle in motion, while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle. First offence: A fine not less than $1,100 and not more than $1,600, or imprisonment for not more than 3 months Subsequent offence: A fine not less than $1,900 and not more than $2,900, or imprisonment for not more than 6 months</td>
</tr>
<tr>
<td>S. 47(1) A person must not – (a) drive a vehicle; or (b) attempt to drive a vehicle in motion, while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle.</td>
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</tr>
<tr>
<td>S. 47BA Driving with prescribed drug in oral fluid or blood</td>
<td>S. 47BA(1) A person must not drive a motor vehicle, or attempt to put a motor vehicle in motion while a prescribed drug is present in the person’s oral fluid or blood.</td>
<td>S. 47BA(4) If a court convicts a person of an offence against s. 47BA, the court must order that the person be disqualified from holding or obtaining a driver’s licence.</td>
<td>S. 47BA(1) A person must not drive a motor vehicle, or attempt to put a motor vehicle in motion while a prescribed drug is present in the person’s oral fluid or blood. First offence: A fine of not less than $900 and not more than $1,300 Second offence: A fine of not less than $1,100 and not more than $1,600 Third or subsequent offence: A fine of not less than $1,500 and not more than $2,200</td>
</tr>
<tr>
<td>S. 47BA(1) A person must not drive a motor vehicle, or attempt to put a motor vehicle in motion while a prescribed drug is present in the person’s oral fluid or blood.</td>
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<tr>
<td>S. 47BA(4) If a court convicts a person of an offence against s. 47BA, the court must order that the person be disqualified from holding or obtaining a driver’s licence.</td>
<td></td>
<td>S. 47BA(6) A person cannot be prosecuted for an offence under s. 47BA unless the person has been given an expiation notice under the Expiation of Offences Act 1996 and allowed the opportunity to expiate the offence in accordance with that Act.</td>
<td></td>
</tr>
<tr>
<td>S. 47BA(6) A person cannot be prosecuted for an offence under s. 47BA unless the person has been given an expiation notice under the Expiation of Offences Act 1996 and allowed the opportunity to expiate the offence in accordance with that Act.</td>
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<tr>
<td>Notes:</td>
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<tr>
<td>Where a person is convicted of driving under the influence while a child aged under 16 is present in the vehicle, they will be required to undergo a drug or alcohol dependency assessment prior to reapplying for their licence at the end of the disqualification period (Motor Vehicles Act ss. 79B(1) and 79B(2)).</td>
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</tr>
<tr>
<td>Sections 5–7 of the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 allow for the wheel clamping or impoundment of a vehicle for 28 days with the ability to apply to the court for an extension of up to 90 days. However, this does not apply if the person is to be, or has been, given an expiation notice in respect of the prescribed offence (unless the notice has been withdrawn or the person elects to be prosecuted in accordance with the Expiation of Offences Act).</td>
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<tr>
<td>Section 12 of the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act allows for a vehicle to be impounded by the relevant authority for up to 6 months if or forfeited to the Crown in certain circumstances.</td>
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</tr>
<tr>
<td>Schedule 4 of the Motor Vehicle Regulations 2010 specifies demerit points for offences against the Road Traffic Act 1961 regarding drug driving.</td>
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</tbody>
</table>

**Subsequent offence:** For such period, being not less than 3 years, as the court thinks fit notice themselves rather than a summons for the person to attend court for prosecution. However, even where an expiation notice may be issued for a particular offence, the authority has the discretion to choose whether to do so or to issue a summons. See Expiation of Offences Act, s. 5.

If expiated: $600 [see Road Traffic (Miscellaneous) Regulations 2014 (SA) Schedule 4 Part 2], and licence disqualification of 3 months [see Motor Vehicles Act 1959 (SA) s. 81D(2)(a)(ii)].
Northern Territory of Australia
Traffic Act

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
<th>Infringement notice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>S. 28 Driving with certain drugs in body</strong></td>
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</tr>
<tr>
<td><strong>S. 28(1)</strong></td>
<td>First offence: A fine of $770 (5 penalty units) or imprisonment for 3 months</td>
<td></td>
<td>Traffic Regulations</td>
</tr>
<tr>
<td></td>
<td>Second or subsequent offence: A fine of $1,155 (7.5 penalty units) or imprisonment for 6 months</td>
<td></td>
<td>Schedule 1 Traffic infringement notice offences</td>
</tr>
<tr>
<td><strong>S. 28(4)</strong></td>
<td>If a court finds a person guilty of a relevant offence that is a second or subsequent offence, the person’s licence to drive is automatically cancelled and the person is disqualified from obtaining a licence.</td>
<td></td>
<td>Traffic offence: drive with prohibited drug in body contrary to s. 28(1) of the Act – Infringement notice fine $400.</td>
</tr>
</tbody>
</table>

| **S. 29AAA Driving under influence** | | |
| **S. 29(1)** | A person commits an offence if, while under the influence of alcohol or a drug to such an extent as to be incapable of having proper control of the vehicle, the person – | | |
| | (a) drives a vehicle; or | | |
| | (b) is a driving instructor occupying a passenger seat in a vehicle for the purpose of instructing another person to drive the vehicle. | | |
| | First offence: A fine of $1,540 (10 penalty units) or imprisonment for 12 months | | |
| | Second or subsequent offence: A fine of $3,080 (20 penalty units) or imprisonment for 12 months | | |
| **S. 29(3)** | If a court finds a person guilty of a relevant offence relating to the influence of a drug only, the person’s licence to drive is automatically cancelled and the person is disqualified from obtaining a licence. | | |
| | First offence: For a minimum period of 6 months | | |
| | Second offence: For a minimum period of 12 months but not more than 3 years | | |
| **S. 29(3A)** | If a court finds a person guilty of a relevant offence relating to the influence of alcohol, or alcohol and a drug, but not a drug only, the person’s licence to drive is cancelled and the person is disqualified from: | | |
| | First offence: Obtaining a licence for a period that is at least 6 months | | |
| | Second or subsequent offence: Obtaining a licence for a period that it is at least 12 months | | |
| **S. 29(4)** | A relevant offence that is a second or subsequent offence is an immediate suspension offence. | | |

| **S. 29AAF Requirement for saliva test** | | |
| **S. 29 AAF(4)** | If a police officer requires a person to submit to a saliva test and – | | |
| | First offence: A fine of $1,540 (10 penalty units) or imprisonment for 12 months | | |
| | Second or subsequent offence: A fine of $3,080 (20 penalty units) or imprisonment for 12 months | | |
| **S. 29AAM(2)** | A police officer may before the person is released give the person a notice disqualifying them from driving for 24 hours. | | |
(a) the person fails to provide a sufficient sample of saliva for the completion of the test and any subsequent analysis; or
(b) the officer reasonably believes (whether as a result of the test or otherwise) that the person’s body may contain a prohibited drug;

The police officer or another officer may arrest the person without warrant and detain the person for the purpose of having a sample of blood or saliva taken for analysis.

**Notes:**
- In accordance with the Penalty Units Act, as in force at 29 May 2013, the penalty unit amount for Darwin changes every new financial year for Darwin on 1 July in line with the consumer price index (CPI) – the current penalty unit amount is $154.
### Tasmania

#### Road Safety (Alcohol and Drugs) Act 1970

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
</tr>
</thead>
</table>
| **S. 4 Driving while under the influence of alcohol, drugs**                       | **First offence:** Minimum $795 (5 penalty units), maximum $4,770 (30 penalty units) or 12 months’ imprisonment **  
**Subsequent offence:** Minimum $1,590 (10 penalty units), maximum $9,540 (60 penalty units) or 24 months’ imprisonment | **First offence:** Minimum 12 months, maximum 36 months  
**Subsequent offence:** Minimum 24 months, maximum 72 months |
| A person who drives a vehicle while under the influence of one or more of the following things to the extent that he or she is incapable of having proper control of the vehicle is guilty of an offence –  
(a) intoxicating liquor;  
(b) a drug. |                                                                                      |                                                                 |
| **S. 6A Driving with prescribed illicit drug in blood**                             | **First offence:** Minimum $318 (2 penalty units), maximum $1,590 (10 penalty units), or 3 months’ imprisonment  
**Subsequent offence:** Minimum $636 (4 penalty units), maximum $3,180 (20 penalty units), or 6 months’ imprisonment | **First offence:** Disqualification, minimum 3 months, maximum 12 months  
**Subsequent offence:** Disqualification, minimum 6 months, maximum 24 months |
| (1) Subject to subsection (2), a person who drives a motor vehicle while a prescribed illicit drug is present in his or her blood is guilty of an offence.  
(2) A person does not commit an offence against subsection (1) if the prescribed illicit drug was obtained and administered in accordance with the Poisons Act 1971. |                                                                                      |                                                                 |
| **S. 14 Offences under Division 2**                                                | **First offence:** Minimum $795 (5 penalty units), maximum $4,770 (30 penalty units), or 12 months’ imprisonment  
**Subsequent offence:** Minimum $1,590 (10 penalty units), maximum $9,540 (60 penalty units), or 24 months’ imprisonment | **First offence:** Minimum 12, maximum 36 months  
**Subsequent offence:** Minimum 24 months, maximum 72 months |
| Any person without reasonable excuse, fails or refuses to comply with the relevant sections of this section regarding a requirement made by a police officer regarding oral fluid, or blood testing, is guilty of an offence. |                                                                                      |                                                                 |
| **Traffic Act 1925**                                                              |                                                                                      |                                                                 |
| **S. 41A Power of police officer to forbid incapable person to drive**             |                                                                                      |                                                                 |
| A person who fails to comply with a direction given under subsection 1 or does an act that is for the time being forbidden under a relevant subsection is guilty of an offence against this Act, but no person shall be convicted of an offence under this subsection unless the court before which he is charged is satisfied that the police officer had reasonable grounds for believing that, in all the circumstances of the case, the direction or prohibition was necessary in the interests of the defendant, or of any other person, or of the public. |                                                                                      |                                                                 |
| **S. 41A Power of police officer to forbid incapable person to drive**             |                                                                                      |                                                                 |
| Where a police officer is of the opinion that a person who is for the time being in charge of a motor vehicle is, by reason of his physical or mental condition, however arising, incapable of having proper control of the motor vehicle, the police officer may prevent the person from driving the vehicle until person is able to have proper control of the vehicle. |                                                                                      |                                                                 |

**Note:**  
- In accordance with the Penalty Units and Other Penalties Act 1987, for the period 1 July 2017 – 30 June 2018, one penalty unit is equal to $159.
## Australian Capital Territory

<table>
<thead>
<tr>
<th>Prescribed offence</th>
<th>Penalty/imprisonment</th>
<th>Licence disqualification / driving prohibition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>S. 47B Police may direct a person not to drive</strong></td>
<td>Maximum penalty: (10 penalty units) $1,500</td>
<td><strong>S. 47B(3) The direction must—</strong>&lt;br&gt; (a) be in writing; and&lt;br&gt; (b) state the period, not longer than 12 hours, for which the person must not drive a motor vehicle...</td>
</tr>
<tr>
<td>This section applies if—&lt;br&gt; (a) a person has been required to undergo a drug screening test or to give a sample of oral fluid or blood for analysis; and&lt;br&gt; (b) a police officer has reasonable cause to suspect that the person’s ability to drive a motor vehicle safely is impaired by a prescribed drug.</td>
<td>The police officer may direct the person not to drive a motor vehicle. The person commits an offence if the person fails to comply with the direction.</td>
<td></td>
</tr>
<tr>
<td><strong>S. 20 Prescribed drug in oral fluid or blood – driver or driver trainer</strong></td>
<td>First offence: (10 penalty units) $1,500</td>
<td><strong>S. 34 Automatic driver licence disqualification – offences other than s. 19</strong>&lt;br&gt; (1) if a court convicts a first offender, other than a driver trainer, of a disqualifying offence, the person is automatically disqualified from holding or obtaining a driver licence for—&lt;br&gt; (a) 3 years; or&lt;br&gt; (b) if the court orders a shorter period of disqualification that is at least 6 months—the shorter period.</td>
</tr>
<tr>
<td>(1) A person commits an offence if the person has been the driver or the driver trainer of a motor vehicle on a road or road related area; and&lt;br&gt; (2) Has, within the relevant period, a prescribed drug in the person’s oral fluid or blood.</td>
<td>Subsequent offence: If the offender is the driver, $3,750 (25 penalty units) and/or imprisonment for 3 months&lt;br&gt; If the offender is the driver trainer, $3,000 (20 penalty units)</td>
<td>(2) if a court convicts a repeat offender, other than a driver trainer, of a disqualifying offence, the person is automatically disqualified from holding or obtaining a driver licence for—&lt;br&gt; (a) 5 years; or&lt;br&gt; (b) if the court orders a shorter period of disqualification that is at least 12 months—the shorter period.</td>
</tr>
<tr>
<td><strong>S. 24 Driving under the influence of intoxicating liquor or a drug</strong></td>
<td>Maximum penalty: $4,500 (30 penalty units) and/or imprisonment for an offence by a first offender – 6 months; or for an offence by a repeat offender – 12 months</td>
<td><strong>S. 34 Automatic driver licence disqualification – offences other than s. 19</strong>&lt;br&gt; (1) if a court convicts a first offender, other than a driver trainer, of a disqualifying offence, the person is automatically disqualified from holding or obtaining a driver licence for—&lt;br&gt; (a) 3 years; or&lt;br&gt; (b) if the court orders a shorter period of disqualification that is at least 6 months—the shorter period.</td>
</tr>
<tr>
<td>(1) A person who drives a motor vehicle on a road or road related area while under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of having proper control of the motor vehicle commits an offence</td>
<td></td>
<td>(2) if a court convicts a repeat offender, other than a driver trainer, of a disqualifying offence, the person is automatically disqualified from holding or obtaining a driver licence for—&lt;br&gt; (a) 5 years; or&lt;br&gt; (b) if the court orders a shorter period of disqualification that is at least 12 months—the shorter period.</td>
</tr>
<tr>
<td><strong>S. 22A Refusing to provide oral fluid sample</strong></td>
<td>Maximum penalty: $4,500 (30 penalty units)</td>
<td></td>
</tr>
</tbody>
</table>
(ii) the driver trainer in a motor vehicle on a road or road related area; and (b) has, in accordance with this Act, been required to provide a sample of oral fluid for analysis.

(2) The person commits an offence if—
(a) the person refuses to provide a sample of oral fluid for analysis; or
(b) the person fails to provide a sample of oral fluid in accordance with reasonable directions of a police officer.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Maximum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 23 Refusing blood test</td>
<td>The driver of a motor vehicle on a road or road related area, or the driver trainer in a motor vehicle on a road or road related area; Commits an offence if they are required to permit a sample of blood to be taken for analysis and they fail to do so.</td>
<td>Maximum penalty: $4,500 (30 penalty units)</td>
</tr>
</tbody>
</table>

Notes:
- In accordance with the Legislation Act 2001 a penalty unit for an offence committed by an individual is $150.
Appendix 2: The difference between ‘driving under the influence of drugs’ and ‘driving while impaired by drugs’ in Victoria and Western Australia

Victoria

Section 49(1) Road Safety Act 1986 – Driving under the influence of a drug

This offence is concerned with people who are intoxicated by liquor or any drug to such an extent as to be incapable of having proper control of a motor vehicle.

The relevant points of proof for the offence are:

- identity
- did drive/in charge a motor vehicle
- intoxicated by liquor/drug to such an extent as to be incapable of having proper control of a motor vehicle.

This offence is more of a general offence and has existed in Victoria prior to most other impaired driving offences including the 0.05 driving while impaired legislation. The offence is normally established when the prosecution can demonstrate beyond reasonable doubt that a driver had consumed intoxicating liquor/drugs, drove (was in charge of) a motor vehicle and was incapable of having proper control of the motor vehicle as a direct result of being under the influence of alcohol/liquor. Evidence to support the offence can include:

- witness accounts of driving/collision that is inconsistent with having proper control of a motor vehicle
- direct police evidence of driving that is inconsistent with having proper control of a motor vehicle
- admissions/confessions
- breath/drug test results
- responses to sobriety tests
- elimination for any other hypothesis for not having proper control of the motor vehicle, other than being under the influence of alcohol/liquor
- expert evidence of a medical examiner regarding the effect of the liquor/drug on the individual.

There is no statutory/regulatory prescription of testing to identify this offence. Proving the person was incapable of having control of the motor vehicle solely because of the intoxicating liquor/drug is often a difficult element to prove. On conviction, the impose a minimum two-year licence cancellation and disqualification.

Section 49(1)(ba) Road Safety Act 1986 – Driving whilst impaired by a drug

This offence came into force in December 2000. The offence is explicitly concerned with drugs as the reason for impairment. It relies on eliminating alcohol and other reasons for any detected impairment. The offence requires observance of a regulated drug impairment assessment (DIA) to enable police to detect visible signs of impairment. The prescribed DIA includes a record of interview, a Horizontal Gaze Nystagmus tests, a Walk and Turn Test and a One Leg Stand Test. The DIA is video-recorded. A medical expert is required to assess the evidence and provide an expert opinion as to whether any sign(s) of impairment detected is/are consistent with the effects of any drug detected.

The relevant points of proof for the offence are:
Evidence to support the offence can include:

- witness accounts of driving/collision that is consistent with impairment
- direct police evidence of driving that is consistent with impairment
- admissions/confessions
- elimination of alcohol or other reasons for detection of impairment
- breath/drug test results
- responses to DIA tests that are consistent with impairment
- expert evidence and certificate issued by a medical examiner regarding any sign(s) of impairment detected is/are consistent with any drug detected.

Unlike the driving under the influence offence, there is no requirement to prove the person was incapable of having proper control of the motor vehicle. On conviction, the court must impose a minimum one-year licence cancellation and disqualification.

**Western Australia**

**Driving under the influence of drugs**

In Western Australia, section 63 of the *Road Traffic Act 1974* (driving under the influence of drugs) is usually determined by a police officer observing a *drivers’ behaviour or demeanour* (it is not necessarily just about the manner of driving). If a police officer suspects a driver is under the influence of alcohol or drugs, their first course of action is to undertake a preliminary alcohol test to detect if alcohol is present. If the alcohol test does not explain the person’s conduct or appearance (it may be a positive alcohol test but very low) WA Police have the power to take blood from the driver to detect any drugs present in their system within four hours of driving. The results of that drug test alone does not prove the charge. The combined effects of both drugs and/or alcohol may be sufficient if they are strongly supported with some other evidence. In general this evidence consists of visual observation by the apprehending officer or independent witnesses. This evidence should be of such a nature that it establishes reasonable grounds to believe that the driver was affected to such an extent as to be *incapable of having proper control of a motor vehicle* (visual DUI).

The most important element to prove in this offence is that the driver was ‘incapable of having proper control’.

Note: An oral fluid test is not considered in this instance because the purpose of an oral fluid is merely to identify if a drug (THC, MDMA, methamphetamine) is present in the system; it is not relevant to proving DUI.

**Driving while impaired by drugs**

With respect to section 64AB of the *Road Traffic Act 1974* driving while impaired by drugs, this is usually identified when police stop a vehicle or speak to a driver after the fact because they have reason to believe that the driver is drug-impaired (driving all over the road or a tip off or involved in a crash). The same testing process applies (preliminary alcohol test, driver assessment and blood obtained).

Upon having the blood analysed and a certificate produced identifying if there were drugs (prescribed or illicit), the officer may seek further detail by requesting a Pharmacologist Opinion Report. This report will detail the effects of the drugs concerned and give an expert opinion as to whether or not the driver was impaired by the combination of drugs. Where
relevant, this analysis will take into consideration the combination of licit and illicit drugs and alcohol present in a person’s system.

With this offence there is no requirement to prove the driver was ‘incapable of having proper control’. The drug analysis and report may be sufficient.

If during the trial the prosecutor requests to amend the charge from one to the other, then the magistrate could consider and approve the amendment based on the evidence.
Towards a national approach to drug driving

References


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