

Land Transport Amendment Act 2009

A new law to combat drug impaired driving and to reform vehicle registration and licensing ...

Overview

The Land Transport Amendment Act 2009 was passed on 25 June 2009. The new law gives Police greater powers to deal with the problem of people driving under the influence of drugs. It also reforms the system for registering and licensing of motor vehicles. These changes do not come into effect immediately but will be staged over the next year.

People who drive when their judgement and reactions are impaired by drugs are a danger to themselves and other road users. The new law aims to reduce this hazard by:

- creating a new offence of driving while impaired and with evidence in the bloodstream of a controlled drug (i.e. a drug that is classified under the Misuse of Drugs Act 1975) or a prescription medicine;
- empowering Police to determine whether or not a driver is impaired by means of a "compulsory impairment test" which tests co-ordination, physiological reactions and markers for drug impairment such as pupil dilation;
- empowering Police, if the test shows that the driver is impaired, to forbid the person to drive (generally for 12 hours) and require the driver to provide a blood sample to determine whether controlled drugs or prescription medicines are present;
- imposing penalties for driving while impaired and with drugs/prescription medicines in the blood which are aligned to the penalties for drink driving;
- providing defences for persons who have consumed prescription medicines in accordance with a current prescription and instructions from the manufacturer or a health practitioner;
- creating a further new offence of driving with Class A drugs in the bloodstream in cases where a driver is injured and unable to undertake the impairment test.

The new law also reforms the law regulating the registration and licensing of motor vehicles. One of its most important initiatives is to improve protection of personal information held on the Motor Vehicle Register. Applications for the release of names and addresses will be dealt with under the Official Information Act (which applies a public interest test) and there will be provision for approved bulk users.

Questions and Answers

Drug impaired driving

1. Isn't drugged driving already against the law?

Yes, it is. Drivers currently have a general duty to be mentally and physically fit when they drive a motor vehicle on public roads – this includes not being impaired by alcohol or drugs.

There is also an offence of being incapable of proper control of a vehicle while under the influence of drink or drugs. The offence can be difficult to prosecute. The Police usually rely on expert medical evidence for a prosecution and many doctors have interpreted "incapable" as meaning "unable to stand."

Many drivers who do not meet this threshold are still likely to be unsafe to drive. This difficulty with prosecutions also undermines an important road safety message. Driving while

impaired by drugs can be as dangerous as driving while impaired by alcohol and should be just as unacceptable.

The existing "incapable" offence remains in place. In cases where the impairment test cannot be used Police will have the option of charging the person under this offence, if there is sufficient supporting evidence.

2. What is the new offence?

The Land Transport Amendment Act 2009 creates a new offence of driving while impaired and with evidence in the bloodstream of a controlled drug or prescription medicine.

3. How will it be enforced?

Where a Police officer has "good cause to suspect" that a driver has consumed a drug or drugs, the officer may require the driver to undergo a compulsory impairment test.

Grounds for having good cause to suspect include erratic driving or, if the driver has been stopped for another reason, odd behaviour. An example of the latter is the person stopped at an alcohol checkpoint who is behaving in an intoxicated manner but there is no evidence of drink driving.

If the driver does not satisfactorily complete the compulsory impairment test, the Police officer may:

- forbid the driver to drive, and
- require the driver to provide a blood sample.

Forbidding the person to drive deals with the immediate road safety risk represented by the impaired driver. The legislation does not say how long a person may be forbidden to drive but the period must be reasonable. It is likely that drivers who fail the impairment test would be forbidden to drive for 12 hours (the period of prohibition applied to a driver who is over the legal adult breath alcohol limit).

The procedure for taking a blood sample is the same as for drink drivers who opt for a blood test. When the blood test results are known, Police will make a decision whether or not to charge the driver.

4. What is the compulsory impairment test?

The compulsory test comprises:

- a walk and turn test;
- a one leg stand test;
- an eye test – pupil size, reaction to light, lack of convergence, nystagmus (i.e. abnormal eye movement - irregular eye movement can be a marker for drug impairment.)

It is based on a test used in the UK and adapted for the New Zealand Police by experts from Swinburne University of Technology, Melbourne in the interest of more effective and efficient enforcement. Details of the test will be published in the New Zealand Government *Gazette*.

5. What substances will be looked for in the blood test?

The target list will be determined by considerations of what drugs create the most risk for road users and which are most likely to be used by New Zealand drivers. Drugs targeted are likely to include opiates, amphetamines, cannabis and prescription medicines that may impair driving (including sedatives, antidepressants and methadone). The list will be reviewed from time to time in the light of research, and changes in New Zealanders' drug taking habits. The new law allows blood samples that were taken for evidential purposes for alcohol testing to be retained and reanalysed for road safety research purposes.

6. Why are prescription medicines included in the offence?

The new law treats controlled drugs and prescription medicines even handedly because both can impair a person's ability to drive safely. This law is concerned with road safety risk, not with the use of illegal drugs per se.

The new law provides a defence for a person who can prove that he or she was using the drug or medicine in accordance with a current prescription and instructions from the manufacturer, the doctor who prescribed it or the pharmacist who dispensed it.

7. Does the new law oblige doctors and pharmacists to warn their patients?

The new law does not impose any additional obligations on doctors or pharmacists. Naturally, doctors and pharmacists will continue to provide advice to their patients on the possible side effects of prescription drugs or medicines (including any potential adverse impacts on driving) in accordance with accepted standards of clinical practice.

8. What happens if the driver is injured?

If the driver is injured or incapacitated he or she cannot be required to undertake the compulsory impairment test. This means that even if a driver is impaired by drugs, he or she can not be prosecuted for drug impaired driving.

Although an injured or incapacitated driver could be prosecuted for reckless or dangerous driving, or even, (providing that there is evidence), for the existing "incapable due to a drug" offence, there was a concern that the inability to easily prosecute the driver for a specifically drug related driving offence would weaken the Government's anti-drug message.

Therefore a further new offence has been created – "driving with Class A drugs in the bloodstream".

Under current law, Police may require a person in hospital or a doctor's surgery as a result of being injured in a motor vehicle accident to provide a blood sample to determine whether or not the person is over the blood alcohol limit. Under the new law, Police will be able to require a blood sample for the purpose of testing whether Class A drugs are present. The principal Class A drug of concern is methamphetamine or "P".

9. What will be the penalty for drug impaired driving or driving with Class A drugs in the blood stream?

The penalties for drug impaired driving largely mirror the penalties applicable for drink driving offences. The table below gives examples of the applicable penalties.

Nature of Offence		Penalties
No Injuries	Drug Impaired - First or second offence	<ul style="list-style-type: none">• Up to 3 months in prison or a fine of up to \$4,500; and• disqualified from holding or obtaining a driver licence for at least 6 months.
	Drug Impaired - Third or subsequent offence	<ul style="list-style-type: none">• Up to 2 years in prison or a fine of up to \$6,000; and• disqualified from holding or obtaining a driver licence for more than 1 year.
Causing Injury or Death	Drug Impaired	<ul style="list-style-type: none">• Up to 3 years in prison or a fine of up to \$10,000; and
	Driving carelessly with Class A drugs in the blood	<ul style="list-style-type: none">• disqualified from holding or obtaining a driver licence for 1 year or more.

10. Why doesn't the new law state a maximum legal level of drug such as exists for alcohol?

There have been decades of research into the relationship between blood alcohol levels and crash risk. It is therefore possible to know where to set legal alcohol limits for driving. The relationship between dosages of various kinds of drugs and crash risk is not yet known.

Further, to set a maximum legal level for drivers using a controlled drug would be at odds with the Misuse of Drugs Act which states that the use of certain controlled drugs (e.g. cannabis and methamphetamine) is illegal at any level.

In any case, it is not necessary to specify a maximum legal limit for drugs: the driver will be shown to be impaired or not impaired by the outcome of the impairment test.

11. Why aren't we doing saliva testing as in some Australian states?

The new law is concerned with impairment and a saliva test cannot show impairment, only the presence of a drug. Also, the saliva test technology is not yet reliable enough for use in criminal prosecutions.

12. Why doesn't drink drive testing use an impairment test?

Drink drive enforcement did once use an impairment test. Then in the late 1960s the breathalyser was developed. A breathalyser test was as reliable as the impairment test and could be undertaken in a fraction of the time. Also by that time enough was known about alcohol impairment to be able to prescribe in law a specific level of alcohol in the breath or blood representing impairment. Therefore a test which measured alcohol levels could replace the impairment test.

13. When does the new law come into effect?

The new anti drug driving regime is planned to come into effect on 1 November 2009.

Motor Vehicle Register

14. Are names and addresses held on the Motor Vehicle Register publicly available under the present law?

Yes. Any person may, on quoting a plate number of a motor vehicle and paying a small fee, obtain the name and address of the current (and previous) registered owner(s). This information is available from a Post Shop or other agent of the NZ Transport Agency (NZTA). It is also available from various commercial websites. Any person may subscribe to the NZTA's own website (motochek.landtransport.govt.nz), download the names and addresses of vehicle owners without their permission and then use this information for any purpose.

15. What is wrong with that?

Bulk downloads of names and addresses are used for unsolicited personally addressed advertising mail (known as "direct marketing") and for phone surveys and market research. As in the case of unsolicited electronic advertising or "spam" (dealt with in the Unsolicited Electronic Messages Act 2007) many vehicle owners find this intrusive and annoying. This is especially as they are compelled by law to provide their name and address to the NZTA and have no way of preventing the NZTA from releasing their details to the marketers and pollsters, who may use the information as they choose (including on-selling it to other organisations).

There are also instances of people obtaining the name and address of vehicle owners for criminal purposes, such as car theft or harassment.

16. Can't I just apply for a confidential listing?

It is possible to obtain a confidential listing, but the criteria are very difficult to satisfy. As a rule, there must be a real and substantial risk to the applicant's privacy or personal safety in the objective view of the NZTA. The subjective opinion of the applicant is not sufficient grounds for a confidential listing. A general irritation at receiving unsolicited advertising mail is not grounds under existing law (and is not grounds under the new law) for a confidential listing.

Further, in the case of harassment or intimidation, by the time a victim has become aware that a person has traced him or her through the Motor Vehicle Register, the victim's name and address are already in the hands of the person threatening the victim and a confidential listing is of no use.

17. How will the new law fix these problems?

The new law will remove the NZTA's obligation to supply names and addresses on request. Applications for release of personal information will be treated like any other Official Information request. The Official Information Act will require the NZTA to weigh personal privacy concerns against the public interest (if any) in releasing the information. Further, as personal information is involved, the NZTA will have to take into account the Information Privacy Principles contained in the Privacy Act. There will also be a number of alternatives to making an Official Information request.

18. When will these changes occur?

This will depend on a range of computer system changes that will need to be implemented. It is expected that the new system will be in place in mid 2010.

19. Doesn't it take quite a long time for an Official Information request to be processed?

That depends on the information. There are three principal steps in dealing with an Official Information request:

1. Deciding what information falls within the scope of the request;

2. Gathering together that information;
3. Deciding whether or not to release the information.

Steps (1) and (2) can take some time if requests are framed in general terms and assembling the information falling within their scope normally requires the manual searching of paper files. On the other hand, names and addresses held on the Motor Vehicle Register are in electronic form and may be retrieved in a matter of seconds.

Further, as the information sought from the Motor Vehicle Register under an Official Information request is all of the same type (ie names and addresses), step 3 (deciding whether or not to release) will usually be quite straightforward and in many cases should be able to be dealt with quickly.

20. What if I apply for personal information and the NZTA declines to release it?

If an applicant is dissatisfied with a decision made by the NZTA to withhold information, the remedies under the Official Information Act will be available. The applicant may ask the Ombudsman to investigate and review the decision. As personal information would be involved, the Chief Ombudsman would be required to consult the Privacy Commissioner.

21. What if I am still concerned about harassment, despite the new safeguards?

You will still be able to seek a confidential listing; however, as noted in the answer to question 16 above, the grounds for obtaining a confidential listing are quite limited.

22. What will happen to existing bulk users?

The Secretary for Transport will be empowered to issue an "authorisation" to any person to obtain vehicle owners' names and addresses. An authorisation may be for any purpose and subject to any conditions specified by the Secretary. It will be up to the applicant to make a persuasive case. An application may be valid for up to 5 years.

People who do not wish their details to be released to a bulk user will be able to instruct the NZTA not to release their details. This is known as an "opt-out".

23. How will the Secretary decide whether or not to issue an authorisation?

The Secretary will be obliged to first consult the Ombudsman, the Privacy Commissioner and the Commissioner of Police, but will have discretion to decide on an application.

24. Can an applicant appeal the Secretary's decision?

Yes. If an applicant is dissatisfied with a decision made by the Secretary not to issue an authorisation, the applicant may ask the Ombudsman to investigate that decision under the Ombudsmen Act 1975.

Applicants also have the option of seeking a judicial review of the decision.

25. What happens to a person who receives an authorisation and does not comply with its conditions?

The Secretary may, where a breach has occurred, impose additional conditions on an authorisation or limit its terms, or even cancel it. An example of a breach is where an authorisation is granted for a specified purpose but the information supplied under that authorisation is used for a different purpose.

26. What if name and address information is required for public safety reasons?

Personal information may be released where necessary to prevent or lessen a serious or imminent threat to public safety or the life or health of an individual (Privacy Act 1993, Information Privacy Principle 11 (f)). This is not subject to an opt out.

Personal information is released to vehicle manufacturers under this provision for the purpose of vehicle safety recalls.

27. What about access to the Motor Vehicle Register by law enforcement agencies?

Law enforcement agencies (eg NZ Police, Ministry of Justice, Customs Service, Ministry of Fisheries, Department of Labour) will continue to have unrestricted access to information held on the Motor Vehicle Register for their legislated purposes. People will not be able to opt out of their information being released to these agencies.

28. What effect will this have on routine vehicle-related transactions (relicensing, change of ownership, etc) carried out by the public?

None, as they do not involve disclosure of personal information.

29. What if I see a car I like and wish to contact the owner to discuss buying it?

A number of options exist for dealing with such enquiries without releasing the contact details of the person registered in respect of the vehicle. The NZTA is exploring these. In the UK, transport authorities forward enquiries about a vehicle to the "registered keeper" of that vehicle and invite him or her to contact the enquirer directly if he or she wishes.

30. What if I want to buy a car privately and want to know if the vehicle is registered in the name of the person selling it?

A new phone and internet service will enable any person to seek confirmation that a specified person is registered in respect of a specified vehicle. You would have to give the name of the presumed owner and the plate number of the vehicle.

The system will respond either "yes" or "no". No names will be released. Alternatively the prospective purchaser could ask to see the certificate of registration of the vehicle.

A person may be registered in respect of a vehicle but not have clear legal title to that vehicle. That is why people considering buying a car must consult the Personal Property Securities Register (see below).

31. But what if the name is a very common one?

It will be possible, to avoid a multiple match, to provide a driver licence number or date of birth, in addition to the name and plate number.

32. How do I find out if the car I want to buy has been a rental vehicle?

Names of companies and other corporate bodies will continue to be publicly available. The name of the rental company will show up in the history of the vehicle.

33. How do I find out if the car I want to buy has been a taxi?

Some taxis are owned by companies and company names will show up in the records. In addition, taxis are licensed in a different usage class to vehicles licensed for private use and the licence class will be publicly available.

34. How do I find out if the car I want to buy has been stolen?

The most reliable way is to check directly with the Police. However the Motor Vehicle Register does record a "reported stolen" flag which is electronically transmitted every night from the Police system. This information will continue to be publicly available.

35. How will I find out if any money is owing on the vehicle?

Security interests in vehicles are recorded on the Personal Property Securities Register (PPSR). A security interest in a vehicle is created when the vehicle is used as collateral for a

loan – to purchase that vehicle or for any other purpose. The PPSR, which is managed by the Ministry of Economic Development, will continue to be a public record.

36. What about technical and physical details of vehicles?

All details of a vehicle (make, model, colour, weight, engine capacity, odometer reading, country of origin, whether imported used or new, vehicle inspection history, type of fuel, whether subject to a Warrant of Fitness or Certificate of Fitness, the number of owners, etc) will continue to be available to anyone who asks for it. This information cannot identify any person and so does not need to be protected.

Other vehicle registration matters dealt with in the new law

37. Why is the term “registered owner” being replaced?

Unlike the Land Register, the Motor Vehicle Register does not guarantee title. The Motor Vehicle Register simply records the assertion of a person that the person is “lawfully entitled to possession” of a vehicle. A “registered owner” may not have clear legal title to the vehicle. This is not of concern to the NZTA as the purpose of the Register is to determine accountability for a vehicle for the purpose of enforcing traffic law and collecting various vehicle related taxes, fees and levies. A prospective buyer of a vehicle, on the other hand, must not rely on the Motor Vehicle Register but must check the Personal Property Securities Register to determine whether another person has a security interest in the vehicle.

Many people have learnt this lesson, to their cost, when a vehicle which they had bought was subsequently repossessed by a finance company, because the previous owner had ceased car loan repayments as soon as he had sold the vehicle.

To dispel the misconception that the “registered owner” is necessarily the legal owner, the new law will replace the term “registered owner” with “registered person”.

38. Why do we need an accurate, up to date Motor Vehicle Register?

Enforcement of certain offences (illegal parking, expired warrant of fitness and licence label, speed camera offences, red light running detected by camera, use of toll roads without paying; unauthorised use of bus priority lanes and other special lanes) rely on linking a vehicle to a person. Where the name or address of the owner on the register is out of date or unknown, these offences cannot be enforced. Furthermore, outstanding vehicle licence fees cannot be collected.

39. How does Motor Vehicle Register information get out of date?

When a vehicle owner moves without advising the NZTA or sells a vehicle and the required forms are not filed, the information on the Register becomes out of date.

40. How many vehicles are affected?

About 50,000 vehicle records are tagged as "owner unknown" or "gone no address", but it is likely that the number of vehicles with out of date owner information is higher. This is because the problem comes to the attention of NZTA only when:

- Unopened correspondence is returned;
- an enforcement authority follows up an unpaid offence notice and discovers that the registered owner of a vehicle involved in an offence is no longer at the address recorded in the Register or claims to have sold the vehicle prior to the offence; or
- a person complains to NZTA about an offence notice or licence fee demand for a vehicle which the person no longer owns.

41. What does the current law say?

Failure to notify change of ownership is an offence. The Courts may impose a fine of up to \$500. Failure to supply a current address when relicensing is also an offence. There are very few prosecutions.

42. How will the new law fix this?

The new law will enable the offence of failure to notify change of ownership or change of address to be dealt with by infringement notice, issued by the Police, NZTA or a local authority. That will facilitate enforcement.

The new law will also empower the Police or parking wardens to order off the road a vehicle not registered in the name, or the address, of the current owner of the vehicle. The order will come into effect at the close of the following working day, to give the current owner time to contact NZTA in order to update the vehicle's registration details. If the owner does so, the order is cancelled.

If a vehicle is driven on a road in breach of the order, it may be seized and impounded. The vehicle may be held until the owner provides evidence of having updated the registration details. An unclaimed vehicle may be dealt with under the abandoned vehicle provisions of the Local Government Act 1974.

43. What else does the new law do?

Mopeds

The new law clarifies and simplifies the definition of moped to make it easier for Police to determine whether a vehicle registered as a moped is correctly registered. There are concerns that small motorcycles are being intentionally registered as mopeds. It is possible to do this because mopeds do not have to be inspected prior to being registered and having plates issued (by contrast, motorcycles, cars and trucks must be inspected and "certified"). There are incentives to register motorcycles as mopeds because mopeds attract a far lower rate of ACC levies than motorcycles and do not require warrant of fitness inspections. Moped riders also need only a class 1 ("car") driver licence.

In addition there is concern that substandard, unsafe machines are being allowed on the road because of the lack of inspection. Therefore the new law will empower the NZTA to require a moped to be inspected by an approved agent before it can be registered.

Supplementary (Bike Rack) plates

The new law creates a new category of "supplementary plates" which will be issued for use on vehicles where a bike rack, dog box or some other attachment obscures the permanently affixed plate.

Trade Plates

The new law empowers the Minister, by notice in the Gazette, to declare which persons may be eligible for trade plates. It also provides for an offence of unlawful or unauthorised use of trade plates, and enables this to be dealt with by way of infringement notice.

New powers to deal with unlawful use of plates, etc

The new law empowers enforcement officers to seize plates which are being used unlawfully or which have been recalled by NZTA. Enforcement officers will also be empowered to seize and destroy fake plates.

Detailed provisions to be dealt with in regulations

The new law increases the flexibility of the Act by providing for administrative detail to be dealt with in regulations, instead of being enshrined in statute as at present.