

PROPOSED DRUG DRIVING LEGISLATION

QUESTIONS AND ANSWERS

The following questions and answers aim to help people understand the proposed drug driving legislation. The State Government is seeking public comment on the proposed legislation.

Note: In the proposed drug driving legislation the term 'prescribed drugs' is used. This is a legal term and should not be confused with prescription drugs. Where the term 'prescribed drugs' is used in this document it refers to THC (the active ingredient in cannabis) and methamphetamines (eg speed).

1. Why is random roadside saliva testing for drugs being proposed?

Drug driving is one of a number of contributors to road deaths in South Australia.

In 2004, 28% of driver and motorcycle rider fatalities tested post-mortem had either THC (the active ingredient in cannabis) and/or methamphetamines (eg speed) in their blood at the time of the crash. This does not include people who suffered serious injuries.

In Victoria 31% of drivers killed in road crashes tested positive to drugs other than alcohol in 2003. In NSW, research has shown that around 24% of drivers killed were found to have drugs in their system. In Tasmania fatally injured drivers for the years 1999-2003 show that drugs other than alcohol were detected in the blood of 22.4% of those drivers.

By comparison, the 5 year average (2000-2004) of drivers and motorcycle riders killed on South Australian roads over the legal blood alcohol limit of 0.05 was 29%. Moreover, in 2004 36% of driver and motorcycle rider fatalities tested positive to being above the legal blood alcohol limit.

Random roadside saliva testing for prescribed drugs is part of the Rann Government's commitment to improving road safety, reducing road trauma and reducing the costs to the community.

2. Has information gained by the Victorian saliva drug testing trial been taken into account?

Victoria has been the first in the world to trial random roadside saliva drug testing and is currently undertaking a 12 month trial.

The Victorian Minister for Transport has agreed that Victoria and South Australia will share information in relation to drug testing of drivers. Lessons learned from the Victorian trial so far have helped shape our proposed legislation.

3. Will the proposed legislation be reviewed?

Yes. The proposed legislation requires the State Government to undertake a review after 12 months operation to assess the effectiveness of the initiative and the need for any legislative changes. The review must be tabled in Parliament.

The Government will continue to closely monitor the developments in other states in regard to drug testing, particularly in Victoria.

4. What drugs are proposed to be detected by random roadside saliva tests?

THC and methamphetamines are the drugs with the highest incidence, after alcohol, detected in the blood of fatally injured drivers and motorcycle riders in South Australia.

Random roadside saliva tests will detect the presence of THC and methamphetamines.

5. What about other drugs?

Random saliva testing will only be used to detect the presence of THC and methamphetamines.

However, drivers impaired by other drugs (prescription or illicit) will continue to be prosecuted for the existing offence of driving under the influence of an intoxicating liquor or drug.

This will apply where a driver has committed a specified road traffic offence, behaved in a manner that indicated their ability to drive is impaired, or has been involved in an accident.

6. Will my medications be detected by random roadside saliva tests?

The proposed saliva test will not detect the presence of prescription drugs or common over the counter medications, such as cold and flu tablets, sinus medication (eg Sudafed), asthma and ADHD medication.

Saliva tests will only detect THC and methamphetamines.

7. Who will be required to undertake a random roadside saliva test?

Under the proposed legislation any driver in South Australia may be required to undertake a random roadside saliva test for the recent consumption of THC and methamphetamines.

This will include the passenger acting as a 'qualified supervising driver' for a learner driver, as proposed in the *Motor Vehicles (Licences and Learner's Permits) Amendment Bill 2005*.

8. Why are saliva samples proposed to be used to test for drugs?

Saliva samples are proposed to be used because they are relatively easy to collect, are less intrusive and can be screened using a quick and accurate method to detect the presence of THC and methamphetamines.

9. How will random roadside saliva testing be conducted?

Before undertaking a random roadside drug test, drivers will be required to complete an alcohol test first.

Drivers will be requested to provide a saliva sample for drug testing by placing an absorbent swab in their mouth or touching it on their tongue until a sample is collected.

The sample will be screened at the roadside, with the result determined within about five minutes.

If positive, a second sample will be required for further analysis. This process may take around 30 minutes.

The proposed legislation also contains a penalty for drivers who refuse or fail to undertake a drug test when required to do so by a police officer.

10. How reliable is saliva testing for THC and methamphetamines?

Saliva testing is an accurate and reliable method for detecting the recent consumption of THC and methamphetamines.

All roadside saliva drug testing devices that will be used under the proposed legislation will be required to meet rigorous standards of accuracy.

Under the proposed legislation no expiation notice will be issued or charges laid without final confirmation of the presence of THC or methamphetamines by a full laboratory analysis of the second saliva sample or a blood sample.

11. Who will be authorised to conduct random roadside saliva tests?

Only police officers in uniform who have been specially trained both in the use of saliva testing equipment and testing procedures, will be authorised to administer roadside saliva tests.

12. Where will random roadside saliva testing be conducted?

Random roadside saliva testing may be conducted anywhere in South Australia.

13. How long will a random roadside saliva test take?

A roadside saliva screening test will take around five minutes. A driver who returns a positive result to the roadside saliva test will then be required to undertake an oral fluid analysis or blood test. In most cases, an oral fluid analysis would take around 30 minutes.

14. Will a driver be required to leave their vehicle to undertake a random roadside saliva test?

The roadside saliva screening test can be conducted through the driver's window, in a similar way to alcohol testing.

As with alcoltests, a driver who returns a positive result to the initial saliva test will be required to leave their vehicle to accompany police for further testing (oral fluid analysis or blood test).

15. Can a driver refuse to undertake a roadside saliva test?

Under the proposed legislation a driver who is pulled over for a random roadside saliva test will be required to undertake the test. Penalties for refusal will apply.

16. What if a driver is unable to provide a saliva sample?

A driver who is unable to supply a saliva sample because of a medical or physical condition may supply a blood sample instead. Blood samples will be conducted under appropriate medical supervision.

17. If a driver tests positive for a random roadside saliva test, will a further test be required?

A driver who tests positive for a roadside saliva test will be required to undertake either an oral fluid analysis or a blood test – which will then be sent off for laboratory analysis.

Police will inform drivers within a few weeks of the results of the laboratory analysis.

Similar to current drink driving legislation, drivers will be given a part of the sample to have their own analysis done if they wish.

Before any expiation notice can be issued or charge can be laid, the presence of THC or methamphetamines must be confirmed by the laboratory analysis.

If the laboratory analysis confirms the presence of THC or methamphetamines police will issue an expiation notice or may prosecute the driver.

Drivers who return a negative saliva and alcohol test will not be detained further.

18. What offences can a driver who tests positive for a roadside saliva test be charged with?

Under the proposed legislation a driver can be charged with:

- the new offence of driving with a prescribed drug in oral fluid or blood (for the new offence the proposed prescribed drugs are THC and methamphetamines), or
- the existing offence of driving under the influence of an intoxicating liquor or drug.

19. What other offences will be counted in determining penalties for drug driving offences?

The new offence of driving with a prescribed drug in oral fluid or blood will be subject to increasing penalties based on whether an offence is a first, second, third or subsequent offence.

Offences that will be counted to determine whether an offence is a first, second, third or subsequent offence include:

- refusal to take a drug test,
- driving under the influence,
- refusal to provide a blood sample having been admitted to hospital as the result of an accident.

However, the new offences of driving with a prescribed drug in oral fluid or blood and refusal to take a drug test will not be counted in calculating previous convictions for any other offences.

This will quarantine the impact of the new offence and will be one of the aspects of the proposed legislation that will be examined in the review of the operation of the amendments within 12 months after their commencement.

20. What are the penalties?

The following penalties will apply under the proposed legislation:

DRIVING WITH PRESCRIBED DRUG IN ORAL FLUID OR BLOOD	First offence	\$300 expiation fee 3 demerit points OR maximum \$700 court fine 3 demerit points
	Second offence	maximum \$700 court fine 3 demerit points court imposed licence disqualification – not less than 3 months
	Third offence	maximum \$700 court fine 3 demerit points court imposed licence disqualification – not less than 6 months
	Subsequent offences	maximum \$700 court fine 3 demerit points court imposed licence disqualification – not less than 12 months
REFUSAL OR FAILURE TO UNDERTAKE A DRUG SCREENING TEST, ORAL FLUID ANALYSIS OR BLOOD TEST	First Offence	maximum \$700 court fine 3 demerit points court imposed licence disqualification – not less than 3 months
	Subsequent offences	maximum fine of \$700 3 demerit points court imposed licence disqualification – not less than 12 months

21. How long after consuming THC or methamphetamines can they be detected?

The consumption of THC will be detected for several hours after use. The exact time will vary depending on the amount and potency of the cannabis used and on the individual's metabolism.

Drivers who may have inactive THC residue in their bodies from use in previous days/weeks will not be detected.

Methamphetamines may be detected for approximately 24 hours after use.

Extremely large doses, other drugs taken at the same time, and differences in individual metabolism may affect the duration of the effects of methamphetamines.

22. Will other substances mask detection of THC or methamphetamines?

No. There is no evidence to suggest that any substance will mask detection of either THC or methamphetamines, when using a saliva drug testing procedure.

23. Will THC from passive smoking be detected in saliva samples?

Experience from Victoria's random drug testing to date shows that the levels of THC which could occur in saliva due to passive smoking are considerably lower than the lowest level which will be detected by the saliva testing devices being used by the Victorian Police.

24. Will a driver who tests positive for a roadside saliva test be allowed to drive before results of the laboratory analysis are known?

A driver who tests positive for THC or methamphetamines will be advised by police not to drive until the drug is no longer detectable in their system (up to 4 hours for THC and up to 24 hours for methamphetamines).

If necessary, police will assist in moving a driver's vehicle to a place where the vehicle can be parked legally. If the driver has a passenger with them and wants the passenger to drive them home, police may test the passenger before allowing them to drive away.

If a person is alone, police will endeavor to assist in arranging alternative transport. Similar procedures already apply in relation to testing for alcohol.

If they attempt to drive away they may be arrested on suspicion of attempting to drive with a prescribed drug in their oral fluid.

25. Will a driver charged for drug driving also be charged for offences relating to drug possession and use?

The proposed drug driving legislation is about improving road safety.

The proposed legislation will not allow police to use the test results or admissions or evidence relating to the tests for anything other than driving related offences.

26. Will evidentiary saliva and blood samples be destroyed?

Yes. Under the proposed legislation all saliva and blood samples must be destroyed if prosecution does not proceed within the time limit allowed or when the prosecution proceedings (and any appeals) are concluded.

27. Will saliva and blood samples collected under the proposed legislation be used for DNA testing?

No. Saliva and blood samples collected under the proposed legislation can not be used in DNA testing.