

OPEN LETTER

JUSTICE WATCH NZ INC

www.jwnz.org | justicewatchnz@protonmail.com

Open Letter to the Commissioner of Police and Head of Legal Services

Wednesday, 29 July 2026

Richard Chambers
Commissioner of Police

New Zealand Police, Police National Headquarters, Wellington

cc:
General Manager, Legal Services, New Zealand Police

Dear Commissioner,

Re: Inconsistencies Between NZ Police's Public Guidance, Internal Operational Policy, and the Governing Legislation on Roadside Drug Driving Testing

Justice Watch NZ Inc writes to bring to your attention, and to that of your Legal Services function, a series of specific findings arising from our review of NZ Police's public roadside drug driving testing guidance against NZ Police's own Impaired Driving chapter of the Police Manual (current as at 9 February 2026) and the Land Transport Act 1998 as amended. We set these out in the interests of accuracy and public confidence in Police's own published material, and we ask that they be reviewed and corrected where appropriate.

Your public guidance overstates the legal effect of a positive roadside screening result.

NZ Police's website, in answer to the question "Are you using this to target people?", states: "If you get stopped, and we test you for drug driving, and you test positive – you have broken the law." This is inconsistent with NZ Police's own internal manual, which states plainly that "a positive OFST is only indicative of recent consumption and does not meet the required grounds for belief that a controlled drug is present." Under the Act, the substantive offences (ss 57A–57C) are defined by reference to a laboratory-confirmed concentration level, not a roadside screening result. We ask that the website statement be corrected to reflect the legal position your own manual already states.

Your own manual identifies an internal inconsistency in how the reliability of a single OFST result is treated — and this bears directly on the justified-limitation standard the Act itself must meet.

The manual states that a positive OFST does not meet the grounds for belief required to search a person or vehicle. It separately states that the requirement for two positive OFST results before a 12-hour prohibition is imposed "reflects the potential risk that the first OFST may have produced a false positive result." We do not suggest these two statements are logically incompatible — both rest on the same

underlying acknowledgment that a single OFST result is unreliable. We do ask Police to consider whether it is consistent to treat that same acknowledged unreliability as sufficient grounds to commence the enforcement process (a second test, potential laboratory referral, and a 12-hour driving prohibition) while treating it as insufficient grounds for a search. We would also ask a further, related question: the Attorney-General's own section 7 report on this Bill concluded that its limits on the rights to be secure against unreasonable search and seizure, to be free from arbitrary detention, and to be presumed innocent could not be demonstrably justified under section 5 of the New Zealand Bill of Rights Act 1990. Given that your own manual acknowledges a single OFST result does not meet even the lower evidentiary threshold of "grounds for belief," we ask how reliance on that same result is said to meet the higher constitutional threshold of a reasonable, demonstrably justified limit on those rights. We would welcome Legal Services' view on this point specifically.

Your public guidance discloses, without documented limit, an extension of the stop for unrelated purposes.

The same page states: "'Free to go' means that roadside drug driving procedures have been completed. Police may require the driver to remain if they have concerns about other breaches of the law, such as a faulty vehicle or driver licence irregularities." We have reviewed the Impaired Driving chapter in full and can find no provision defining, limiting, or governing this practice — no guidance on what "concerns" must consist of, and no limit on how far such an extension may go. We ask what internal policy, if any, governs this practice, and whether Legal Services considers the current public description of it to be adequate.

More fundamentally, we do not accept that this is a legitimate exercise of Police's function at all.

It is not Police's business to use a person's detention for one lawful purpose as an opportunity to check that person, or their vehicle, for the mere possibility of some other, unrelated violation, absent any independent cause to suspect one exists. Policing power in New Zealand has always been properly oriented around responding to conduct that gives cause for suspicion — not around scanning the public at large for whatever might turn up once someone is already stopped. That principle does not bend because a person happens to be present and available to check. A practice of this kind is not a minor administrative extension of a lawful stop; it is a different exercise of state power entirely, and one for which "the driver was already here" is not, in our view, a legitimate basis.

We wish to be precise that this is a different matter entirely from Police's ordinary and well-established practice of requiring a driver's licence and details when a vehicle is stopped for an actual reason — for example, a speeding stop, a broken tail-light, or any other observed matter connected to that specific stop. That practice is lawful and is not what we raise here, because the information sought is connected to the reason the stop was made.

The position under this regime is different in kind, not merely in degree. The driver's only connection to Police at the roadside is the drug test itself; once that test concludes and the driver is, in the manual's own words, "free to go," Police's purpose for having stopped that person is exhausted. Using the residual fact of the person's continued presence — rather than any independent reason connected to why they were stopped — as the basis to check for unrelated matters is not the same act as an officer noticing and acting on a genuine issue connected to a stop made for that purpose. It is the collection of information, and the exercise of further checks, untethered from the purpose that justified the detention in the first place, which is precisely what distinguishes it from ordinary, lawful roadside practice. Because the driver's ability to leave is itself being withheld for this untethered purpose, this

also directly engages section 18 of the New Zealand Bill of Rights Act 1990 — the right to freedom of movement — which has no continuing basis to be restricted once the purpose that justified the original detention has already been satisfied.

This raises specific rights concerns distinct from, and additional to, those engaged by the drug test itself.

A detention that begins lawfully for one purpose does not remain lawful indefinitely: it must be reasonably confined to the purpose and duration genuinely required for that purpose. Extending an already-completed drug test into an open-ended enquiry into "other breaches of the law," with no independent cause and no defined scope, engages section 22 of the New Zealand Bill of Rights Act 1990 (the right not to be arbitrarily detained) as a distinct concern from the detention's original, lawful basis. It also compounds the section 21 concern already engaged by the drug test itself: collecting a driver's name, address, date of birth, or other personal information, or conducting further checks or questioning, because the person happens to already be detained — rather than for any reason independently connected to that purpose — is a further act of search and information-gathering requiring its own justification, and raises separate questions under the Privacy Act 2020 regarding the collection of personal information beyond what is reasonably necessary for the purpose for which the person was stopped.

We also raise the scale at which this operates. Applied across the roughly 50,000 stops conducted annually under this regime, an undefined power of this kind is not a marginal administrative footnote: it is, in practice, a nationwide, entirely discretion-governed compliance-checking regime, with no documented policy, no defined boundaries, and no evident oversight or audit trail specific to its use. We ask Police to confirm whether officers are, as a matter of practice, checking identity details, running further enquiries, or questioning drivers about unrelated matters during these stops, on what legal basis this occurs, and what safeguards exist to prevent this becoming a means by which individual officers — or the practice more broadly — could be used to detain and question members of the public beyond what the drug testing regime was itself assessed and justified for.

The manual contains no documented welfare protocol for a person prohibited from driving.

Having reviewed every occurrence of the word "safety" in the chapter, the entire welfare provision for a driver at the conclusion of testing consists of two general sentences, requiring only "reasonable steps" and "reasonable assistance" to arrange transport to "a place of safety," with no defined minimum standard, no provision for isolated locations, and no reference anywhere to a driver's passengers or dependent children. We ask Police to consider whether this is adequate, particularly for elderly, medically vulnerable, or otherwise fragile members of the public who may be affected by this regime despite having done nothing wrong.

We raise these matters constructively and ask for a substantive response addressing each of the four points above. We would welcome the opportunity to discuss them further with you or your officials. For context, we enclose as Appendix A our open letter to the Prime Minister and Cabinet of 27 July 2026, setting out our related concerns regarding this Act more broadly.

Yours sincerely,

Andrew Major

Andrew Major

Chairman, Lead Investigator

On behalf of Justice Watch NZ Inc

www.jwnz.org | justicewatchnz@protonmail.com

Appendix A

Open Letter to the Prime Minister and Cabinet, dated 27 July 2026

Open Public Letter to the Prime Minister and Cabinet

Monday, 27 July 2026

Rt Hon Christopher Luxon
Prime Minister of New Zealand

Parliament Buildings, Wellington

cc:

Hon Mark Mitchell, Minister of Police

Hon Chris Bishop, Minister of Transport

Members of Cabinet

Dear Prime Minister and Cabinet Ministers,

Re: Repeal of the Land Transport (Drug Driving) Amendment Act 2025 — Random Roadside Oral Fluid Testing

Justice Watch NZ Inc writes to formally request that Cabinet repeal, or urgently suspend pending independent review, the random roadside drug testing regime introduced under the Land Transport (Drug Driving) Amendment Act 2025. Our concerns are set out in full in an accompanying independent statistical and legal analysis; this letter summarises why we believe the law fails on its own terms and cannot be justified as currently designed.

Our central concern is this: an estimated 47,500 innocent New Zealanders are compelled to undergo this test every single year — roughly 95% of everyone stopped — to correctly identify approximately 2,000 genuine offenders.

This is not an incidental cost of enforcement; it is the deliberate, designed effect of a suspicionless search power applied indiscriminately to the entire driving public. Stopping, detaining, and threatening tens of thousands of innocent citizens with criminal punishment each year — with no requirement that police hold any reasonable grounds or good cause to suspect wrongdoing — is not proportionate policing. It is unjustified state action against people who have done nothing wrong, and it is precisely the disproportion the Government's own Attorney-General identified as incapable of justification under the Bill of Rights Act.

This also raises a further constitutional concern: it redirects police attention away from criminal conduct and onto the public at large. A finite pool of Police capacity that could be wholly directed at the criminal supply of Class A, B, and C drugs — where every enforcement contact is with someone actually engaged in criminal conduct — is instead substantially engaged in monitoring the innocent driving public. Policing power in New Zealand has always been oriented around good cause to suspect wrongdoing; this law

inverts that orientation, and does so at the direct expense of capacity that could instead target the supply chain identified below.

The scheme also does not deliver the detection it promises. At its 50,000-test annual target, the regime samples roughly one in 50,000 driving trips nationally. Our modelling shows it correctly identifies an estimated 2,000 genuinely impaired drivers a year — but this figure should not be read as a meaningful safety outcome. Our crash-risk modelling shows that this entire group of 2,000, even left undetected for the full year, would collectively be expected to cause well under one fatal crash between them. The number is a statistical footnote, not a result: it is a negligible fraction of the driving population the Bill's own explanatory note cites as responsible for around 105 deaths annually, and catching it does almost nothing to address that toll.

The law was passed despite the Government's own rights assessment. The Attorney-General's section 7 report under the New Zealand Bill of Rights Act 1990 concluded that the Bill is inconsistent with the rights to be secure against unreasonable search and seizure, to not be arbitrarily detained, and to be presumed innocent until proved guilty (ss 21, 22, 25(c)) — and that this inconsistency could not be demonstrably justified. The New Zealand Law Society endorsed that conclusion. The Act nonetheless permits a stop and test with no requirement of reasonable grounds or good cause, makes refusal to test a criminal offence regardless of actual innocence, and rests an infringement on a screening result our analysis shows is only around 46% reliable.

A more effective, rights-consistent alternative already exists. Supply-side interdiction — the seizure of methamphetamine and other controlled drugs before they reach any driver — removes an estimated 50,000 doses from circulation per kilogram, using Customs' own published methodology, at zero cost to any innocent member of the public. Unlike roadside testing, seizure directly reduces the amount of the drug available in New Zealand; testing cannot achieve that outcome at any scale.

This is no longer a projection. Police's own published national figures confirm it: 4,143 roadside tests were completed between December 2025 and 30 June 2026, with a 3.2% positivity rate — lower than the assumption underlying our modelling, which means the true rate of innocent people wrongly flagged is likely higher, not lower, than our central estimate. On Police's own numbers, at least 4,009 people returned an immediate negative result for every 134 who even screened positive — a measured ratio of roughly 30 innocent contacts for every 1 positive screen, before lab confirmation narrows that further.

This is what the law now demonstrably does: it authorises the state to physically interfere with the liberty of tens of thousands of innocent people as the mechanism by which it searches for a small number of offenders. Lawful state interference with a person's body or liberty has always required a justification particular to that person — good cause to suspect, or a judicial warrant. This law removes that requirement entirely. A search conducted on individualised cause remains lawful even where the person is later found innocent, because it was justified at the point it was exercised. What this law authorises is different in kind: interference with no individualised justification at all, now measured at roughly 30 confirmed-innocent interferences for every positive screen. That is the definition of arbitrary state action, and it is inconsistent with the basic boundary a democratic society places on its own coercive power.

This has a further, civic cost beyond any single stop. A state that repeatedly and routinely interferes with the liberty of people doing nothing more than ordinary lawful driving is not just conducting individual searches — it is training an entire population's expectations of what the state may do to them without

reason. This is a documented effect in the literature on state surveillance and search practices: repeated exposure to a search power normalises it, regardless of whether any single instance is justified, by making the alternative — a state that only interferes with individualised cause — feel like the unusual case rather than the ordinary expectation. At the scale this law now operates, New Zealanders are being conditioned to accept that the state may come through their life without cause, whenever it chooses, as it relates to driving. That is a very poor position for New Zealand's civic and constitutional culture to be placed in by a law whose own detection statistics do not justify the scale of the practice being normalised.

We ask Cabinet to: (1) repeal or suspend the random testing provisions pending an independent, published cost-effectiveness and rights review; (2) redirect the resources currently committed to random testing toward supply-side enforcement, where the evidence of impact is stronger and no innocent person bears any cost; and (3) require that any future drug-driving enforcement regime be grounded in reasonable suspicion, consistent with ordinary policing standards and with the rights the Government's own Attorney-General has already found this Act to breach.

Yours sincerely,

Andrew Major

Chairman, Lead Investigator

On behalf of Justice Watch NZ Inc

www.jwnz.org | justicewatchnz@protonmail.com