

Regulatory Impact Statement

Completing the actions to address alcohol-impaired driving

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Transport (the Ministry).
2. It provides an analysis of options to reduce the number of road deaths and injuries caused by repeat drink drive offenders. Alcohol-impaired driving is one of the main causes of serious road crashes. In 2009, alcohol contributed to 33 percent of fatal crashes and 21 percent of serious injury crashes. Crashes involving alcohol resulted in 137 deaths, 565 serious injuries¹, and 1725 minor injuries at an estimated social cost² of \$875 million.
3. Repeat drink drive offenders are a notable part of New Zealand's drink drive problem. The total number of convicted drink drive offenders comprises about 1 percent of New Zealand's driving population, and repeat offenders comprise about 0.3 percent. However, between 2005 and 2007, repeat drink drive offenders were involved in around 23 percent of the serious and fatal alcohol-related crashes.
4. This impact analysis informs the regulatory decisions to:
 - 4.1. enable the introduction of compulsory alcohol interlocks for repeat drink drive offenders and first time offenders convicted of a high excess blood alcohol offence (that is a blood alcohol content (BAC³) of 0.16 or higher)
 - 4.2. introduce a zero drink drive limit for repeat offenders
 - 4.3. amend the traffic offences and penalties for dangerous driving causing death
 - 4.4. allow the New Zealand Police (Police) to apply to the Courts, in special and limited circumstances, to extend the mandatory 28 day licence suspension where further time is needed to be able to lay a charge.
5. The analysis in this statement includes an examination of the likely costs, benefits and risks of these actions. It also outlines the alternative options that were examined during the policy process, but not recommended to Cabinet.
6. The first two recommended actions are estimated to save 3 lives, and prevent 38 injuries each year. This equates to an annual social cost saving of \$15.4 million.

¹ As measured by the number of injuries requiring hospitalisation for more than 1 day.

² The social cost of a road crash, or a road injury, includes the following: loss of life and life quality, loss of output due to temporary incapacitation, medical costs, legal costs and property damage costs. For further information see <http://www.transport.govt.nz/ourwork/Land/landsafety/Pages/TheSocialCostofRoadCrashesandInjuries.aspx>

³ Blood alcohol content, or concentration, is the amount of alcohol in the blood stream. A BAC of 0.05 means there is 0.05 grams of alcohol in every 100 millilitres of blood.

7. Cabinet is currently considering lowering the adult and youth drink drive limits. These measures, particularly a lower adult limit, provide a basis that can be built on to address repeat drink driving. A lower adult limit will require people to be more aware of the number of drinks they consume before driving. It has proven successful in reducing the level of alcohol consumption across the driving population in other jurisdictions.
8. This paper builds on these recommendations and seeks Cabinet agreement to proceed with the actions identified in *Safer Journeys* that specifically target repeat drink drivers and serious traffic offenders. These initiatives will provide a new approach to addressing repeat drink drive offending. The aim is to collectively bring about a change in behaviour through encouraging drivers with drink drive convictions to adopt the habit that if they are planning to drive, they do not consume any alcohol.
9. It is acknowledged that the strength of the benefits gained through the recommended actions will ultimately depend on society's attitude to alcohol. This is because alcohol-impaired driving is not just a transport problem—it is a wider public health and social problem.
10. As well, the costs are highly dependent on the assumptions made. The assumptions underpinning the analysis of each proposal are disclosed in the relevant sections of this Regulatory Impact Statement.

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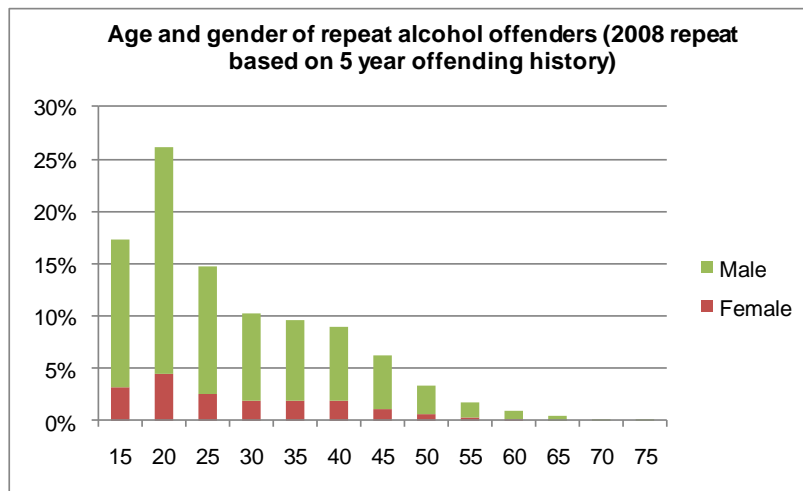
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Status quo

Repeat drink drive offenders in road crash statistics

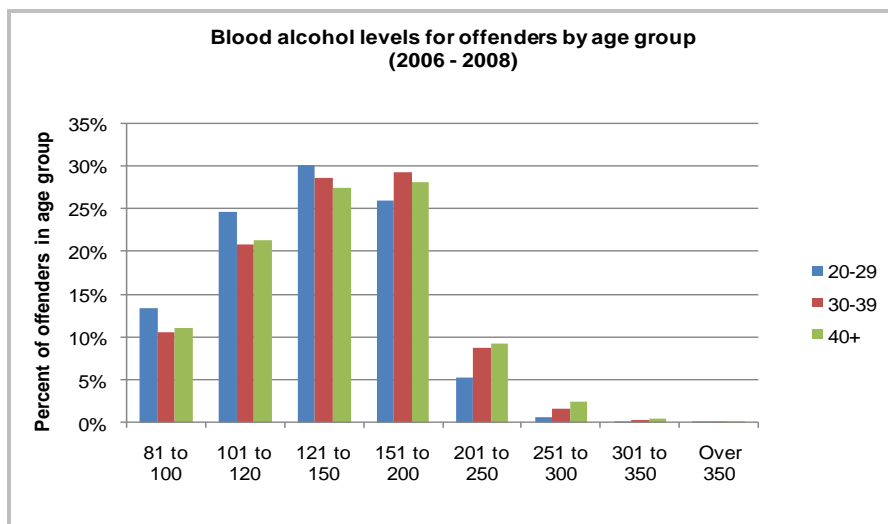
11. In 2009, alcohol contributed to 33 percent of fatal crashes and 21 percent of serious injury crashes. In total in 2009, crashes involving alcohol resulted in 137 deaths, 565 serious injuries, and 1725 minor injuries at an estimated social cost of \$875 million.
12. As can be seen from the graph below, repeat drink drivers are predominantly young and male. In terms of age, 43 percent are under 25 years of age and 58 percent are under 30.

Graph 1: age and gender of repeat offenders



13. However, the risk posed by repeat drink drive offenders is not solely a younger driver issue. Older drink drive offenders tend to drive with higher and more dangerous levels of alcohol relative to their younger peers (as can be seen from the following graph).

Graph 2: blood alcohol levels for offenders, by age



14. In terms of offenders' contribution to alcohol related crashes, Table 1 shows the proportions of drivers involved in Police-reported casualty crashes between 2005 and 2007 by prior offence history.

Table 1: Prior offending history of drivers involved in alcohol-related crashes between 2005-2007⁴

Prior offending history period	Number of prior drink-driving offences within prior history period	Proportion of drivers involved in alcohol related crashes between 2005-2007		
		Alcohol involved casualty crashes ⁵	Alcohol involved serious and fatal crashes ⁶	Alcohol involved fatal crashes ⁷
5 years	None	76%	77%	77%
	One	18%	16%	15%
	Two	5%	5%	5%
	Three or more	1%	2%	3%
10 years	None	67%	68%	70%
	One	20%	19%	17%
	Two	8%	8%	7%
	Three or more	5%	5%	6%
Lifetime	None	62%	65%	67%
	One	18%	16%	13%
	Two	9%	8%	7%
	Three or more	11%	11%	13%

Current approach to address drink driving

15. Drink driving is addressed primarily through enforcement of the legal BAC limits for driving (the drink drive limits), the penalties that apply for breach of those limits, and public advertising campaigns.
16. To deter drink driving, adult offenders face licence disqualification for at least 6 months, and a maximum fine of \$4,500 or a maximum prison term of 3 months, for first or second offences.⁸ For third and subsequent offences, this penalty increases to licence disqualification for at least 1 year, and a maximum fine of \$6,000 or a maximum prison term of 2 years. Roadside licence suspension may also apply.
17. Drivers under the age of 20 face a maximum fine of \$2,250 and minimum licence disqualification of 3 months, or a prison term of 3 months, if convicted of drink driving.⁹
18. Proposals are currently before Cabinet to lower the youth limit to BAC zero, and to lower the adult limit to BAC 0.05. It is also proposed that these limits be introduced with infringement penalties, which would complement the existing penalties for drink drive offences.

⁴ The information is limited to those crash-involved drivers with valid licences only when linking the Crash Analysis System and Driver Licence Register information. Approximately 12% of the crash-involved drivers were either missing licence information or had an invalid driver licence number for these analyses.

⁵ Drivers involved in alcohol related casualty crashes comprise 9% of all drivers involved in casualty crashes during 2005-2007.

⁶ Drivers involved in serious or fatal alcohol related casualty crashes comprise 14% of all drivers involved in serious or fatal crashes during 2005-2007.

⁷ Drivers involved in fatal alcohol related crashes comprise 18% of all drivers involved in fatal crashes during 2005-2007.

⁸ The adult drink drive limit is currently BAC 0.08.

⁹ The youth (under 20 years) drink drive limit is BAC 0.03.

Problem definition

Current situation

19. Road crashes place a substantial burden on the economy and the health sector, and lower the quality of life of many New Zealanders. The annual social cost of road crashes in New Zealand is approximately \$3.8 billion. Alcohol-impaired driving is one of the key causes of serious road crashes.
20. The current approach of fines and disqualification works well in deterring most people from drink driving, and most people convicted of a drink drive offence are a first time offender. However, this approach fails for the 27 percent of drink drivers who re-offend.
21. Repeat drink drive offenders comprise about 0.3 percent of New Zealand's driving population. However, despite being a minority of all drivers, between 2005 and 2007 repeat drink drive offenders were involved in around 23 percent of the serious and fatal alcohol-related crashes.

Expected outcome if we continue with the status quo

22. Through the 1990s, substantial progress was made in reducing the number of alcohol-related deaths and serious injuries. However, since 2000 no further progress has been made, and the level of deaths and serious injuries is now higher than it was in 2000.
23. This suggests that if we continue with the status quo, the number of alcohol-related road deaths and serious injuries will continue to rise.

Objective

24. We require a more effective approach to address the issue of repeat drink driving, which will:
 - 24.1. encourage drivers with drink drive convictions to adopt the habit that if they intend to drive, then they do not consume alcohol before doing so; and
 - 24.2. ensure that sanctions for drink driving are substantial enough to hold someone to account and promote a sense of responsibility.

Options

Maintain the status quo

25. Maintaining the status quo will mean that the level of alcohol-related death and injury will continue to rise.

Safer Journeys

26. The *Safer Journeys* discussion document was launched on 18 August 2009, and presented over 60 possible initiatives across a number of high and medium priority areas, and other areas for continuing focus.
27. Addressing alcohol/drug impaired drivers were identified as a high priority area in *Safer Journeys*. The final *Safer Journeys* strategy set out several first actions to reduce the incidence of alcohol/drug impaired driving and repeat drink drive offending. Several of these first actions are analysed in this paper and proposed in the attached Cabinet paper.

28. Other actions, and options, for addressing alcohol-impaired driving and repeat offending, will likely be considered in other action plans over the period of the strategy, from 2010 to 2020.

Regulatory Impact Analysis

Alcohol interlocks

29. Alcohol interlocks have been used commercially in some countries since the 1960s, and have been used as a sanction for convicted drink drivers since the early 1980s. There is now widespread use of interlocks in the United States, Canada, Australia, and several countries in Europe. Interlocks are used both commercially (for example in taxis or buses) and as part of criminal justice systems.

Options

30. Option 1: apply alcohol interlocks to all drink driving offenders. Under this option, alcohol interlocks are applied to first time offenders for a period of 6 months, and to repeat offenders (those who have a previous conviction in the last 10 years) for 12 months.
31. Option 2: apply alcohol interlocks to repeat drink driving offenders and high level first time offenders (BAC 0.16 or higher) only, for a period of 12 months.
32. Option 3: promote voluntary use of alcohol interlocks.

Benefits of an alcohol interlock programme

33. Interlocks have been proven to be an effective tool to reduce episodes of drink driving and to reduce the risk of repeat offending. Offenders who participate in an interlock programme show an average 67 percent reduction in repeat offences compared with those who serve a comparable term of licence disqualification.
34. The benefits of an interlock for an individual (assuming that they would otherwise be disqualified from driving and given a fine) are significant. Being able to continue driving allows the individual to remain connected to their community, retain employment, socialise and meet family and other commitments, all of which may be at risk if they were disqualified. The interlock also acts as a constant reminder to the driver that they should not consume any alcohol before driving.
35. The benefits of an interlock programme for the government are harder to quantify but they include: a potential reduction in Court time dealing with those who are caught driving while disqualified; a reduction of people eligible for a term of imprisonment for repeat or serious drink driving offences, or repeat driving while disqualified offences; and a reduction in unemployment involving people whose employment is in affected because they are unable to drive. There could also be benefits for the health system, by addressing a person's alcohol issues before they escalate to a level at which medical intervention is necessary.

Costs of an alcohol interlock programme

36. The New Zealand Transport Agency (NZTA) will incur costs from setting up and administering an interlock programme. Individuals will bear the cost of leasing an interlock for the duration that it is fitted in their vehicle. All costs are indicative and are highly dependent on the following assumptions:

- a. Offence history is limited to offences within the 10 years prior to the most recent offence (therefore a person with 11 years between offences would be considered a first time offender for the purposes of these calculations).
- b. Offenders who do not have a valid driver licence at the time sentencing will not be eligible for an alcohol interlock licence.
- c. Offenders will have an interlock for a minimum of 12 months and will undergo an alcohol assessment paid for by the Crown.
- d. Offenders will pay for the lease of an interlock. It is assumed that the one-off installation cost is \$150 per unit and the monthly rental cost is also \$150 per unit.
- e. There will be an increasing participation rate for interlocks, with 20 percent participation in the first year, 40 percent in the second year, and 60 percent in subsequent years.

Option 1: Apply alcohol interlocks to all drink driving offenders

Benefits

37. It is estimated, if applied to all offenders, that the interlocks programme could save 2 lives and 40 injuries¹⁰ every year from 2013/14. This would be a reduction in the social cost of road crash injuries of \$13.9 million each year. The estimated safety benefits for the first 2 years will be lower due to lower levels of participation (see Table 3).
38. If the level of harmful alcohol use among drink driving offenders was reduced, the proposal could deliver wider social benefits to the economy. Based on BERL (2009)¹¹, it is estimated that the proposal could reduce the social cost of harmful alcohol use¹² by \$5.4 million each year from 2013/14. The estimated wider social benefits for the first 2 years will be lower, due to lower levels of participation (see Table 3).

Costs

39. The estimated costs to the NZTA and the Ministry of Justice, and the Crown allocation for alcohol assessments, are summarised in Table 1.
40. The estimated costs to the NZTA include a one-off IT development cost of \$1.1 million, \$100,000 for approval of interlocks suppliers and \$50,000 communications and promotion. The costs also include \$45,100 per annum of ongoing monitoring and auditing; back-office handling of alcohol interlocks offences, help desk enquiries and the costs associated with licence replacement.
41. The estimated costs to the Ministry of Justice include a one-off IT development cost of \$150,000 and \$160,000 for process design and staff training. There will be a reduction over time of Court time for those who are caught driving while disqualified. However,

¹⁰ These estimates are for when interlocks are applied to all drink driving offenders and they are installed for 6 months for first time offenders and 12 months for repeat offenders (those who have a previous drink driving conviction in the last 10 years).

¹¹ BERL (2009), "Costs of Harmful Alcohol and Other Drug Use", Report to the Ministry of Health and Accident Compensation Corporation.

¹² The social cost of harmful alcohol use includes lost output, costs of crime, health care costs and loss of life and life quality, and excludes social cost of road crashes.

the establishment of new offences associated with alcohol interlocks would counter any reduction. Preliminary estimates of cost savings in Court time are approximately \$50,000 per annum, while the new interlock offences will cost the Ministry of Justice \$170,000 in the first year, increasing as the estimated participation and consequential offending rate of interlock users increases over the following 3 years. This estimation includes the increased staffing requirements that are required to meet the increased Court sitting hours of 1000 (200 days) per year in the first year.

Table 1: Estimated costs to the New Zealand Transport Agency and the Crown allocation for alcohol assessments

Cost (\$)	Year 1 (20% participation and set up costs)	Year 2 (40% participation)	Outyears (60% participation)
NZTA costs	1,530,300	658,700	1,036,900
Ministry of Justice costs (Courts)	449,873	325,041	492,674
Crown allocation for assessments (note) (@\$631.10 per assessment, GST excl)	655,100	1,941,900	3,228,100
Total	2,635,273	2,925,641	4,757,674

Note: The alcohol assessment programme is relevant for second and subsequent offences only.

42. The estimated costs of leasing the interlock to an individual participating in the interlock programme are summarised in Table 2.

Table 2: Estimated costs to individuals

Cost (\$)	Year 1 (20% participation)	Year 2 (40% participation)	Outyears (60% participation)
Costs of leasing the interlock (including installation) to individuals	7,712,100	15,426,200	23,138,300

43. There will also be an upfront cost to the individual, which exceeds the average fine for drink driving. The approximate costs for an individual are:
- a. Court costs (these costs will vary)
 - b. The licence fee for the alcohol interlock licence
 - c. either
 - o \$65 for a new licence card with the interlock conditions
 - or
 - o \$110 – \$143 if the NZTA’s set-up and operating costs are recovered through this fee¹³
 - d. \$150 for installation of the interlock (included in Table 2)

¹³ If set-up costs are recovered from participants, the size of the pool determines the per-person contribution.

- e. \$150 for the monthly lease of the interlock (a minimum of \$900 or \$1,800 depending on how long the Court orders the interlock to be fitted) (included in Table 11)
 - f. A possible \$50 for the removal of the interlock
 - g. The \$65 licence reinstatement fee when applying for full licence.
44. The total cost of an interlock over the minimum 12 month period is about \$2,000. This is far in excess of the average fine given through the Courts. In 2008, the average fine for drink driving offences was \$566.
45. The Ministry of Justice advised that if there is a net increase in the number of traffic offenders going through the courts system, there could be potential costs to their operation. However, the Ministry of Transport believes a successful interlock programme should reduce the numbers of drink driving offences and driving while disqualified offences. While these reductions may offset, to a degree, the impact of any interlock violation offences, the Ministry of Justice advises that there will still be some costs due to increased Court hearings.

Cost benefit analysis

46. The estimated total cost of an interlock programme is summarised in Table 3. The estimated Benefit Cost Ratio (BCR) of the programme is 0.7, with an estimated net loss of \$47 million (in Net Present Value (NPV)), meaning the proposal is unlikely to produce enough safety benefits to outweigh the total cost of implementation. The estimates are based on an annual discount rate of 8 percent and an evaluation period of 10 years (from year of implementation).

Table 3: Costs and benefits of an alcohol interlock programme

	\$ (GST excl) Year 1 ¹⁴	\$ (GST excl) Year 2	\$ (GST excl) Outyears
Estimated safety benefits	4,639,800	9,279,600	13,919,400
Estimated wider social benefits	1,788,000	3,576,000	5,364,000
Total benefits	6,427,800	12,855,600	19,283,400
Total costs (to NZTA, Ministry of Justice, Crown and individuals)	10,347,373	18,351,841	27,895,974
Estimated BCR	0.7		
Estimated NPV (\$)	(47,011,000)		

Note: The estimated BCR and NPV are based on an evaluation period of 10 years (from 2011/12) and an annual discount rate of 8 percent.

Option 2: Restrict the use of alcohol interlocks to repeat offenders and high level first time offenders (preferred option)

47. There is an option of restricting eligibility for the interlock programme to repeat offenders, and first time offenders with a BAC of 0.16 and above. This would

¹⁴ This date assumes legislation is passed by the end of 2010 and has a 12 month implementation period.

significantly reduce the numbers of eligible participants, and therefore the costs. However, the benefits of the interlock programme would be reduced.

48. The potential road safety benefits from restricting the use of alcohol interlocks to repeat offenders¹⁵ will be a reduction of one to two lives and 25 injuries every year from 2013/14. In terms of the social cost of road injuries, the reduction would be \$10 million each year. Furthermore, the potential reduction in the social cost of harmful alcohol use will be \$2.9 million each year from 2013/14. The estimated benefits for the first 2 years will be lower due to lower levels of participation (see Table 3).
49. Repeat offenders have shown that the penalties that are in place have not been effective in deterring them from drinking and driving. Given the repetitive nature of the offending, they are also more likely than some first time offenders to have an issue with their alcohol management. Restricting the interlock programme to repeat offenders and high level first time offenders will target attention to those who are most in need of help to stop their drink driving.
50. A potential benefit from restricting interlock participation to repeat offenders and high level first time offenders is that there will be a lower number of participants who have to be managed during the early stages of implementing the interlock programme.
51. There is a potential risk involved in restricting the numbers of eligible participants. If the programme was restricted to repeat offenders, the number of potential participants may be too small to attract service providers. Service providers will not want to contract service centres giving national coverage for a small number of participants. Small numbers might mean that it is untenable to contract more than one service provider, therefore allowing the contracted service provider to operate a monopoly.
52. International practice is now moving away from restricting use of interlocks to repeat offenders. The benefits of interlock use have been well researched and documented, and there is a proven reduction in reoffending after using an interlock. To get the maximum benefit from an interlock programme, first time offenders should be included as they make up a significant percentage of the overall drink driving population. The use of an interlock after the first conviction maximises the chance of changing the offender's attitude towards drink driving, and reduces the risk of the offender re-entering the criminal justice system.

¹⁵ Repeat offenders are those who have a previous drink driving conviction within the last 10 years.

Table 4: Costs and benefits of restricting the use of alcohol interlocks to repeat offenders¹⁶

	\$ (GST excl) Year 1 ¹⁷	\$ (GST excl) Year 2	\$ (GST excl) outyears
Estimated safety benefits	3,349,800	6,699,600	10,049,400
Estimated wider social benefits	954,000	1,909,000	2,864,000
Total benefits	4,303,800	8,608,600	12,913,400
NZTA costs	1,447,300	492,700	787,900
Ministry of Justice (Courts) costs	309,607	131,878	166,044
Crown allocation for alcohol assessments	655,100	1,941,900	3,228,100
Costs to the individual for leasing the interlock (including installation)	3,974,100	7,950,200	11,924,300
Total costs	6,386,107	10,516,678	16,106,344
Estimated BCR	0.8		
Estimated NPV (\$)	(17,868,000)		

Note: The estimated BCR and NPV are based on an evaluation period of 10 years (from 2011/12) and an annual discount rate of 8 percent.

53. Table 4 above represents the benefits and costs associated with restricting an alcohol interlock programme to repeat offenders only. This is because there is not enough information in the datasets available to identify high BAC level first time offenders. The costs in the table above show that restricting the interlock programme to repeat offenders will not significantly reduce the cost of the programme for the government. The biggest cost for the government is the alcohol assessments which will be required regardless of which option is chosen. There would also be costs to the individual for leasing the interlock.
54. The estimated BCR of option 2 is 0.8, with an estimated net loss of \$17.9 million (in NPV), meaning the proposal is unlikely to produce enough safety benefits to outweigh the total cost of implementation. The estimates are based on an annual discount rate of 8 percent and an evaluation period of 10 years (from year of implementation).

Option 3: Promote the voluntary use of alcohol interlocks

55. Another option considered is to have voluntary use of alcohol interlocks. Some jurisdictions have given offenders the choice of an interlock or a disqualification and a fine. No other jurisdiction has had a successful uptake of voluntary alcohol interlocks. Uptake rates in these jurisdictions are usually less than 10 percent.
56. An offender will know that it is very easy to drive while disqualified and not come to the attention of the Police, and therefore will get away with continued driving during their disqualification. There would be no perceived advantage for them to install and lease an interlock at greater cost than the fine, and to have the inconvenience of the interlock.

¹⁶ This cost and benefits table is for repeat offenders only (based on a 10-year definition), as there is not enough detail in the datasets available to identify high BAC level first time offenders.

¹⁷ This date assumes legislation is passed by the end of 2010 and a 12 month implementation period.

Risks of an interlock programme

There may be a low uptake of participants in the interlock programme

57. At the time of sentencing the Court will have the discretion give the offender an order for an alcohol interlock licence, meaning that they will only be allowed to drive a nominated vehicle with an interlock fitted. If the offender does not get an interlock fitted and continues to drive, they will be driving in breach of their licence conditions.
58. There is a possibility that the cost of leasing an interlock will be prohibitive for some people, which may lead to a low uptake. This may be alleviated with a subsidy for those who cannot afford to pay the full cost of the interlock programme. However, if the additional licensing fee to cover NZTA costs is imposed, the upfront costs of an interlock may be too expensive. Whereas with a Court imposed fine an offender can enter into a payment scheme and pay off the fine over time, this is unlikely to be the case with private interlock providers. Court costs, as well as a licence fee, installation fee and the first month lease of the interlock could be in excess of \$1,000. This may result in offenders pleading hardship and the Court not ordering an interlock, which will undermine the efficacy of the interlock programme.
59. The mitigation of the risk that people who are required to have an interlock fitted but do not and continue to drive is the deterrent effect of the penalties for driving in breach of the alcohol licence conditions. The proposed penalties for driving contrary to an alcohol interlock licence are the same as those for driving contrary to a limited licence (as set out in section 32 of the Land Transport Act 1998 (the Act)), with the addition of mandatory vehicle impoundment.
60. If a person does not apply to have an interlock fitted after receiving an alcohol interlock sentence, they will be considered to be disqualified. If they are found to be driving they will be subject to the penalties that exist for driving while disqualified.

Perception that interlocks are easily circumvented or will give false positives

61. There are common myths about interlocks: that they are easy to circumvent by getting someone else to blow into it, or by using other devices to simulate breath (such as a hairdryer); or by simply blowing up balloons before drinking and releasing them into the interlock. There are also concerns that interlocks may give false positives by detecting a driver or passenger's perfume or aftershave, and the vehicle will be immobilised.
62. Modern interlocks have many built in anti-circumvention features making it very difficult to tamper with or circumvent the system. Some interlocks have digital cameras which will capture and store the image of the person providing the breath sample. Interlocks can also require a specific technique when providing the breath sample, commonly the blow/suck or the blow/hum. This is an anti-circumvention measure, but also makes it difficult for people who have not been trained in the technique to start the vehicle.
63. False positive tests from interlocks are extremely rare. A person's perfume or aftershave would not give a positive reading for alcohol as the interlock only analyses the breath sample provided, not the air surrounding the driver.

Perception that alcohol interlocks are a soft option for drink drivers

64. Police are concerned that, as a person with an interlock can still drive (albeit with an interlock fitted) that there is no real sanction for drink driving because there is no loss of driving privilege.

65. The purpose of an interlock programme is to be an alternative to a fine and disqualification. If an interlock programme is simply an add on to the current regime, the effectiveness of the programme will be diminished and fairness compromised.
66. International experience shows that the benefits from interlocks are highest when fitted as soon after the offences as practicable. Jurisdictions with a mandatory period of disqualification also report lower rates of participation in programmes, as there is a likelihood that offenders will simply continue to drive unlicensed. In New Mexico, changes in legislation removing the period of disqualification before an interlock is installed saw an increase from approximately 300 interlock participants in 2002 to nearly 6,000 in 2006.
67. If a mandatory period of disqualification is added to the interlock programme, this would further increase the penalty for drink driving and may see people being over penalised for the offence. This is likely to see more offenders argue for a disqualification and a fine, and apply for a limited licence, as this will be cheaper and more convenient (as a limited licence does not require the monthly monitoring like an interlock). It is also more likely that the period of disqualification alone will be less than the period of disqualification and an interlock. If this happens, the potential effectiveness of an interlock programme will be severely undermined.

Zero drink drive limit for repeat offenders

64. To contribute to reducing the crash risk posed by repeat drink drivers, it is proposed to introduce a zero drink drive limit for repeat offenders. This proposal would complement the proposed alcohol interlock initiative, and the existing sanction of licence disqualification. Its aim is to work with these sanctions to collectively bring about a change in behaviour, through encouraging drivers with drink-driving convictions to adopt the habit that if they are planning to drive, they do not consume any alcohol.
65. Its specific role is to transition drink drivers to an unencumbered licence status on a managed condition, that is, they must drive sober for a period of 1 year. Zero limit drivers would subsequently be entitled to apply for reinstatement of their previous licence status at the end of the 12 month period.

How a zero limit for offenders would work

66. Repeat offenders who have at least one previous summary¹⁸, or indictable, excess BAC conviction within the last 5 years would be required to apply and pay for a zero limit licence for a period of 12 months. This requirement would form part of the Court sentence. When applicable, the offender would apply for a zero licence following the term of the individual's licence disqualification, and if the alcohol interlock proposal is agreed to, following the term of the individual's use of an interlock.
67. To enable Police to distinguish zero limit drivers from the rest of the driving population, at the roadside, offenders would be issued with a special licence (a "zero limit licence"). Holders of a zero limit licence would be required to produce this licence when requested by Police.
68. Police would require all drivers with positive breath screening tests to show their licences at mobile and compulsory breath testing operations. To avoid prosecution, holders of a zero limit licence would have to produce a zero BAC result from the evidential breath and/or blood test.

¹⁸ A summary offence is a criminal act that can be dealt with summarily, that is, it is heard before a judge without a jury in a district court and without a preliminary hearing. Determination of guilt results in conviction and the person acquires a criminal record. Summary offences are considered less serious than indictable offences.

69. The proposed penalties for non-compliance with the zero limit are outlined in the following tables.

Table 5: Proposed adult zero limit offence and penalty regime

First offence		
BAC 0–0.05	BAC 0.05–0.08 (subject to Cabinet agreement)	Higher than BAC 0.08
No offence	Infringement offence Penalty: 50 demerit points and \$300 infringement fee	Summary offence Penalty: Licence disqualification for at least 6 months, and either a fine not exceeding \$4,500, or a prison term not exceeding 3 months OR proposed interlock sentence if BAC is 0.16 or higher 28 day licence suspension if BAC exceeds 0.13
Second offence		
BAC 0–0.05	BAC 0.05–0.08 (subject to Cabinet agreement)	Higher than BAC 0.08
No offence	Infringement offence Penalty: 50 demerit points and \$300 infringement fee	Summary offence Penalty: Licence disqualification for at least 6 months, and either a fine not exceeding \$4,500, or a prison term not exceeding 3 months OR proposed interlock sentence 28 day licence suspension if BAC exceeds 0.08 and offender has previous qualifying conviction within the previous 4 years Zero limit applied if previous conviction was for BAC higher than 0.08
Third and subsequent offence—zero limit applies		
BAC 0–0.08	Higher than BAC 0.08	
Summary offence Penalty: Licence disqualification of at least 3 months and 50 demerit points, and either a fine not exceeding \$2,250, or a prison term not exceeding 3 months Failing to produce zero limit licence Infringement offence Penalty: \$400 infringement fee and 25 demerit points	Indictable offence Penalty: Licence disqualification of more than 1 year, and either a fine not exceeding \$6,000, or a prison term not exceeding 2 years OR proposed interlock sentence 28 day licence suspension if BAC exceeds 0.08 and offender has previous qualifying conviction within the previous 4	

	<p>years</p> <p>Failing to produce zero limit licence</p> <p>Infringement offence Penalty: \$400 infringement fee and 25 demerit points</p>
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Table 6: Proposed youth zero limit offence and penalty regime

First offence		
BAC 0–0.03 (subject to Cabinet agreement)	BAC 0.03–0.08	Higher than BAC 0.08
Infringement offence Penalty: 50 demerits and \$200 infringement fee	<p>Summary offence</p> <p>Penalty: Licence disqualification of at least 3 months and 50 demerit points, and either a fine not exceeding \$2,250, or a prison term not exceeding 3 months</p>	<p>Summary offence</p> <p>Penalty: Licence disqualification for at least 6 months, and either a fine not exceeding \$4,500, or a prison term not exceeding 3 months</p> <p>28 day licence suspension if BAC exceeds 0.13</p>
Second offence		
BAC 0–0.03 (subject to Cabinet agreement)	BAC 0.03–0.08	Higher than BAC 0.08
Infringement offence Penalty: 50 demerits and \$200 infringement fee	<p>Summary offence</p> <p>Penalty: Licence disqualification of at least 3 months and 50 demerit points, and either a fine not exceeding \$2,250, or a prison term not exceeding 3 months</p> <p>Zero limit applied if previous conviction was for BAC higher than 0.03</p>	<p>Summary offence</p> <p>Penalty: Licence disqualification for at least 6 months, and either a fine not exceeding \$4,500, or a prison term not exceeding 3 months</p> <p>28 day licence suspension if BAC exceeds 0.08 and offender has previous qualifying conviction within the previous 4 years</p> <p>Zero limit applied if previous conviction was for BAC higher than 0.03</p>
Third and subsequent offence—zero limit applies		
BAC 0–0.08	Higher than BAC 0.08	
<p>Summary offence</p> <p>Penalty: Maximum fine \$2,250, minimum disqualification of 3 months, or a prison term of 3 months</p> <p>Failing to produce zero limit licence</p> <p>Infringement offence Penalty: \$400 infringement fee and 25 demerit points</p>	<p>Indictable offence</p> <p>Penalty: Licence disqualification of more than 1 year, and either a fine not exceeding \$6,000, or a prison term not exceeding 2 years</p>	

	<p>28 day licence suspension if BAC exceeds 0.08 and offender has previous qualifying conviction within the previous 4 years</p> <p>Failing to produce zero limit licence Infringement offence Penalty: \$400 infringement fee and 25 demerit points</p>
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Benefits of a zero offenders limit

70. It is estimated that a zero drink drive limit for repeat offenders could save 1 life and 13 injuries every year. This corresponds to an estimated annual social cost saving of \$5.4 million. Benefit cost analysis indicates a potential BCR of 5.5:1 for a zero limit for offenders, and a NPV of \$30.6 million. These estimates use an annual discount rate of 8 percent and a 10 year evaluation period.

Increase sanctions in a way that encourages offenders to stay within the system

- 71. The key benefit of this proposal is that it allows sanctions against repeat drink drive offending to be strengthened in a way that offenders could be expected to comply with. The alternative would be to increase fines and lengthen terms of disqualification and prison sentences. All of these would impose greater financial and social cost on individuals, including the potential loss of employment and disrupted participation in education.
- 72. A sanction for drink driving will only be fully effective where it is substantial enough to hold someone to account and promote a sense of responsibility, while at the same time being fair and not disproportionately severe to any particular group. For some offenders increases in fines and disqualification that go beyond their means could be counterproductive, encouraging non-compliance with traffic legislation, rather than compliance.
- 73. This is important as the majority of repeat offenders are under the age of 30 and this demographic has a lower than average income level.
- 74. A zero limit would also usefully complement alcohol interlocks in encouraging and reinforcing a habit of sober driving. The existing penalty regime allows repeat offenders to legally drive having consumed alcohol. This proposal makes it clear that having increased the community’s road safety risk in the past, the standard the community expects now is sober driving.

Costs

- 75. The New Zealand Police, the NZTA, the Ministry of Justice (Courts) and the Department of Corrections will all face additional cost pressures giving effect to the zero limit for offenders. The key costs arising from the proposal include:
 - 75.1. IT system changes and related costs to NZTA, Police and Courts
 - 75.2. an increase in the costs of handling zero BAC licence offences to Courts
 - 75.3. an increase in the costs of handling extra evidential blood tests by Police
 - 75.4. an increase in operational costs to the NZTA for issuing zero limit licences, handling surrendered cards and answering additional licensing enquires.

76. All costs are indicative and are highly dependent on the following assumptions:
- 76.1. The zero limits will be introduced alongside the proposed alcohol interlock initiative.
 - 76.2. The zero limit will have a non-compliance rate of 50 percent but only 10 percent of offenders will be detected. All detected offenders will request evidential blood tests and will go through the Courts system. Of these, 50 percent of offences will be defended in Courts (that is, the other 50 percent plea guilty).
 - 76.3. Fifty percent of offences detected are below the existing legal limits, to which existing youth penalties for excess alcohol offences apply. The other 50 percent of offences detected are above the existing legal limits, to which existing penalties for third and subsequent alcohol offences apply.
 - 76.4. All potential financial savings from a reduction in alcohol offences will be net against the potential increase in costs for relevant agencies.
 - 76.5. The discount rate used is 8 percent and the evaluation period is 10 years. All costs and benefits are exclusive of GST.

Table 7: Indicative costs of implementing the zero drink drive limit for repeat offenders

Agency	Year 1 \$000	Year 2 \$000	Year 3 \$000	Out years \$000
Police				
IT system changes	1,150			
Additional blood tests	52	108	108	121
Zero limit defended hearings	33	67	67	75
Reduction in alcohol offences hearings	(41)	(81)	(81)	(93)
Total	1,194	94	94	103
NZTA				
IT development	2,490			
Helpdesk enquiry	31	64	64	71
Zero limit licences	214	440	440	494
Total	2,735	504	504	504
Justice (Courts)				
IT system change	150			
Depreciation	5.4	21.4	21.4	21.4
Process design/training	160			
Court hearings for zero limit offences	32.8	67.2	67.2	75.4
Reduction in court hearings from reduction in alcohol offences	(41.5)	(81)	(81)	(92.8)
Capital charge	11.25	11.25	11.25	11.25
Total	317.95	18.85	18.85	15.25
Corrections				
Increase in community sentences and imprisonment due to zero limit offences	106	240	240	275
Reduction in community sentences and imprisonment due to alcohol offences	(141)	(282)	(282)	(317)
Total	(35)	(42)	(42)	(42)
Total	4,208	574	574	641

Risks

Reduced efficiency of Police breath testing operations

77. The main risk with this proposal is the impact it will have on the efficiency of Police breath testing operations. Police have the power to require any driver to undergo a breath screening test. In exercising this power, Police are obliged to only detain drivers, and by implication the flow of traffic, for the shortest period of time possible.
78. To meet this obligation, Police do not routinely visually check the licence card or status of adult drivers. Doing so would slow down the flow of vehicles through breath testing operations and impede the flow of traffic.
79. However, to enforce a zero limit for offenders, a driver on evidence of any alcohol present in a breath screening test must produce their licence to Police, in order to determine their BAC level. Drivers not carrying a licence will have to be detained at the roadside until their licence status is ascertained and the relevant evidential breath test

done (that is, a no alcohol screen for zero limit drivers and youth drivers, and a screen below the adult limit for general adult drivers).

80. Depending on the number of Police resourcing an operation, if more than a couple of drivers are detained the operation is temporarily closed until those drivers are processed. This will reduce the number of breath tests able to be performed each year, thereby lowering the likelihood of being detected drink driving. As a consequence, the deterrent effect of all drink drive penalties is likely to be weakened to some extent.
81. It is probably not possible to fully mitigate this risk because of the related risk discussed below. However, it could be partially mitigated by reminding the general driving population of the requirement to have their drivers licence with them while driving. This could be part of the public awareness raising that would be done if the proposal is approved by Parliament.
82. As well, it is proposed that officials from Police and the Ministry of Transport review the impact that enforcement of the zero limit has on the effectiveness of breath testing operations within the 2 years of it being in force.
83. An alternative course of action would be to increase the penalty for failing to produce a driver's licence. Currently this penalty is an infringement fee of \$55. This is a less preferred option because it would effectively penalise the general driving population in order to assist the detection of repeat drink drive offenders.
84. In the future the use of smart technologies (like personal digital assistance devices) would make the enforcement of a zero limit for offenders more efficient. These devices speed up the ability of Police to check driver details including licence status and offence history at the roadside. However, these devices will not fully mitigate this risk if the driver licence is not presented to Police. This is because a driver can provide the identity of another person at the roadside. Full enforcement of this initiative hinges on mandatory carriage of the photo driver licence.
85. As well, the procedures for offenders surrendering their existing licences prior to being issued a zero licence would need to be stronger than the current procedures. If they are not strengthened there is the very real risk of offenders being able to provide an invalid licence and thus avoid apprehension.

The number of offenders failing to produce their zero limit licence when requested may be significant

86. Related to the risk, it is likely that the number of offenders choosing not to produce their zero limit licences when requested will be significant. This is because if someone with a zero limit licence has chosen to drink and drive, then it would be in their interest to fail to produce their licence when requested by Police.
87. Although they would face the existing \$55 infringement fee, any delay they can create before requesting and giving an evidential blood test could be long enough to avoid prosecution, or at least reduce the level of excess BAC offence that they are charged with.
88. Police estimate that it can take 1–1.5 hours to complete a blood test over and above the average time taken for a breath-only alcohol test. For people with a BAC slightly higher than the BAC enforcement tolerance, the time delay can be long enough for their BAC level to fall to be within the legal limits. The time delay occurs while awaiting the expiration of the 10 minute decision-making period for electing to have an evidential blood test, the location and call out of a registered medical practitioner, the taking of the blood sample and completion of the blood specimen administration requirements.

89. Repeat offenders having been through the process of being apprehended for excess BAC, will be familiar with the advantage that can be gained through delay.
90. Where people successfully avoid prosecution through electing to have a blood test, not only does this impose a direct cost on Police, it also brings a loss in forgone enforcement time, and weakens the deterrent effect of the drink drive penalties.
91. To mitigate this risk it is proposed that it be an offence for a holder of a zero limit licence to fail to produce their zero limit licence when requested by Police, or to produce their previous unsurrendered licence instead of their zero limit licence. It is also proposed that the penalty for this offence be the same as for the existing offence of driving contrary to licence conditions. This is an infringement penalty of a \$400 infringement fee and 25 demerit points.

The zero limit by itself is unlikely to be effective for people who are alcohol dependent

92. The zero limit requires repeat offenders to always drive sober. It relies on the deterrent effect of further fines, disqualification and prison terms as a means to motivate offenders not to drink and drive. This contrasts with the interlock proposal, where offenders would be given a tool to prevent them from drinking and driving.
93. Research suggests that a significant number of repeat drink drivers are alcohol dependent. By itself a zero limit may not be effective for people with alcohol addiction issues. As a consequence we would expect there to be a relatively high level of non-compliance with the zero limit.
94. The key way to mitigate this risk would be to ensure repeat offenders have access to addiction services.

Traffic offences and penalties for causing death and injury

Problem definition

71. Every driver of a motor vehicle on a road in New Zealand has a statutory duty not to operate that vehicle in a dangerous or reckless manner (section 7 of the Act) or in a careless or inconsiderate manner (section 8 of the Act). Where these statutory duties are breached, sanctions may apply. Where the breach of these duties occurs and death or injury results, more severe sanctions can be applied.
72. Dangerous driving offences and careless driving covers a wide range of driving behaviour that is unsafe on New Zealand roads and at the serious end of breaches of transport legislation. These behaviours may be one-off momentary lapses in concentration, through to deliberately dangerous or reckless actions that seriously compromise road safety.
73. In terms of dangerous and careless drivers' contribution to crashes, in 2009 there were 10,106 Police-reported casualty crashes where the driver of at least one vehicle was been identified as 'at fault'. Not all drivers deemed at fault are held to be legally culpable. Of those who were: 1,004 were convicted of careless driving causing death or injury; and 291 were convicted of driving dangerous or reckless driving (sections 36, 36A or 61 of the Act) causing injury or death.
74. Over the past few years, public concern (including some judicial comment) has been expressed over the adequacy and appropriateness of existing sentences for careless driving causing death or injury (set out in sections 38, 39 and 62 of the Act) and

dangerous driving offences¹⁹ causing injury or death (sections 36, s36A and 61 of the Act). The current penalty regime for this suite of driving offences is outlined in table 8 below.

Table 8: Current penalties for driving offences (under the Land Transport Act 1998) causing death or injury

Offence	Causing Death	Causing Injury
Careless driving	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 3 months imprisonment, or ○ a fine not exceeding \$4,500; and • Licence disqualification for 6 months or more 	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 3 months imprisonment, or ○ a fine not exceeding \$4,500; and • Licence disqualification for 6 months or more
Aggravated careless driving/ careless driving under the influence of drink or drugs (s62 of the Act)	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 3 years imprisonment, or ○ a fine not exceeding \$10,000; and • Licence disqualification for 1 year or more 	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 3 years imprisonment, or ○ a fine not exceeding \$10,000; and • Licence disqualification for 1 year or more
Dangerous/Reckless driving: causing injury or death (section 36), illegal street racing causing injury or death (section 36A), drink/drug driving causing injury or death (section 61), and failing to stop after a crash involving injury or death (section 36)	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 5 years imprisonment, or ○ a fine not exceeding \$20,000; and • Licence disqualification for 1 year or more 	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 5 years imprisonment, or ○ a fine not exceeding \$20,000; and • Licence disqualification for 1 year or more

75. In *Safer Journeys*, the government's new road safety strategy to 2020 it was announced that there would be a review of the penalties for offences causing injury or death, to ensure that they better reflect society's views of the culpability of drivers who kill or injure other road users, and that they are more in line with penalties in other jurisdictions.

Comparable penalties

76. The current level of penalties for these offences are not in line with penalties for offences involving injury or death where the mental element of the offence is similar to that applying to these driving offences.

¹⁹ This includes dangerous/reckless driving, illegal street racing, drink/drug driving, and failing to stop after a crash when someone is injured or killed.

Penalties in other jurisdictions

77. Penalties in other jurisdictions for similar offences vary, but on the whole they are greater than the penalties applicable in New Zealand. It must be noted, however, that New Zealand prosecutors have the option of charging drivers with Crimes Act 1961 offences where death has occurred (for example, manslaughter or murder).
78. The following are examples from other jurisdictions:
- United Kingdom—maximum 14 years imprisonment for dangerous driving or drink driving causing death
 - United States—varies from state to state but on average the maximum terms of imprisonment for traffic offending causing death are between 15-20 years in prison or “vehicle manslaughter”
 - Australia—varies from state to state but usually between 14-20 years imprisonment
 - Canada (Ontario)—maximum 14 years imprisonment for dangerous driving causing death.
79. The current level of penalty imposed in New Zealand is approximately one half to a third of the maximum term of imprisonment for dangerous/reckless driving, illegal street racing or drink/drug driving causing death in overseas jurisdictions.
80. Finding comparable information on careless driving causing injury or death is more difficult, as not all other jurisdictions have a similar offence. One jurisdiction that does is the United Kingdom. In 2006 the United Kingdom increased the penalty for careless driving causing injury or death from a maximum £5,000²⁰ fine and demerit points, to a maximum term of imprisonment of 5 years.

Proposed new penalties for offences causing injury or death

81. It is proposed that the penalty for the dangerous driving offences be doubled from a maximum 5 years imprisonment to a maximum 10 years imprisonment.

Alternative options

82. The retention of the status quo was considered as an alternative in both sets of offences. However, it was concluded that doing so would fail to address public concerns about the penalty levels, and would continue the current inconsistency of these penalties with other crimes of similar weighting and the penalties applicable in overseas jurisdictions for this type of offending.
83. Consideration was also given to introducing a ‘vehicle manslaughter’ offence into the Act. This would have effectively replaced the current penalty for dangerous driving or reckless driving causing death with a maximum penalty of life imprisonment, matching the comparable penalty for manslaughter under the Crimes Act 1961. This option was not pursued, as it was accepted that setting a penalty of this magnitude would require all other driving penalties to be increased considerably to ensure relativity. In addition, Police have the ability to lay a charge of manslaughter in driving cases resulting in death where the circumstances of the case warrant it, and this will continue to provide a satisfactory level of deterrent and penalty for the very serious instances of dangerous driving.

²⁰ This was equivalent to about NZD\$10,450 on 21 June 2010.

- 84. Another option considered was to increase the penalties for all dangerous driving offences causing injury or death and careless driving causing injury or death.
- 85. Consideration was given to increasing penalties for driving offences causing injury and causing death, in line with the approach adopted with other criminal offences. This would also simplify the penalty structure applying to careless driving charges involving injury or death by amalgamating the three offences into a single generic term. This would allow the Court greater discretion to take into account all aggravating factors when sentencing an offender, rather than being restricted to the very narrow current criteria under section 39.

Table 9: New penalties for driving offences (under the Land Transport Act) causing injury or death

Offence	Causing Death	Causing Injury
Careless Driving (combining offences currently covered under sections 38, 39 and 62 of the Act)	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 3 years imprisonment, or ○ a fine not exceeding \$10,000; and • Licence disqualification of 1 year or more 	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 2 years imprisonment, or ○ a fine not exceeding \$10,000; and • Licence disqualification of 1 year or more
Contravention of sections 36, 36A or 61 of the Land Transport Act	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 10 years imprisonment; or ○ a fine not exceeding \$20,000; and • Licence disqualification for 1 year and 1 day or more 	<ul style="list-style-type: none"> • Either: <ul style="list-style-type: none"> ○ maximum 7 years imprisonment; or ○ a fine not exceeding \$20,000; and • Licence disqualification for 1 year and 1 day or more

- 86. This is a significant increase in the current penalty for these offences. However, an increase brings the penalty for these serious driving offences in line with the penalty for other similar offending.
- 87. Currently, Police have the option to charge some drivers under the Crimes Act 1961 (for manslaughter or murder), should the circumstances warrant it. This ability would be retained.

Regulatory impact analysis

Benefits

- 88. The major quantifiable benefit of the proposed increase in penalty is the reduction in culpable driver-caused crashes involving death arising from the deterrent effect of the penalties. The Ministry of Transport has estimated that, assuming an average deterrence effect of 3 percent from these increased penalties, the expected annual benefit would be a reduction in social costs of \$4.1million.

Costs

- 89. The major costs associated with these proposals would be incurred within the justice sector. It is possible that more cases will be defended than at present because the penalties will be higher, and those penalties given may be appealed. This would impact on Court costs, Crown Solicitor prosecution costs and Crown Law costs to represent the Crown on appeals, and increased applications for legal aid. The assessed cost for

these are \$0.201 million in the first year of the new penalties rising to \$0.399 million by year three and continuing at this level for each out-year (this does not include any additional prosecution costs for trials, or for appeals).

90. The Department of Corrections will face additional cost pressures giving effect to these proposals. The key costs arising from the proposal:
 - 90.1. There is a need to make provision for 10 - 40 extra prison beds²¹ (25 beds is likely) to cope with the lengthened prison sentences offenders would be expected to receive. Assuming that all current prison capacity is being used, this would lead to a one-off cost capital cost of \$10 million to provide the prison beds (or \$16 million to provide 40 extra beds). There would also be annual on-going operational costs of \$2.275 million (\$3.64 million for 40 beds).
91. The Ministry has conducted a BCA using its estimates for these options and, at a benefit rate of a 3 percent reduction in offenders and associated road safety social costs, and an extra 25 prison beds, this provides a BCR of 1 and a breakeven NPV.

Risks

92. The major risk is to the capacity of prisons to deal with longer sentences and potentially more offenders being sentenced to terms of imprisonment. If Courts are unable to apply longer sentences or use a sentence of imprisonment due to capacity issues then this will lessen the expected deterrence effect of these proposals. This will be mitigated by the delay that will occur before the full number of extra beds is required, and this may allow capacity issues to be addressed.
93. A further risk is that as this proposal only targets those who are driving dangerously, the deterrence effect may be minimal. The obvious crash risks associated with driving dangerously are often not enough to deter this small group of drivers, so it is unlikely that they will be deterred from this behaviour by an increase in penalty alone.

Mandatory 28 day suspension

Status quo and problem definition

94. Section 95 of the Act requires the Police to suspend a person's driver licence for a period of 28 days when any of the following four specified circumstances arise:
 - 94.1. It is the driver's second (or subsequent) drink driving offence within 4 years.
 - 94.2. The driver's breath alcohol concentration exceeds 650 micrograms per litre of breath, or blood alcohol concentration exceeds 130 milligrams of alcohol per 100 millilitres of blood (BAC 0.13).
 - 94.3. The driver failed or refused to undergo a blood test when requested or required to do so.
 - 94.4. The driver exceeded a permanent posted speed limit by more than 40km per hour, or any other speed limit by 50km per hour.
95. The suspension begins immediately when the Police serve the notice on the driver, whereupon the driver is required to surrender their licence card to the Police. The suspension can be appealed on the grounds that the person was not the driver of the

²¹ A prison bed is the measure used for housing one prisoner 365 days per year. For example, a prisoner who serves 200 days, followed by a prisoner serving 165 days would equate to one prison bed.

vehicle at the time of the offence, that there was a procedural error by the Police, or that the Police did not have reasonable grounds to believe that the offence took place.

96. Mandatory 28-day licence suspension (and 28-day vehicle impoundment) was introduced in 1999 as a “swift, certain and severe” roadside sanction to give the Police a tool to address an immediate road safety issue. It was never intended as an additional penalty that would otherwise be dealt with through the Court. If the Police decide during the 28-day period that no charges will be brought, then the suspension must be withdrawn.
97. Between September 2008 and August 2009 some 17,104 mandatory licence suspension notices were served, of which 82 percent were for drink-driving offences. In most cases, the Police investigation was completed within the 28-day suspension period.
98. The problem associated with section 95 arises when the Police may not have completed their investigation and been able to lay charges within the 28 days. The reasons include the need to obtain a legal opinion on the appropriate charges to lay, to interview uncooperative or injured witnesses, or to await the result of a lengthy crash investigation.
99. When charges cannot be laid within the 28-day period, the driver licence suspension period lapses and the offender is able to drive again.
100. The biggest delay for the Police is associated with obtaining legal advice. Consequently, if the proposed changes to the penalties for dangerous driving offences are accepted, the Police will no longer need a legal opinion on whether to charge the offender with manslaughter under the Crimes Act 1961 or an offence under the Land Transport Act 1998.

Objective

95. The objective is to provide a legal mechanism to enable the driver licence suspension to remain in place for those occasions when matters arise that preclude the Police from laying charges within the 28 day period.

Options

Option 1 – Status quo

101. Retaining the current period of 28 days will not address the problem that Police face on occasions where they cannot lay charges within the 28 day period. This means that the driver in question may be able to resume driving while the Police continue their investigation, although they may later be disqualified from driving for a period of time. It is considered that this may pose a road safety risk.

Option 2 – Extend the 28-day period for all mandatory suspensions

96. To provide Police with more time in which to complete investigations, the 28 day period could be extended to 56 days.
97. This option was discounted, as immediate roadside suspension was never intended to be an additional penalty to that imposed by the Court, and it is considered that extending the 28-day further could compromise the integrity of the roadside suspension and resulting penalty. The Police also advise that, in the majority of cases, an extension is not required.

Option 3 – Enable Police to apply for an extension of the 28 day period in certain circumstances

98. Officials consider that a suitable amendment would include the following features:

- the Police apply to the Court for an extension, before the expiry of the initial 28-day period, setting out the special circumstances that warrant an extension of time being granted;
- any extension would be limited to 28 days; and
- the Police would have the ability to make up to three applications in any one case, with each subsequent application setting out the reasons why the earlier extension(s) was not long enough, and the special circumstances that have continued to apply or have arisen since the first application was made.

Regulatory Impact Analysis

Benefits

99. Enabling the Police to extend the 28-period of suspension will ensure that a person who has had their licence suspended at the roadside will remain suspended from driving until the Police lay charges against them or withdraw the suspension.

Costs

100. No additional direct costs for drivers will arise, although there may be indirect costs associated with making alternative transport arrangements for a longer period. The Police will be able to meet any costs that will arise from making use of any amendment to section 95 from current resources.

101. There may be a small increase in costs to the NZTA, in manually processing the extension to the suspension period. It is expected that, at the volumes expected by Police, this will not be a significant cost.

Risks

102. The Police anticipate that the use of the proposed extension period would be rare and unusual. The estimates of costs are based on only a few instances per year where the Police would apply to extend the suspension period, and means that the applications can be processed manually. Should there be a significant increase in the number of applications made, the costs associated with processing will increase, and may require investigation of an IT systems solution.

Consultation

Safer Journeys initiatives

103. The *Safer Journeys* consultation period was between 18 August 2009 and 2 October 2009. During the consultation period, Ministry officials attended over 40 meetings across New Zealand, including Regional Transport Committee meetings and meetings with road safety coordinators, and specific interest groups like walking and cycling advocates. The *Safer Journeys* website contained an online forum, where people could exchange their views on the different priority areas and *Safer Journeys* in general. Almost 400 people joined the forum and posted more than 1000 notes.

104. More than 1500 submissions were received on the *Safer Journeys* discussion document. This is a much higher number of submissions than was received on the *Road Safety to 2010* strategy (about 800). In addition, more than 1200 members of the general public and almost 20 key stakeholders ranked the 62 initiatives outlined in the discussion

document. The Ministry of Youth Development also received 310 submissions on the *Safer Journeys* youth document (264 from individuals and 46 from groups).

105. The option of a zero drink drive limit for repeat offenders was coupled with the alcohol interlock proposal and included in the *Safer Journeys* discussion document that was released on 18 August 2009.
106. The combined initiative was strongly supported by those submitters who commented as part of the *Safer Journey's* consultation. However, most of the comment related to alcohol interlocks. Overall the combined initiative was the fifth-highest preferred initiative out of the 62 suggested initiatives.
107. The option of introducing alcohol interlocks was included in the Law Commission's issues paper *Alcohol in Our Lives*, which was released in July 2009 and had a 3 month consultation period.

Feedback received on the proposed alcohol initiatives

Alcohol interlocks

108. Alcohol interlocks were strongly supported by those submitters who commented as part of the *Safer Journey's* consultation. Submitters were of the view that interlocks are the best way to deal with repeat offenders. However, some submitters were concerned that these could be bypassed and would be expensive to implement.
109. The proposal was also included in the Law Commission's consultation paper: *Alcohol in our Lives* and 1240 people responded. Of these submissions, 72 percent supported having alcohol interlocks, 0.2 percent were opposed, and 27.8 percent made no direct comment, but supported increasing alcohol countermeasures including alcohol interlocks.

Zero drink drive limit for repeat offenders

110. The option of a zero drink drive limit for repeat offenders was coupled with the alcohol interlock proposal and included in the *Safer Journeys* discussion document.
111. The combined initiative was strongly supported by those submitters who commented as part of the *Safer Journey's* consultation. However most of the comment related to alcohol interlocks.

Increase in penalties for driving offences causing injury or death

112. Consultation occurred with justice sector agencies on all options. The preferred option of some justice sector agencies is to not make any legislative changes at this time, but to undertake a more considered and thorough review of the penalties for driving offences causing injury or death, in particular looking at the relativities with other offences (both transport and wider criminal offences), and the cost implications for the wider justice sector.

Other consultation

113. The *Safer Journeys* strategy, which included the alcohol interlock, zero drink drive limit for repeat offenders, and review of the penalties for causing death or injury initiatives, was endorsed by the members of the National Road Safety Committee (NRSC). The NRSC comprises the Secretary for Transport, the Commissioner of Police, and the Chief Executives of the NZTA, Accident Compensation Corporation, and Local Government New Zealand. The Chief Executives of the Ministries of Health, Education, Justice and the Department of Labour are associate members.

114. The alcohol interlock initiative was included in the Law Commission's issues paper *Alcohol in our Lives*. The Commission received 2939 submissions in response to the issues paper and of these, 1240 commented on the transport related proposals. *Alcohol in our Lives* was released in July 2009 and had a 3 month consultation period.
115. The following government agencies were also consulted in the development of this RIS and the accompanying Cabinet paper: Ministry of Health, Ministry of Justice, Department of Corrections, New Zealand Police, the New Zealand Transport Agency, the Accident Compensation Corporation, Local Government New Zealand, Ministry of Education, Department of Labour, Ministry of Agriculture and Forestry, Department of Internal Affairs, Office for Senior Citizens, Office for Disability Issues, Ministry of Economic Development, Ministry of Pacific Island Affairs, Ministry of Youth Development, Ministry of Social Development, Te Puni Kōkiri, Ministry of Tourism, and the Treasury. The Department of the Prime Minister and Cabinet was informed

Conclusions and recommendations

116. Road crashes place a substantial burden on the economy and the health sector, and reduce the quality of life in New Zealand. Alcohol-impaired drivers, and repeat drink drive offenders, are a significant contributor to this problem. As a consequence, reducing the impact of alcohol-impaired driving is a high priority in *Safer Journeys*.
117. It is clear that the current approach to drink driving will not achieve the objective of reducing the level of fatalities caused by drink driving, currently 28 deaths per million population, to a rate similar to that in Australia, of 22 deaths per million population, by 2020.
118. Cabinet agreement is sought to proceed with the actions identified in *Safer Journeys* that specifically target repeat drink drivers and serious traffic offenders. These initiatives will provide a new approach to addressing repeat drink drive offending. The aim is to collectively bring about a change in behaviour through encouraging drivers with drink drive convictions to adopt the habit that if they are planning to drive, they do not consume any alcohol.
119. The Ministry recommends the following package of actions be implemented:
- 119.1. introduce alcohol interlocks for repeat drink drive offenders and high level offenders
 - 119.2. introduce a zero drink drive limit for repeat drink drive offenders
 - 119.3. amend the penalty for dangerous driving causing death
 - 119.4. enable the police to apply to the Courts, in special and limited circumstances, to extend the mandatory 28 day licence suspension, if further time is required to complete an investigation and lay a charge.
120. The first two actions listed above will bring New Zealand closer to Australia in terms of alcohol-related deaths and injuries. The Ministry estimates that these initiatives will save 3 lives, and prevent 38 injuries each year. This equates to an annual social cost saving of between \$15.4 million.
121. The overall BCR for the two alcohol initiatives (alcohol interlocks and a zero drink drive limit for repeat offenders) is estimated at around 1.2:1, with an overall NPV of \$15.8

million.²² These estimates are based on an annual discount rate of 8 percent and an evaluation period of 10 years.

122. Table 9 below summarises the potential financial costs to government of these actions. These cost estimates are based on a number of assumptions, as outlined in the relevant sections of this paper.

Table 9: potential cost of measures

Potential financial implications	Year 1 (\$)	Year 2 (\$)	Year 3 (\$)	Year 4 (\$)
Alcohol interlocks	1,822,007	2,566,478	4,182,044	4,217,044
Zero drink drive limit for repeat offenders	4,207,907	574,879	574,879	641,279
Penalties for causing death or injury	747,800	1,463,800	7,874,800	7,467,800
Mandatory 28 day suspension	nil	nil	nil	nil
Total financial implications	6,777,714	4,605,157	12,631,723	12,326,123

Implementation

123. A Land Transport Amendment Bill to give effect to the government's decisions on *Safer Journeys*, including those outlined in this RIS, is scheduled for introduction during 2010 and has a priority 2 on the 2010 legislative programme. The Land Transport (Offences and Penalties) Regulations 1999 will also require amendment.
124. The NZTA and Police will be responsible for ensuring the public is aware of the changes and the reasons for the changes. NZTA will develop a public awareness campaign that will support and work with the Police's enforcement effort. The Police and the NZTA will also revise all relevant material including the *Official New Zealand Road Code*, fact sheets and website information

Monitoring, evaluation and review

125. The effectiveness of the initiative will be monitored as part of reviewing the *Safer Journeys* action plans. This function will be carried out by the National Road Safety Committee.

²² This is based on a uptake of interlocks of 20 percent in year one, 40 percent in year two, and 60 percent in year three onwards, with implementation in 2011/12