Regulatory Impact Statement

Safer Journeys: lowering the legal alcohol limits for driving

Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Transport. It provides an analysis of options to minimise the harm and social cost resulting from alcohol-related crashes, without unreasonably impinging on individual rights and freedoms. This analysis was used to inform Cabinet decisions on 4 November 2013 in relation to the legal adult blood alcohol concentration (BAC) limit. For simplicity, this paper does not refer to the legal breath alcohol limits. Note that a BAC of 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood is equivalent to 400 micrograms (mcg) of alcohol per litre of breath and 50mg per 100ml is equivalent to 250mcg per litre.

Nature and extent of analysis undertaken

The analysis is limited to examining the transport legislation, primarily the Land Transport Act 1998, which regulates drink-driving in New Zealand. Therefore, the options assessed are the adult BAC limit, the offences and penalties regime, and the New Zealand Police (the Police) enforcement regime.

An independently reviewed cost-benefit analysis has been undertaken on the option to reduce the adult BAC limit from 80mg per 100ml to 50mg per 100ml. The analysis provides a conservative estimate (in comparison to the Ministry of Transport's 2010 analysis) of the impacts of a lower adult BAC limit, taking into account the reduction in the number of alcohol-related crashes since 2010 and making use of updated assumptions on the level of behaviour change resulting from a lower limit. The analysis also excludes crashes involving under 20 year olds, crashes where both drugs and alcohol were contributing factors and crashes where alcohol was suspected as a factor but not tested. The key findings from the analysis are summarised in this RIS.

Where possible, we have sought to estimate the impact of proposed changes to the offences and penalties regime and the Police enforcement regime. However, the level of analysis is less sophisticated than the cost-benefit report. Changes to the offences and penalties regime as well as the Police enforcement regime are expected to complement a lower adult BAC limit.

As summarised in a 2013 report from the Office of the Auditor-General into the enforcement of drink-driving laws, current measures of Police enforcement are not specific enough to form a view of how effectively the Police are enforcing drink-driving laws. This precludes an analysis of the appropriate level of enforcement necessary to complement or provide a substitute for a lower adult BAC limit.

No new consultation was undertaken on the options considered in this paper. However, this paper incorporates feedback received when the government considered amending the law to lower the adult BAC limit in 2010. The public will have the opportunity to comment on the proposed changes as part of the select committee process.

Further work required before policy decisions could be implemented

In order to implement the proposed changes, amendments to the Land Transport Act and the Land Transport (Offences and Penalties) Regulations 1999 would be required. On 18 November 2013, Cabinet considered this paper along with a final Land Transport Amendment Bill incorporating the proposed changes.

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Executive Summary

Status quo

1. The key piece of legislation regulating drink-driving in New Zealand is the Land Transport Act 1998 (the Act). The Act supports a three-pronged approach to regulating drink-driving behaviour based on Blood Alcohol Concentration (BAC) limits, compulsory random breath testing, and offences and penalties for breaching the specified BAC limits.

2. There are a range of indicators[1] about the prevalence of drink-driving and the extent of harm and social cost it contributes to. Many of these indicators show improvement over time, particularly since 2010. In 2011, New Zealand recorded 19 alcohol and drug-related deaths per million people, ahead of the 2020 goal set in *Safer Journeys New Zealand's Road Safety Strategy 2010-2020* (Safer Journeys) of 22 alcohol and drug related deaths per million people.

Problem definition

3. While road safety trends in relation to drink-driving have been improving, alcohol remains the joint most frequent contributing factor (alongside speed) to road deaths and serious injuries in New Zealand and the cause of significant social cost. For the three years to 2012, there was an average of 61 fatalities, 244 serious injuries and 761 minor injuries each year caused by at-fault adult (aged 20 years and over) drivers with some level of BAC[2]. The estimated social cost[3] for these injuries was about $446 million per annum (in 2013 dollars).

Regulatory impact analysis

4. The policy question addressed is whether the current drink-drive measures minimise harm at reasonable cost, without unreasonably infringing on private benefits and freedoms.

5. The preferred options are:

    5.1. Lower the adult BAC limit from 80mg per 100ml to 50mg per 100ml with infringement penalties applied for offences of having a BAC between 51 to 80mg per 100ml. The Ministry of Transport and the Police, in consultation with the Ministry of Justice, would review the adequacy of the infringement regime in deterring offending once three years of data is available about the new regime.

    5.2. Extend the scope of the *Safer Journeys Action Plan 2013-15* review of alcohol interlocks in 2014 to include rehabilitation and monitoring measures, along with a review of the offences and penalties regime.

[1] The number of drivers over the limit, number of breath tests conducted, drink-driving convictions, alcohol-related casualties and public attitudes to drink-driving.
[2] This excludes crashes where drugs were also a contributing factor and crashes where alcohol was suspected but not confirmed as a contributing factor.
[3] Social cost is a measure of the total cost that occurs as the result of crash or injury. It includes loss of life and life quality, loss of economic output, medical costs, legal costs and vehicle damage costs.

5.3. Make the following changes to the Police roadside testing regime:

- Enable the Police to disclose the possibility that the costs of administering a blood test may be recovered from drivers if they fail the blood test. Currently, drivers are not informed, before they elect a blood test, of the possibility that the costs of administering the blood test[4] may be recovered from them by the courts if they fail the blood test.

  Amend the 10 minute wait period so that a driver is given one 10 minute period in which to make their decision with no further restarts of the 10 minute period, and if the driver makes their decision in less than 10 minutes, the 10 minute period is terminated. Drivers currently have 10 minutes in which to make a decision of whether to elect a blood test. This 10 minute period has been and continues to be the focus of a number of legal challenges, which has resulted in opportunities for drivers to force multiple restarts of the 10 minute period.

  Introduce a rebuttable presumption which would provide for a presumption that a driver, who when electing a blood test, had foreknowledge of the probable outcome that they would not be able to provide an adequate blood sample and therefore had in effect refused the blood test. This would partially deal with the loophole addressed in the Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill which is currently being considered by the Transport and Industrial Relations Committee. This loophole in the testing process allows a small number of drivers to avoid a prosecution and conviction by electing a blood test after failing an evidential breath test, with the knowledge from prior experience that they will not be able to provide an adequate blood specimen due to a physical or medical condition.

6. The estimated net present value of the option to lower the adult BAC limit to 50mg per 100ml is $200 million over 10 years with a national benefit-cost ratio[5] of 10:1. The estimated reduction in alcohol-related trauma per annum is around three fatalities and 64 minor and serious injuries.

7. The changes to the roadside testing regime are not expected to deliver significant road safety benefits in isolation, but will remove opportunities for drivers to frustrate the testing and prosecution processes and reduce the number of blood tests elected which will have flow on effects for Police roadside enforcement efficiency and road safety outcomes.

[4] These costs could be in the range of $200 to $300. This includes medical expenses for the doctor or nurse to take the specimen and the costs of the approved laboratory to analyse it (the analyst's fee is $92, but the medical expenses vary).

[5] An estimate of the ratio of total benefits to total costs resulting from the policy change.

8. The table below provides a summary of all options considered.

Option (✓=preferred)	Road safety impact	Impacts on private benefits and freedoms	Cost effectiveness	Public acceptability	Impacts on the justice sector
Options to amend the BAC limit					
Lower the adult limit to 50mg per 100ml with infringement penalties between 51 and 80mg per 100ml ✓	Estimated reduction in alcohol-related trauma of 3 lives and 64 minor and serious injuries	Some impact on drivers in the 51 to 80mg per 100ml range	Estimated net present value of $20m per annum over 10 years	Public surveys show strong support for a lower adult BAC limit	Increase in drivers to be processed (estimated to be 19,100), but mitigated by infringement regime
Introduce a zero limit for heavy vehicle drivers	Modest additional benefit with a lower adult limit	Minor impact as most heavy vehicle drivers will not need to change behaviour	Minor increase in costs as most heavy vehicle drivers are likely to be compliant	Possibly in favour of zero tolerance applied to heavy vehicle drivers	Minor increase in offenders, given the low incidence of heavy vehicle crashes
Introduce a zero limit for motorcyclists	Modest additional benefit with a lower adult limit	Restriction on motorcyclists on the basis of vehicle choice	Increase in costs due to the higher number of motorcyclists affected	Possibly not in favour of differential limit on the basis of vehicle choice	Increase in motorcyclists to be processed
Extend the zero youth limit to 29 year olds	Some benefit but limited to target group	Restriction on drivers on the basis of age	Increase in costs due to the higher number of drivers affected	Possibly unlikely to accept differential limit on the basis of age	Increase in drivers to be processed
Options to amend the offences and penalties regime					
Introduce a presumption of imprisonment for 5th and subsequent offenders	Tougher penalties unlikely to deter target group	Restrictions on the rights of specific repeat offenders	Increase in costs for Corrections (approx 1,200 offenders affected)	Likely to be in favour of tougher penalties for repeat offenders	Increase in severity of sentences issued
Mandate alcohol and drug assessments for first time high alcohol level offenders	Effectiveness of assessments uncertain	Some impact on the freedom of specific first time offenders	Increase in costs to the Crown (estimated at $2.6m per annum)	Possibly in favour of tougher penalties for high alcohol offenders	Minor impact as assessments are carried out outside of the courts
Increase maximum penalties for third and subsequent offenders	Road safety benefits likely but minor	Uncertain as not all offenders will change behaviour	Increase in costs for Corrections (estimated at $91m per annum)	Likely to be in favour of tougher penalties for repeat offenders	Increase in severity of sentences issued
Increase maximum penalties for first and second time offenders	Road safety benefits likely but minor	Some restriction on alcohol consumption	Increase in costs for Corrections (estimated at $5.9m per annum)	Possibly in favour of tougher penalties for high alcohol offenders	Increase in severity of sentences issued
Options to amend the Police enforcement regime					
Disclosure of cost recovery prior to election of a blood test ✓	Little road safety impact	Some impact on the decision to elect a blood test	Modest improvements in roadside efficiency	Unlikely to cause concern	Some impact but less risky than removal of blood test
Amend the 10 minute waiting period ✓	Little road safety impact	Still retains 10 minute period to make decision	Modest improvements in roadside efficiency	Unlikely to cause concern	Minor impact
Introduce a rebuttable presumption ✓	Minor benefits as problem appears limited to 20 drivers	Some impact as certain drivers would have to accept the breath test	Minor costs involved	Unlikely to cause concern	Minor impact as problem appears limited to 20 drivers
Increase the level of investment in roadside enforcement	Uncertain on the basis of current indicators	Little impact on individuals	Higher costs with no clear indicators of effectiveness	Public surveys show some support	Increase in offenders processed
Higher penalties for the election and failure of a blood test	Little road safety impact	Prejudices decision to elect a blood test	Mitigates higher number of blood tests being elected	Likely to be against higher penalties for what is essentially the same offence	Increase in technical defences and disruption to the courts
Removal of the blood test	Little road safety impact	Removes the right to challenge the breath test	Improvements in roadside efficiency	Likely to be against removal of a right	Increase in technical defences and disruption to the courts
Improved Outcomes	Negligible or no change	Poor outcomes			

Status quo

9. Alcohol is widely consumed as part of the social lives of New Zealanders, with 80 percent of the New Zealand adult population consuming alcohol at least occasionally.[6] Public survey results[7] continue to show that a majority of the public consider it acceptable that some level of alcohol can be consumed before driving and the current law allows for this in most circumstances.[8]

10. The key piece of legislation regulating drink-driving in New Zealand is the Act. The Act supports a three-pronged approach to regulating drink-driving behaviour based on drink-drive limits, compulsory random breath testing, and offences and penalties for breaching the specified BAC limits.

11. In addition to the regulatory approach described above, significant investment is made in public education through advertising undertaken by the New Zealand Transport Agency, the Health Promotion Agency and school-based education programmes.

Adult BAC limit

12. The adult (aged 20 years and over) BAC limit, prescribed in the Act, establishes the maximum amount of alcohol a person can have in their blood while still being able to drive legally. The adult BAC limit is set at 80mg per 100ml. Drivers aged under 20 are not allowed to have any alcohol in their blood.[9]

13. A person commits an offence if they drive or attempt to drive a motor vehicle on a road while the proportion of alcohol in their blood, as ascertained from an analysis of a blood specimen subsequently taken, exceeds the prescribed adult BAC limit.

14. Inherent in having an adult BAC limit above zero is an acceptance of the additional safety risk posed by individuals who drive after drinking, but within the legal adult BAC limit. In this sense, the adult BAC limit effectively establishes the additional road safety risk tolerated by society from individuals who drive after consuming alcohol.

15. The Institute of Environmental Science and Research Ltd has provided estimates of the level of drinking that the current limit of 80mg per 100ml and a lower limit of 50mg per 100ml would allow for males and females of varying heights and weights. This is more comprehensively displayed in Table 4 along with the necessary qualifications. Broadly speaking, under the current 80mg per 100ml adult BAC limit, a male of average height and weight could consume up to six standard drinks over a four hour period while a female of average height and weight could consume up to four standard drinks over the same four hour period.

[6] Information taken from http://www.health.govt.nz/publication/hazardous-drinking-2011-12-findings-new-zealand-health-survey.
[7] Ministry of Transport, Public Attitudes to Road Safety survey 2013.
[8] Excluding drivers under 20 years of age or on a zero alcohol licence.
[9] A zero BAC limit for youth (drivers aged under 20) was established in 2011.

Offences and penalties regime

16. A summary of the offences and penalties that apply under the Act for driving in excess of the legal adult and youth BAC limits is provided in Appendix 1.

17. In New Zealand, fines, licence disqualifications and community sentences are the most common form of penalties issued for drink-driving offences. Imprisonment is typically reserved for more serious recidivist drink-drivers (see Table 1).

Table 1 – Drink-driving convictions and sentences in 2012/2013[10]

Prior convictions	Number of convictions	Types of sentence							
		Fines	AOD[11]	Supervision	Intensive supervision	Community work	Community detention	Home detention	Custodial sentence
0	11,022	9,216	269	165	23	1,174	90	28	87
1	5,448	2,819	834	297	39	1,904	185	45	81
2	3,152	490	1,329	140	86	1,430	667	137	166
3	1,502	113	732	39	46	469	477	169	176
4	755	53	393	8	29	141	248	135	135
5 plus	874	21	485	15	20	129	201	182	298
Total	22,753	12,712	4,042	664	243	5,247	1,868	696	943

18. The current penalty regime appears effective as a deterrent against second time offences as 73 percent of those convicted for a first offence do not reoffend within a five year period.[12]

19. On the other hand, by the very nature of their offending, repeat offenders (third and subsequent) do not appear to be deterred by the current penalty regime. The penalty regime also does not explicitly include provision to target offenders with a high BAC level.

Police enforcement regime

20. The Act prescribes the process for testing drivers for alcohol. A major component of Police drink-drive activities is the random testing of drivers, most often through the establishment of compulsory breath testing sites. Under this regime, the Police can stop and breath test any driver who is driving a motor vehicle on a public road without requiring good cause to suspect the driver has consumed alcohol. Drivers who fail or refuse a roadside breath screening test are then taken through formal processes involving evidential breath testing and possible blood testing.

21. In many respects, the current testing regime works well. However, the alcohol testing process is time consuming and complex. Drivers found in excess of youth and adult BAC limits can take as long as one and half to two hours to process, particularly in rural areas.

[10] Information provided by the Ministry of Justice. Prior convictions data dates back to 1980.
[11] Cases ordered to have alcohol treatment and/or counseling as a sentence condition.
[12] Ministry of Justice. (2013). Characteristics of first-time drink drivers who are reconvicted. Ministry of Justice, Wellington.

Previous government decisions

22. In July 2010, Cabinet agreed to [CAB Min (10) 26/9 refers]:

    22.1. lower the youth drink drive limit for drivers under 20 years of age from a BAC of 0.03 [30mg per 100ml] to a BAC of zero

    22.2. maintain the current adult drink drive limit of a BAC of 0.08 [80mg per 100ml] for the time being until further [New Zealand-based] research is conducted.

23. Cabinet requested two pieces of research to identify the risk posed by drivers with a BAC reading of between 50 to 80mg per 100ml.

    23.1. The first piece of research, conducted by the University of Waikato, was to evaluate the effects of alcohol on the cognitive and driving abilities of New Zealanders with a BAC reading in this range and to identify the relationship between drivers' perception of intoxication and the actual level of impairment produced.

    23.2. The second piece of research involved the collection of data, by the Police, about the number of drivers with a BAC reading of between 50 to 80mg per 100ml who have been involved in a fatal or serious injury crash. It was intended that two years of data would be collected.

Other related issues

The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill

24. The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill, a Member's Bill sponsored by MP Scott Simpson, is currently before the Transport and Industrial Relations Committee. This Bill aims to address a small problem with the alcohol testing process where a driver can escape prosecution, even after failing an evidential breath test, due to a medical or physical condition that prevents a blood specimen from being collected for an evidential analysis.[13]

25. The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill, as currently drafted, has a number of limitations. Officials advising the Committee of possible improvements are limited by the relatively narrow scope of this Bill. The Minister of Transport has noted that officials would consider a wider set of options as part of the current analysis, in order to address this loophole in the roadside testing process.

The Land Transport (Safer Alcohol Limits for Driving) Amendment Bill

26. On 26 September 2013, the Land Transport (Safer Alcohol Limits for Driving) Amendment Bill, a separate Member's Bill sponsored by MP Iain Lees-Galloway was pulled from the ballot to go before Parliament. This Bill, as currently drafted, proposes an amendment to section 56 of the Act to replace the current breath and blood alcohol limits of 400mcg per litre and 80mg per

[13] s77(b)(i) of the Land Transport Act 1998 provides that the breath test result becomes inadmissible as evidence once a person advises an enforcement officer that they wish to undergo a blood test.

100ml with new limits of 250mcg per litre and 50mg per 100ml respectively. The Land Transport (Safer Alcohol Limits for Driving) Amendment Bill is awaiting its first reading.

The harm and social cost from drink-driving has reduced since 2010

27. There are a range of indicators about the prevalence of drink-driving and the extent of harm and social cost it contributes to. Many of these indicators show improvement over time, particularly since 2010.

28. The proportion of the population driving over the current adult BAC limit during Friday and Saturday nights, 10pm to 2am, has dropped, and the overall number of drink-driving offences is falling. This has occurred at a time when the number of roadside breath tests has increased and public attitudes toward drink-driving have become less accepting. The road trauma resulting from alcohol-related crashes has also been trending downward, with alcohol-related fatalities decreasing since 2010.

29. However, in contrast to the improvements in the above trends, the number of repeat drink-driving convictions has been increasing since 2002.

30. The improvement in road safety indicators since 2010 is a global phenomenon. Preliminary figures suggest that for many countries in the Organisation for Economic Co-operation and Development, the year 2012 could see the lowest recorded overall road fatalities.[14] The global financial crisis may have had a positive short term impact on road safety through a decrease in overall mobility. However the evidence for this is mixed.

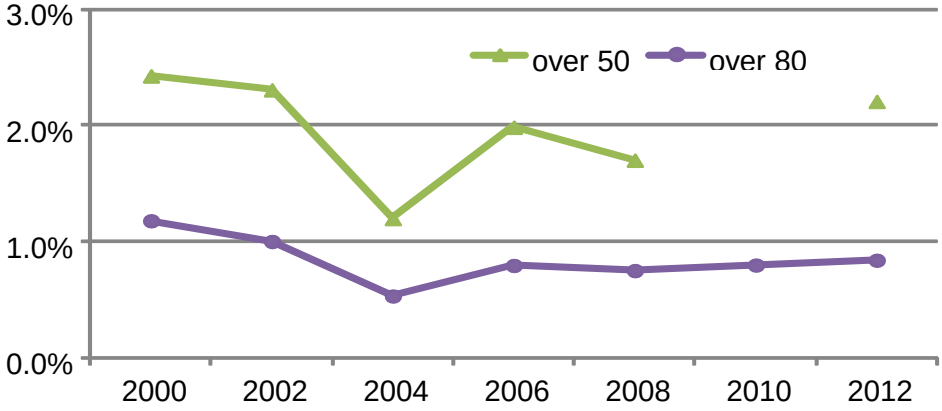
31. In the absence of government intervention, future trends are difficult to predict due to the breadth of factors that could influence road safety outcomes. Assuming that recent trends continue, overall alcohol-related trauma may trend downwards, and repeat drink-driving convictions may increase. However, alcohol would be likely to remain a significant contributor to road fatalities.

32. The historical trends are shown graphically and discussed in further detail below.

    32.1. **Number of drivers over the limit (see Figure 1).** The proportion of the driving population driving over the current adult BAC limit (80mg per 100ml) during Friday and Saturday nights, 10pm to 2am, remains at around 1 percent following a drop from 2000 to 2004. The proportion driving over a BAC of 50mg per 100ml fluctuates between 1 percent and 2.5 percent.

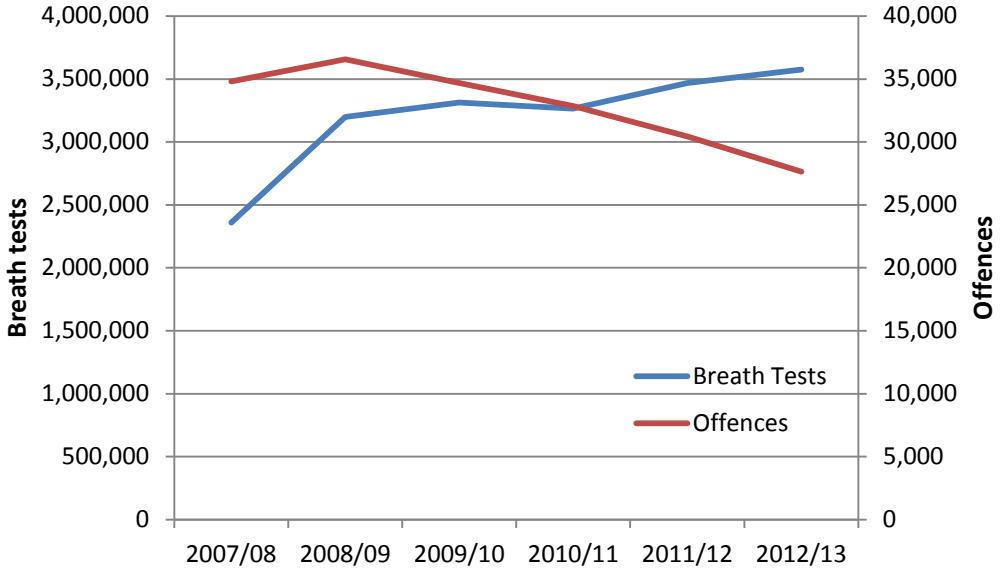
[14] International Traffic Safety Data and Analysis Group. (2013). Road Safety Annual Report 2013. International Transport Forum, Paris.

Figure 1 – BAC levels of drivers aged 20 and over[15]



32.2. **Number of offences and breath tests (see Figure 2).** The number of drink-drive offences has reduced since 2008. This has occurred over a period when the total number of roadside breath tests has increased.

Figure 2 – Breath tests against drink-driving offences[16]

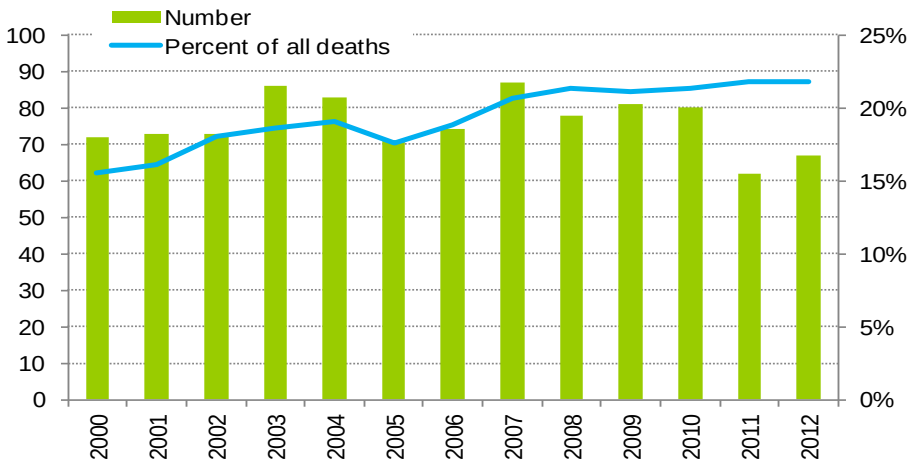


32.3. Fatalities where alcohol was a factor (see Figure 3). From 2000 to 2012, the total number of alcohol-related road fatalities has dropped slightly. At 19 deaths per million people in 2011, New Zealand was ahead of the goal set in *Safer Journeys New Zealand's Road Safety Strategy 2010-2020* of 22 alcohol and drug-related deaths per million people by 2020. However, as a percentage of all road fatalities, alcohol-related deaths have increased since 2000.

[15] Taken from the Ministry of Transport roadside measurement survey conducted biennially; data for the 50mg per 100ml level was not collected in 2010 due to technical changes in the set up of the testing devices.

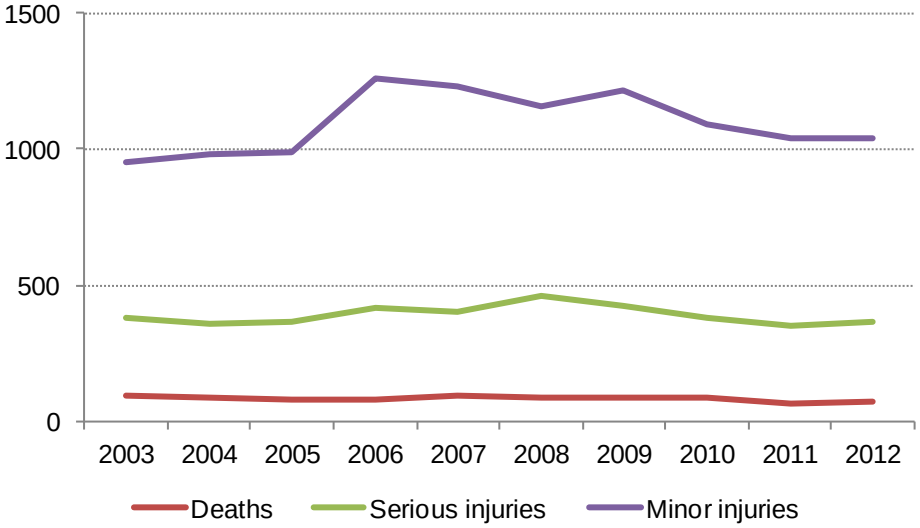
[16] Information provided by the Police and includes all drink-driving offences including those that did not result in a conviction. These figures differ from Table 1 which only includes convictions.

Figure 3 – Deaths in crashes where the at-fault driver was over 20 with alcohol, but no other drugs, as a contributing factor[17]



32.4. **Casualties resulting from alcohol-related crashes (see Figure 4).** The number of minor injuries resulting from alcohol-related crashes has declined significantly since 2009. As with the graph above, the number of deaths and serious injuries has been declining at a modest rate.

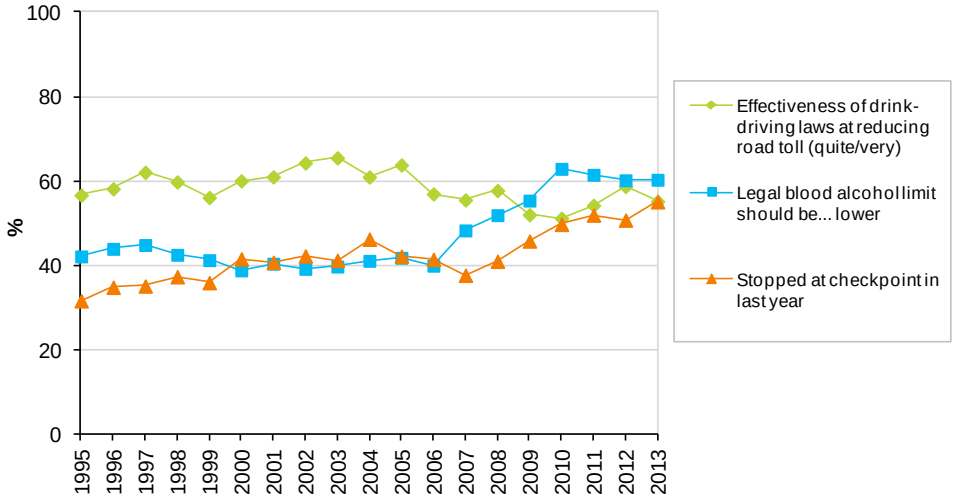
Figure 4 – Casualties in crashes where the at-fault driver was over 20 with alcohol, but no other drugs as a contributing factor[18]



32.5. **Public attitudes (see Figure 5).** Public attitudes towards road safety have changed since 2006, with more individuals claiming to have been stopped at alcohol check points and more seeking to see the legal BAC limit lowered.

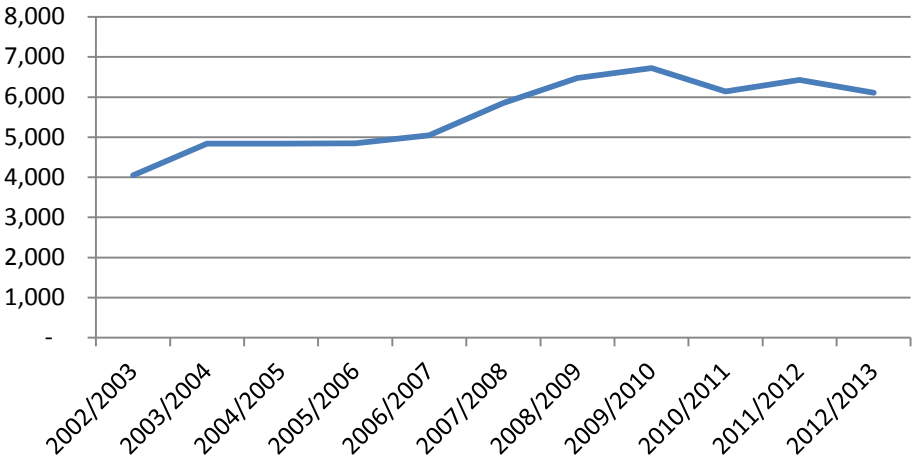
[17] Information taken from the New Zealand Transport Agency's Crash Analysis system.
[18] Ibid.

Figure 5 – Public attitudes to drink-driving[19]



32.6. **Repeat convictions (see Figure 6).** The number of repeat convictions has increased since 2002/2003. The trends seen with repeat offenders contradict the improvements in other indicators of drink-driving. The most recent study of repeat drink-drivers in New Zealand was conducted by the New Zealand Automobile Association. On the basis of data from the Ministry of Justice, the New Zealand Automobile Association report identifies that the most common repeat offender[20] would be a male (81 percent of repeat offenders), non-Maori (61 percent) and between 20 to 29 years of age (34.5 percent).[21]

Figure 6 – Number of third and subsequent convictions[22]



[19] Information taken from the Ministry of Transport 2013 Survey of Public Attitudes to Road Safety.
[20] Defined as committing multiple drink-driving offences since the year 1980.
[21] Walters, G. (2013). Drink/Drug Driving Data 2009-2012 and Preliminary Report on Interlock Uptake in New Zealand. New Zealand Automobile Association, Auckland.
[22] Information provided by the Ministry of Justice and measures third and subsequent convictions dating back to 1980.

Problem definition

33. While road safety trends in relation to drink-driving have been improving, alcohol remains the joint most frequent contributing factor (alongside speed) to road deaths and serious injuries in New Zealand and the cause of significant social cost.

34. For the three years to 2012, there were an average of 61 fatalities, 244 serious injuries and 761 minor injuries each year caused by at-fault drivers (aged 20 years and over) with some level of BAC.[23] The estimated social cost[24] for these injuries was about $446 million per annum (in 2013 dollars).

The nature and magnitude of the problem: risk and consequence

Risk – It is widely established that alcohol impairs cognitive and driving abilities

35. The impacts of alcohol on cognitive abilities were discussed at length in the Ministry of Transport's advice on a proposal to lower the adult BAC limit in 2010.[25] This can be summarised as follows:

    35.1. Between 20 to 40mg per 100ml, at least some driving skills are impaired such as vision, alertness, attention, perception and reaction time.

    35.2. Above 50mg per 100ml, psychomotor skills[26] begin to display impairment while reaction time, vision and perception further deteriorate.

    35.3. Above 80mg per 100ml, vision, perception, attention and psychomotor skills are significantly impaired while judgment is also affected, causing more risk taking behaviour.

36. These impacts have been confirmed in research Cabinet requested in 2010 to replicate overseas studies on how New Zealanders' driving performance is affected as BAC levels rise. The main findings from this study, undertaken by the University of Waikato, are summarised below.

    36.1. At a BAC of 80mg per 100ml, there was significant impairment across a broad range of cognitive and driving measures relative to 'sober' participants (who consumed a very modest amount of alcohol). Participants with a BAC of 80mg per 100ml tended to exaggerate their steering responses, were less able to control their reactions to false alarm vehicles at intersections, and had higher peak driving speeds. At

[23] This excludes crashes where drugs were also a contributing factor and crashes where alcohol was suspected but not confirmed as a contributing factor.
[24] Social cost is a measure of the total cost that occurs as the result of crash or injury. It includes loss of life and life quality, loss of economic output, medical costs, legal costs and vehicle damage costs.
[25] Ministry of Transport. (2010). Regulatory Impact Statement: Safer Journeys – Reducing the impact of alcohol impaired drivers. Ministry of Transport, Wellington.
[26] Skills such as steering, braking and changing gears.

a BAC of 50mg per 100ml, participants showed performance impairment on some behavioural measures.

36.2. Participants at BAC levels of 50mg per 100ml and 80mg per 100ml were able to recognise that they were intoxicated but were unable to accurately determine by how much. Both sets of participants also underestimated the amount of alcohol they had consumed, and the amounts they estimated were very similar, which meant that participants receiving the high dose were more inaccurate. Participants at a BAC of 80mg per 100ml made errors of up to half their actual level of consumption. Both groups had similar responses regarding their willingness to drive, despite one group having consumed more alcohol (80mg per 100ml) than the other (50mg per 100ml). Findings of this nature suggest that drivers are unable to adequately determine whether they are within the legal BAC limit, affecting the safety of themselves and other road users.

37. The impact of alcohol on cognitive and driving abilities is reflected in the risk of being involved in a crash. Measuring the actual risk of drink-driving is complicated as it will vary markedly by driver, vehicle and driving conditions. Relative risk estimates can give a closer proxy of drink-driving risk. The relative risk of being killed in New Zealand while driving with different BAC levels was estimated in a 2004 study using data on drivers killed in fatal crashes[27] (see Table 2).

Table 2 – Relative risk of fatal crash by blood alcohol level and age

BAC (mg per 100ml)	30+ years	20-29 years	15-19 years
0	1	3	5.3
30	2.9	8.7	15
50	5.8	17.5	30.3
80	16.5	50.2	86.6

Consequence – The incidence of alcohol-related crashes occurs at all levels of impairment

38. As requested by Cabinet in 2010, the Police have collected additional roadside and crash data, including the BAC level of any driver involved in a fatal or serious injury crash. Over the 22 month research period (from 7 August 2011 to 31 May 2013), the Police tested 723[28] drivers where alcohol was a suspected factor in fatal or serious injury crashes. The results are displayed in Table 3.

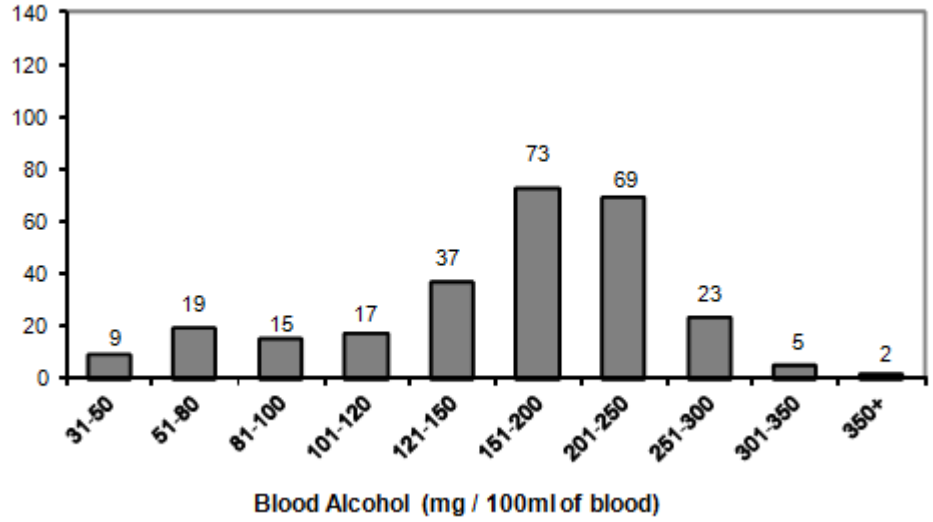
[27] Keall, M.D, Frith, W.J and Patterson, T.L. (2004). The influence of alcohol, age and the number of passengers on the night-time risk of driver injury in New Zealand. *Accident Analysis and Prevention,* 36(1), 49-61.
[28] 230 drivers were recorded with a BAC level below 50mg per 100ml.

Table 3 – Crashes involving drivers with a BAC above 50mg per 100ml from 7 August 2011 to 31 May 2013

BAC range of driver	Crashes	Fatalities	Serious injuries	Minor injuries
51-80mg per 100ml	53	5	62	31
81mg per 100ml and above	440	92	492	192

39. Complementing the findings from the Police roadside data, Figure 7 shows the distribution of drink-drivers who were killed while driving under the influence of alcohol. However, these numbers do not align with the Police data as they only display drink-drivers who have been killed in road crashes while the Police data also includes serious injury crashes and victims other than the driver.

Figure 7 – Distribution of drink-drivers killed in road crashes 2008-2012



40. The data shows that there are a significant number of people killed or seriously injured at levels below the current adult BAC limit. However, the majority of alcohol-related deaths and serious injuries occur beyond the current adult BAC limit.

Impacts of drink-driving on the justice sector

41. Drink-driving places significant pressure at multiple points across the criminal justice system, from enforcement at the roadside, through to court hearings and post-sentence monitoring. Drink-driving offences make up 17 percent of all cases going through court (24,171 cases in 2012).

42. During the 2011/2012 year the Police completed around 3.45 million roadside drink-driver breath tests. The overwhelming majority of people who are prosecuted for a drink-driving offence receive a conviction; with a conviction rate of 95 percent in 2012. The failed prosecutions are likely to arise from technical defences in the court or police officers not following strict procedures.

43. The sentences issued for drink-driving are varied with fines and licence disqualifications the most common sanction issued (refer to Table 1). Approximately 5 percent of those convicted for drink-driving are sentenced to imprisonment and the average sentence of imprisonment served for drink-driving is 219 days.[29]

Objectives

44. The policy question to be addressed is whether the current drink-drive measures minimise harm at reasonable cost, without unreasonably infringing on private benefits and freedoms. The key policy lever is the level at which the drink-drive limit is set; the offences and penalties regime as well as the Police enforcement regime are vital complements to the drink-drive limit.

Safer Journeys

45. In March 2010, the government released *Safer Journeys New Zealand's Road Safety Strategy 2010-2020*. Safer Journeys established a vision of a "safe road system increasingly free of death and serious injury" and adopted the 'Safe System' approach to achieve this.

46. A Safe System approach looks across the road system to achieve safe roads and road sides, safe vehicles, safe speeds and safe road use. A Safe System approach to road safety recognises that even responsible people sometimes make mistakes when travelling on the roads and therefore looks to institute policies that proactively mitigate the risk of a crash and reduce the severity of consequences in the event of a crash.

Criteria

47. All options have been assessed against five criteria:

    47.1. *Road safety impact* – the likelihood and magnitude of the policy option achieving a reduction in harm and social cost, measured by taking into account the risk and consequences of an alcohol-related crash.

    47.2. *Impacts on private benefits and individual freedoms* – an assessment of the impacts on the freedom of individuals and private benefits of alcohol consumption.

    47.3. *Cost effectiveness* – the costs incurred by government agencies, the private sector and individuals and the extent to which these costs are proportionate to the benefits expected. This includes any cost impacts on the hospitality industry and for New Zealanders residing in rural areas.

    47.4. *Public acceptability* – an assessment of whether the public is likely to accept and adhere to a particular policy option based on consultation undertaken in 2010 and the Ministry of Transport's Survey of Public Attitudes to Road Safety in 2013.

[29] Information provided by the Ministry of Justice and excludes offences causing death and serious injury.

47.5. *Impacts on the justice sector* – impacts on the integrity and efficiency of the justice system when processing drivers.

48. The criteria have been weighted with the road safety impact as the primary consideration balanced against the costs associated with the remaining four criteria.

Regulatory impact analysis

49. This regulatory impact analysis is limited to examining the transport legislation, primarily the Act, which regulates drink-driving in New Zealand. Therefore, the options assessed are the adult BAC limit, the offences and penalties regime, and the Police enforcement regime.

50. An independently reviewed cost-benefit analysis has been undertaken on the option to reduce the adult BAC limit from 80mg per 100ml to 50mg per 100ml. The cost-benefit analysis provides a conservative estimate of the impacts of a lower adult BAC limit. The key findings from that analysis are summarised in this section.

51. The Ministry of Transport has not assessed options relating to:

    51.1. Alcohol availability (e.g. sale and supply restrictions) where the government has recently implemented changes through the alcohol reform legislation.

    51.2. Treatment and monitoring measures, including alcohol interlocks. A review of alcohol interlock policy is identified as an action in the second action plan of Safer Journeys. The Ministry of Transport proposes to extend the scope of this review to consider treatment and monitoring measures.

    51.3. Public education. The Ministry of Transport considers public education to be a tool which gives effect to the drink-driving policies in place. It is likely to be more effective when it accompanies changes to the drink-driving regime. As such, the relative level of investment in education has not been considered as an option but as an implementation issue for the options identified.

The adult BAC limit

Preferred option – lower the adult BAC limit to 50mg per 100ml

52. A lower adult BAC limit of 50mg per 100ml is preferred as it would not just target groups of drivers identified as posing a high safety risk when drinking and driving, but would deal with the risk posed by all drivers who drink and drive.

53. Eighty-nine countries, covering 66 percent of the world's population (4.55 billion people), enforce the World Health Organization's recommended BAC limit of 50mg per 100ml or less.[30]

[30] World Health Organization. (2013). Global status report on road safety 2013: Supporting a decade of action. World Health Organization, Geneva.

54. Table 4 provides estimates, based on advice from the Institute of Environmental Science and Research Ltd, of the maximum alcohol consumption permitted by the current limit of 80mg per 100ml and the recommended limit of 50mg per 100ml.

Table 4 – Estimates of the level of alcohol consumption allowed

MALE (weight, height)	Drinking time[1] (hours)	BAC Limit	Safe[2]	Possibly safe[3]
			(standard drinks)[4]	
55kg, 160cm	2 hours	50mg	up to 2.5	up to 4.5
		80mg	**up to 3.5**	**up to 6**
	4 hours	50mg	up to 3.5	up to 6.5
		80mg	**up to 4.5**	**up to 8**
85kg, 175cm	2 hours	50mg	up to 3.5	up to 6
		80mg	**up to 5**	**up to 8**
	4 hours	50mg	up to 4.5	up to 8.5
		80mg	**up to 6**	**up to 10.5**
125kg, 195cm	2 hours	50mg	up to 4.5	up to 8
		80mg	**up to 6.5**	**up to 10.5**
	4 hours	50mg	up to 6	up to 11
		80mg	**up to 8**	**up to 13.5**
FEMALE (weight, height)	**Drinking time[1] (hours)**	**BAC Limit**	**Safe[2]**	**Possibly safe[3]**
			(standard drinks)[4]	
40kg, 145cm	2 hours	50mg	up to 1.5	up to 3
		80mg	**up to 2**	**up to 4**
	4 hours	50mg	up to 2.5	up to 4
		80mg	**up to 3**	**up to 5**
70kg, 160cm	2 hours	50mg	up to 2.5	up to 4
		80mg	**up to 3**	**up to 5.5**
	4 hours	50mg	up to 3.5	up to 6
		80mg	**up to 4**	**up to 7**
110kg, 180cm	2 hours	50mg	up to 2.5	up to 4.5
		80mg	**up to 3.5**	**up to 6**
	4 hours	50mg	up to 3.5	up to 6.5
		80mg	**up to 4.5**	**up to 8**

[1] Plus an extra half hour following drinking, to allow for full absorption of the alcohol dose. Therefore, calculation of the number of standard drinks is based on a total of 4.5 hours between the time drinking starts and the time of the blood test.
[2] Drivers in this category will not exceed the BAC limit.
[3] Approximately 50 percent of drivers in this category would not exceed the BAC limit. Beyond this category, drivers are most likely to be impaired and only a small proportion of drivers would not exceed the BAC limit.
[4] A standard drink is equivalent to 330ml of beer, 100ml of wine or 32ml of spirits.
* These calculations assume that drinking occurs at an even pace, on an empty stomach and the driver is in reasonable health.

55. Public surveys carried out by the Ministry of Transport as well as consultation undertaken in 2010 indicate that an adult BAC limit of 50mg per 100ml has strong public support.

56. The road safety benefits of a lower adult BAC limit are two-fold.

56.1. It will better reflect the risk of driving with a BAC level of 50mg per 100ml as indicated by a significant body of international research summarised in para 35 and confirmed by the University of Waikato study commissioned by Cabinet [para 36 refers].

56.2. A lower adult BAC limit may facilitate a change in behaviour amongst drivers outside of the target 51 to 80mg per 100ml range. The experience of similar policies internationally (summarised in the Ministry of Transport's advice in 2010)[31] as well as the experience with the zero youth BAC limit in New Zealand (see Table 5), provides support for this expectation. However, the youth experience should serve as an optimistic estimate of change should the adult BAC limit be lowered as the zero youth BAC limit makes it illegal to drive with any level of alcohol; a 50mg per 100ml adult BAC limit would still allow some level of alcohol consumption.

Table 5 – Offences detected for drivers under 20 years of age

Offences (% change from 2010/11)	Under 30mg per 100ml[32]	30 – 80mg per 100ml	Over 80mg per 100ml	Total
1 Sept 2010 – 31 Aug 2011	Not an offence	2,940	3,352	6,292
1 Sept 2011 – 31 Aug 2012	1,177	1,992 *↓32%*	2,418 *↓28%*	5,587 *↓11%*
1 Sept 2012 – 31 Aug 2013	878 *↓25.4% (from 2011/12)*	1,581 *↓46%*	1,914 *↓43%*	4,373 *↓30%*

57. A detailed cost-benefit analysis has been undertaken on the policy proposal to lower the adult BAC limit to 50mg per 100ml. Based on a 10-year evaluation period, the estimated net present value of the preferred policy is $200 million with a national benefit-cost ratio[33] of 10:1.

58. A lower adult BAC limit will force drivers to either reduce their consumption of alcohol, switch their drinking to a home-based environment, or make alternative transport arrangements if they do not already do so. In rural areas, the restrictions on behaviour are likely to be felt more strongly.

59. It is estimated that a lower adult BAC limit will result in an additional 19,100 offenders[34] in the 51 to 80mg per 100ml range. This would almost double the number of drink-driving offences in 2012 (24,171).

[31] Ministry of Transport. (2010). Regulatory Impact Statement: Safer Journeys – Reducing the impact of alcohol impaired drivers. Ministry of Transport, Wellington.
[32] Drivers under 20 years of age receive an infringement penalty for offences in the 0 to 30mg per 100ml BAC range.
[33] An estimate of the ratio of total benefits to total costs resulting from the policy change.
[34] Assuming 30% of adults with a BAC currently between 50 to 80mg per 100ml and 4% of adults with a BAC greater than 80mg per 100ml will reduce their alcohol consumption.

60. The benefits and costs of this policy are distributed as follows (the independently reviewed cost-benefit report provides more detail):

Table 6 – Estimated benefits (present value) over 10 years

Component	Reductions in social costs	Justice sector cost savings[35]	Other benefits[36]	Total
Benefit	$207.2m (93%)	$12.6m (6%)	$2.3m (1%)	$222.1m

Table 7 – Estimated costs (present value) over 10 years

Component	Administrative costs[37]	Private costs[38]	Transport costs[39]	Total
Cost	$18.4m (82%)	$2.6m (11%)	$1.5m (7%)	$22.5m

61. The analysis has estimated that the number of alcohol-related road casualties saved would be around three fatalities and 64 minor and serious injuries per annum. This is a lower estimated reduction than reported in the 2010 cabinet paper (between 15 and 30 fatalities a year). The key reasons for the differences are that:

    61.1. The 2010 analysis used crash and injury data from 2006-2008, whereas the current analysis uses data from 2010-2012 where there has been a significant reduction in alcohol-related crashes.

    61.2. The current analysis uses crash and injury data that excludes drivers under 20 years of age due to the youth BAC limit implemented in 2011 and also excludes data from drug related crashes and crashes where alcohol was suspected, but not confirmed as a contributing factor; inclusion of these groups would result in higher estimates of road safety benefits.

    61.3. More conservative assumptions of behaviour change have been used in the current analysis. In 2010, the Ministry of Transport's analysis drew on the French and Australian experiences of changing their BAC limits due to the lack of New Zealand-based data. The current analysis uses the behaviour change observed since the youth BAC limit was changed in New Zealand as an upper range estimate.

62. Estimating the road safety benefits resulting from a lower adult BAC limit requires fine judgments to be made about the changes in drinking behaviour of New Zealand drivers. Adopting a cautious approach in the analysis allows the

[35] Administrative cost savings from reduction in offences over 80mg per 100ml.
[36] Reduced productivity lost due to absenteeism, reduced health care costs and reduced social cost of crime.
[37] Increase in administrative costs to the Police, New Zealand Transport Agency, Department of Corrections and the Ministry of Justice.
[38] Reduction in consumer satisfaction and producer surplus and additional compliance costs to drivers.
[39] Costs for drivers to make alternate transport arrangements when drinking.

policy to be assessed without significant reliance placed on behavioural assumptions.

63. In taking a cautious approach, the cost-benefit analysis has shown that the policy remains beneficial and will meet the policy objectives. If greater behaviour change occurs, the benefits could be greater than forecast.

Considerations resulting from a lower adult BAC limit

64. A lower adult BAC limit would necessitate several considerations.

Criminalising a new segment of the driving population

65. A lower adult BAC limit would potentially criminalise a new segment of offenders who presumably, would otherwise be law abiding citizens.

66. Arguably, criminal-based sanctions would be a strong deterrent to breaching the new limit, enhancing the credibility of the change and sending a clear message that driving with BAC levels in excess of 50mg per 100ml is unacceptable.

67. On the other hand criminal-based sanctions may be seen as disproportionate given the lower number of fatal and serious injury crashes associated with drivers who have BAC levels in the range of 51 to 80mg per 100ml relative to those above 80mg per 100ml.

68. A disadvantage of criminal-based sanctions is the pressure and cost they will place on the court system because of the volume of offences that can be expected, at least in the short term. The Ministry of Transport estimates the costs to the Ministry of Justice of implementing a criminal-based sanction for the new offences would be around $5 million for the first year following the policy change. There would also be cost pressure on the Department for Corrections for handling additional community, home detention and related sentences. The Ministry of Transport estimates that total costs to the Ministry of Justice and the Department of Corrections could be $45 million for the first year following the policy change.

69. Infringement offences, which do not result in a criminal conviction, are an alternative to criminal-based sanctions. An infringement regime provides an administratively efficient method of encouraging compliance with the law by imposing a set of financial penalties following relatively minor breaches of the law. It is a proportionate response to less severe offences, which avoids the formality of court proceedings and does not impose a full criminal penalty.[40]

70. Infringements provide a swifter way of sanctioning drivers than the courts can. However, they may create a risk that drink-driving over the new adult BAC limit, but below the current limit, is perceived as a minor offence. This may depend on the infringement penalties applied. For example, coupling a modest infringement fee with a reasonable number of demerit points on a driver's licence could provide both a deterrent and a fairer penalty, which is commensurate with the nature of the offence.

[40] Ministry of Justice. Policy framework for new infringement schemes available at http://www.justice.govt.nz/publications/global-publications/i/infringement-guidelines.

71. Currently, infringements are issued to drivers who breach the zero youth BAC limit (up to 30mg per 100ml). The penalty consists of a $200 infringement fee plus 50 demerit points. Because driver licences are suspended for three months after 100 or more demerit points have been accumulated within a two year period, 50 demerit points represents a strong deterrent. It would be sensible to apply these penalties to an infringement regime put in place to sanction adult BAC offences in the 51 to 80mg per 100ml range.

72. A benefit of an infringement regime is that it would limit the additional pressure of a large number of new offenders (estimated in the cost-benefit analysis at around 19,100) on the justice sector. The estimated cost on the justice sector is $0.4 million to $0.6 million per annum. However, this cost increase is expected to be partially offset if it causes a behaviour change in drink-driving offences with a BAC greater than 80mg per 100ml.

73. Under an infringement regime, a small number of drivers (estimated in the cost-benefit analysis to be 152) are expected to be processed through the courts as a result of incurring a licence suspension and then driving while disqualified (see Figure 8). This number is lower than the 19,100 adult drivers who would be prosecuted in court if a lower limit was a criminal rather than an infringement offence.

Figure 8 – Estimated impact of infringement regime in the first year of the policy change as a result of drivers incurring 100 demerit points, a licence suspension and going on to drive while disqualified

74. The public is more likely to accept an infringement regime for blood alcohol offences between 51 to 80mg per 100ml.

75. The Ministry of Transport recommends that under a lower adult BAC limit, an infringement regime is adopted for blood alcohol offences between 51 to 80mg per 100ml.

Recovery of costs for electing a blood test

76. One of the implications of lowering the limit is that there will be increased costs arising from drivers electing a blood test after failing the evidential breath test. Under the criminal-based regime, these costs can be recovered from the individual at the discretion of the court.

77. Under an infringement regime, there would be no equivalent method to recover the costs of the blood test. There is no cost recovery in the current infringement regime that applies to youth. To enable cost recovery, both for adults and youth, explicit provision would need to be made to collect this cost in addition to the infringement fee. Officials estimate that this would add around $100 to be recovered in addition to any infringement fee if the driver elects and fails a blood test. In a situation where a driver is successful in proving their innocence via the blood test, costs would not be recovered. Otherwise, the option is for

the Crown to absorb the cost of blood tests where infringements are involved. The Ministry of Transport estimates the number of additional blood tests to be between 3,000 and 4,000 a year.

78. The Ministry of Transport recommends that the costs of electing a blood test are recovered under the proposed infringement regime for adult blood alcohol offences between 51 to 80mg per 100ml.

Repeat offending between 51 to 80mg per 100ml

79. The Act contains provisions which deal with repeat convictions incurred over a 5 year period, but is silent on repeat infringement offences.

80. Under an infringement regime for BAC offences between 51 to 80mg per 100ml, drivers would be subject to more lenient sanctions for repeat infringement offences.

81. If these were convictions, repeat drink-drivers would be subject to stronger penalties, commensurate with the repeated nature of their offending. However, as infringement offences, the regime would theoretically allow for offenders to reoffend once every two years with a maximum penalty each time of a $200 infringement fee and 50 demerit points (which would be reset to zero at the end of a two year period if the driver had no other demeritable offences within that period).

82. The Police would still have the discretion to process an offender in court upon viewing their infringement history. Offenders with two drink-driving infringements within two years would also have their licence suspended for 3 months as a result of exceeding the 100 demerit point threshold.

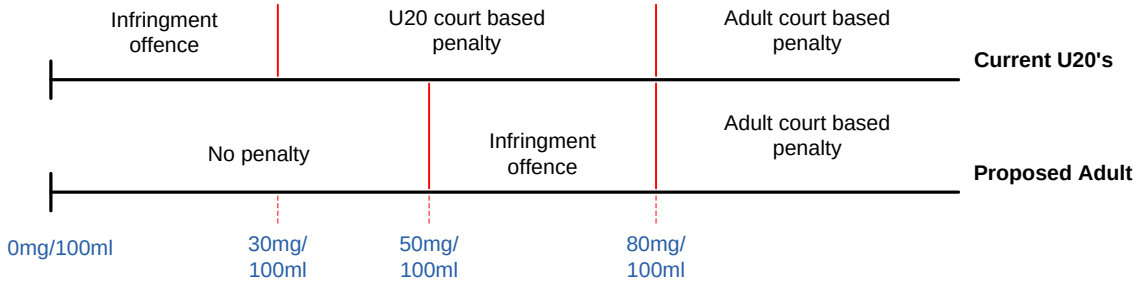
83. Therefore, the existing regime provides a partial solution, but may not address the risk of drivers incurring repeat infringement offences that are more than 2 years apart without being sanctioned appropriately. The Ministry of Transport recommends that it monitors this area, in collaboration with justice sector agencies, to determine the adequacy of the infringement regime in deterring offending once three years of data about the new regime is available.

Alignment with the youth infringement regime

84. Currently, youth drink-drive offenders receive an infringement penalty if they are caught between 0 and 30mg per 100ml. If the adult BAC limit were lowered and infringement offences adopted in the 51-80mg per 100ml range, it would mean young drivers (aged under 20) would receive criminal offences at BAC levels where adults are receiving infringement offences.

85. The youth infringement regime could be extended to 50mg per 100ml to align it with the adult regime. However, this would disrupt the escalation within both BAC regimes where prison sentences are available for offences that are 30mg per 100ml over each limit. This is displayed in Figure 9.

Figure 9 – Comparison of youth and adult drink-drive regimes with a lower adult limit



86. Extending the infringement penalties for youth also runs the risk of sending out a public message of leniency with regard to the zero youth limit, contradicting the road safety message intended by a lower adult BAC limit.

87. The Ministry of Transport recommends retaining the existing youth offences and penalties regime.

Options considered but not progressed

Introduce a zero BAC limit for heavy vehicles drivers

88. A zero BAC limit was considered for heavy vehicle drivers as the consequences for this group of drivers in the event of a crash are magnified due to the size and mass of the vehicles and, in the case of large passenger service vehicle crashes, the number of passengers involved. It could also be argued that the public expects heavy vehicle drivers in the commercial sector to be completely sober when driving, something that the current limit does not reflect.

89. Heavy vehicle drivers are more likely to drive for longer periods and may therefore be exposed to greater levels of fatigue than the average driver. Anecdotally, alcohol consumption would be expected to further impair heavy vehicle drivers.

90. The vast majority of heavy vehicle drivers are self-employed commercial drivers. For these drivers, section 63 of the Act makes it compulsory for the courts to disqualify a drink-drive offender from driving a vehicle used in a transport service[41] for a period exceeding one year but not more than 10 years. This provides a strong deterrent to drinking while operating a heavy commercial vehicle as drivers face the prospect of losing employment if caught.

91. According to health and safety guidelines issued by the Ministry of Business, Innovation and Employment, commercial drivers should already comply with zero alcohol tolerance policies.[42] This could be an underlying reason for the low incidence of alcohol-related commercial vehicle crashes when compared to similar crash data for other vehicle types from 2010 to 2012 (see Table 8).

92. A zero BAC limit for heavy vehicle drivers would expose many commercial drivers to multiple sanctions for drink-driving as both land safety and health and

[41] Defined as vehicles being used in a goods, passenger, rental or vehicle recovery service.
[42] For more information, visit http://www.dol.govt.nz/infozone/businessessentials/safety/hazards/fatigue-drugs-alcohol.asp.

safety regulations would apply. This may have impacts on individual freedoms as well as the justice sector.

93. While a zero BAC limit for heavy vehicle drivers would reflect the higher risk of crashes involving heavy vehicles, the prevalence of crashes among this group of drivers does not differ significantly from other groups. On balance, if the preferred option of a 50mg per 100ml adult limit is progressed, any additional road safety benefits of a zero BAC limit for heavy vehicle drivers are likely to be modest.

Introduce a zero BAC limit for motorcyclists

94. New Zealand-based research[43] has found that the baseline risk for motorcyclists is considerably higher than for car and van drivers. Therefore, even modest amounts of alcohol contribute to the higher crash risk already faced by motorcyclists compared to car and van drivers.

95. However, as shown in Table 8, motorcyclists are not involved in a higher number of alcohol-related crashes, compared to car drivers. This may reflect less alcohol impaired driving, or no greater alcohol-related risk.

96. This is consistent with findings from the New Zealand research mentioned in para 94, which confirmed that the rate of increase in fatal injury risk with increasing BAC was not found to be different for motorcyclists compared to car and van drivers.

97. In addition to not being a typical policy adopted internationally, a different BAC limit for motorcyclists may be perceived as an additional and unfair restriction based on the choice of vehicle driven. If the intent of a differential BAC limit was to target the heightened baseline risk of riding a motorcycle, it would add a further restriction on motorcyclists in addition to the motorcycle levies that are currently charged by the Accident Compensation Corporation.

98. On balance, if the preferred option of a 50mg per 100ml adult limit is progressed, a zero BAC limit for motorcyclists is only likely to achieve modest additional road safety benefits.

Extending the zero youth BAC limit to 29 year olds

99. The Ministry of Transport considered extending the zero BAC limit for young drivers to those aged 29 and under. This was based on crash data which showed this group to be involved in a greater number of alcohol-related crashes than the general population (see Table 8).

100. However, a zero BAC limit for this wider age range may only offer a short term solution to the drink-driving problem as it would not send out a general public message about the risk of driving after consuming alcohol, but would specifically target this age group.

101. This also raises questions of the degree of public support for a legislative change that will substantially limit the freedom of drivers at ages which are not defined as youth elsewhere in New Zealand legislation.

[43] Keall, M. D., Clark, B., & Rudin-Brown, C. M. (2013). A preliminary estimation of motorcyclist fatal injury risk by BAC level relative to car/van drivers. *Traffic injury prevention*, *14*(1), 7-12.

102. A zero BAC limit for drivers aged 29 and under would also entail increased costs for the justice sector, by bringing a high proportion of the driving population into a strict zero tolerance regime.

103. While the road safety impact of this option may be greater compared to options targeting motorcyclists or heavy vehicle drivers, the costs associated are also higher.

104. On balance, this option is unlikely to achieve significantly improved road safety outcomes over and above a change to lower the adult BAC limit.

Table 8 – Drivers with alcohol suspected or proven (excludes drugs only) in crashes in 2010-2012[44]

Age group	Fatal crashes			Serious injury crashes			Minor injury crashes		
	Total drivers	With alcohol	% with alcohol	Total drivers	With alcohol	% with alcohol	Total drivers	With alcohol	% with alcohol
15-19	116	41	35%	814	176	22%	4187	544	13%
20-24	175	67	38%	1025	237	23%	5542	746	13%
25-29	107	32	30%	724	169	23%	3769	382	10%
30-39	190	35	18%	1168	205	18%	6174	493	8%
40+	678	74	11%	3565	273	8%	16663	638	4%
Unknown	25	4	16%	209	20	10%	1451	90	6%
Vehicle type	**Total drivers**	**With alcohol**	**% with alcohol**	**Total drivers**	**With alcohol**	**% with alcohol**	**Total drivers**	**With alcohol**	**% with alcohol**
Bus	16	0	0%	80	0	0%	325	2	1%
Car/Van/SUV	973	220	23%	5770	901	16%	33326	2706	8%
Motorbike	139	29	21%	1173	167	14%	2376	155	7%
Other	11	1	9%	35	1	3%	97	4	4%
Taxi	3	0	0%	41	1	2%	179	1	1%
Truck	149	3	2%	406	10	2%	1483	25	2%
Total	**1291**	**253**	**20%**	**7505**	**1080**	**14%**	**37786**	**2893**	**8%**

Offences and Penalties

105. In order to complement a lower adult BAC limit, changes to parts of the offences and penalties regime (sections 56, 60 and 65 of the Act) have been considered as a way of better targeting some drink-drive offenders.

106. The proposed changes to the offences and penalties regime have not been analysed to the same extent as the cost-benefit report on the proposed lower adult BAC limit. Where possible the proposed changes have been quantified using a conservative approach, assuming no change in behaviour of drink-drive offenders or of the judges who are applying penalties. While these behavioural assumptions differ from those used in the cost-benefit analysis, they allow for an initial analysis of the maximum potential cost implications.

[44] Data taken from the New Zealand Transport Agency's Crash Analysis System.

Preferred option

107. As referred to in para 51, it is proposed that treatment and monitoring measures, along with an examination of the offences and penalties regime be investigated as part of the planned review of the alcohol interlock policy in 2014, thus widening the scope of that review.

108. A wider review would allow work to be conducted in tandem with the Ministry of Justice and the Ministry of Health, approaching the problem from a wider perspective and having regard to the transport, justice and health sector implications of any possible changes to the offences and penalties regime.

109. This would also allow officials to look in more detail at the root causes of offending by high risk offenders such as repeat and high alcohol drink-drivers with consideration given to possible treatment and monitoring measures to reduce offending.

Options considered but not progressed

Introduce a presumption of imprisonment for fifth and subsequent offenders

110. Applying a presumption of imprisonment for serious repeat offenders was considered as a means of targeting drink-drivers who repeatedly disregard the law and the safety of themselves and others.

111. We consider this is likely to be accepted by the public as a strong signal of the risk posed by drivers who repeatedly drink and drive.

112. Fifth and subsequent offenders, as a group, were identified as judges appear to issue more custodial sentences for these offenders compared to offenders with fewer prior convictions.

113. However, a presumption of imprisonment is only applied to the most serious of offences, such as murder, and may be an excessively harsh means of dealing with offenders of this nature. It may also be counterproductive where addiction or alcoholism is the true cause of the problem.

114. A presumption of imprisonment would also increase costs to the Department of Corrections as currently only 27 percent (433) of offenders in this category receive a prison sentence. A presumption of imprisonment would make incarceration the default penalty for an additional 1,196 offenders based on 2012/2013 convictions data.

Mandate alcohol and drug assessments for first time high alcohol level offenders

115. Under section 65 of the the Act, the courts can order alcohol assessments for offenders convicted of their:

    115.1. second or subsequent offence in a 5 year period, one of which was at a BAC level above 200mg per 100ml or a breath alcohol level above 1000mcg per litre

115.2. third or subsequent offence, where at least two previous offences were committed within 5 years prior to the date of commission of the offence being dealt with by the court.

116. Extending the section 65 provisions in the Act in order to require first time high alcohol level offenders to attend an assessment centre was considered as an additional mechanism for targeting drink-drive offenders who are caught with a high BAC level. Extending the threshold for assessments to capture those caught at a high BAC level may facilitate better identification of drink-drivers with alcohol misuse problems.

117. The aim of this policy option would be that in attending an assessment centre, offenders feel obliged to re-examine their behaviour and alter their drinking patterns. Estimating the road safety benefits of this option would depend on the likelihood of offenders changing their behaviour prior to and following an assessment centre.

118. Currently, it may be unlikely that assessment centres provide an effective rehabilitation option as there is no requirement to provide rehabilitation services to offenders. Additionally, the Ministry of Health does not have available appropriate mechanisms for maintaining oversight of assessment centres.

119. Under this policy, an assessment would be required for a maximum additional 3,700 offenders, based on 2012/2013 convictions data, at a cost to the Crown of $710 per assessment; a total cost of around $2.6 million per annum.

120. Given the costs involved and the known current limitations of assessment centres, officials will need to examine this option in further detail before making recommendations. This option will be considered further as part of the proposed review of treatment and monitoring measures.

Increase maximum penalties for third and subsequent offences

121. Third and subsequent offenders make up approximately 26 percent of all drink-driving offenders. By repeatedly electing to drive after drinking, this group of offenders pose a significant road safety risk to themselves and other road users.

122. Increasing the penalties for third and subsequent drink-drive offenders would therefore reflect the higher risk these offenders pose to themselves and others from repeatedly electing to drive after drinking and, in some cases, at higher BAC levels.

123. A recently released Law Commission study paper[45] reviewed the maximum penalties contained in the five major criminal statutes (Crimes Act 1961, Misuse of Drugs Act 1975, Land Transport Act 1998, Arms Act 1983, and Summary Offences Act 1981). It found that the offences in the Land Transport Act for third and subsequent drink-driving offences were not commensurate with the harm caused to individuals, society and the government. It found other similar offences to carry a higher maximum prison term than two years.

[45] Law Commission. (2013). Maximum penalties for criminal offences. Law Commission, Wellington. Available from http://sp21.publications.lawcom.govt.nz/.

124. In addition to the Law Commission findings, public consultation carried out in 2010 revealed that public submitters who did not support a lower adult BAC limit believed that it would not deal with the problem group of repeat drink-drivers who drive well above the existing adult BAC limit.

125. Higher penalties for this group of offenders would reflect public expectation that they are sanctioned more harshly and that the offence carries a higher deterrent effect. However, the deterrent effect for this group of offenders is questionable, as current sanctions do not seem to be effective and there may be other issues such as alcohol misuse that may need to be attended to.

126. Increasing the penalties for third and subsequent offences would entail costs to the Department of Corrections. Estimates based on convictions data over the previous four years spanning 2009 to 2012 are displayed in Table 9 and Table 10 (the assumptions for these estimates are explained in para 106).

Table 9 – Status quo cost of sentences from 2009 to 2012

Number of previous convictions	Cost impact of custodial sentences	Cost impact of home detention sentences	Cost impact of community sentences
2	$ 23,116,544	$ 2,242,254	$ 2,735,661
3	$ 35,452,793	$ 6,530,925	$ 5,480,743
4	$ 37,840,007	$ 5,304,507	$ 5,451,433
5 plus	$ 100,196,382	$ 11,089,704	$ 7,969,879
Total	**$ 196,605,725**	**$ 25,167,391**	**$ 21,637,715**
Sum total = $243,410,831			

Table 10 – Cost of sentences if penalties for third and subsequent offences are raised

Number of previous convictions	Cost impact of custodial sentences	Cost impact of home detention sentences	Cost impact of community sentences
2	$ 57,791,361	$ 5,605,636	$ 6,839,151
3	$ 88,631,982	$ 16,327,313	$ 13,701,857
4	$ 94,600,017	$ 13,261,268	$ 13,628,581
5 plus	$ 250,490,954	$ 27,724,260	$ 19,924,698
Total	**$ 491,514,314**	**$ 62,918,477**	**$ 54,094,287**
Sum total = $608,527,078			

127. The total estimated cost increase is approximately $365 million over four years or an average of $91 million per annum. These are preliminary estimates and further work is needed with the Department of Corrections to determine the full cost impacts of this option.

128. Under this policy option, the severity of penalties issued would increase and place strain on the Department of Corrections' resources. While the Law Commission study paper referred to in para 123 raises issues relating to the misalignment of current drink-driving penalties with penalties for other offences of a similar nature, changes to the drink-driving regime would need a more thorough review in light of the potential cost implications. This will be done as part of the proposed review of treatment and monitoring measures.

Increase maximum penalties for first and second offences

129. The intent of this option is to target first and second time offenders who are caught drink-driving with a high BAC reading.

130. A report by the Ministry of Justice[46] found that drink-driving reconviction is 21 percent more likely if offenders are over twice the adult BAC limit for their first conviction. This suggests an underlying trend where offenders who are caught and convicted for driving well above the adult BAC limit are more likely to reoffend.

131. High alcohol offenders pose a significant road safety risk not only to themselves, but to other road users, as they are more likely to drink and drive again and they are responsible for a higher proportion of crashes as discussed in para 40. The current penalties do not reflect this risk as the maximum penalty a judge can impose on an offender with a high BAC reading is a three month term of imprisonment or a $4500 fine. An increase in penalties would provide judges with greater scope than currently available for sanctioning such behaviour.

132. Convictions data (see Table 1) shows that judges already sentence repeat offenders to longer prison terms based on how high their BAC reading was at the time of the offence. This pattern would likely be replicated for first and second time offenders who offend at a higher BAC level.

133. Anecdotally, the impacts on private benefits and individual freedoms are likely to be felt more strongly under this option in comparison to the previous option of increasing penalties for third and subsequent offences. Increasing the penalties for first and second offences would increase the sanctions that are applicable to drivers without prior drink-driving convictions. These drivers may be more likely to reduce their alcohol consumption to avoid a criminal conviction and the associated penalties. In contrast, increasing the penalties for third and subsequent offences would not provide as strong a restriction on drivers without a drink-driving criminal history.

134. Higher penalties for first and second offences would raise costs to the Department of Corrections. Estimates based on convictions data over the previous four years spanning 2009 to 2012 are displayed in Table 11 and Table 12 (the assumptions for these estimates are explained in para 106).

[46] Ministry of Justice. (2013). Characteristics of first-time drink drivers who are reconvicted. Ministry of Justice, Wellington.

Table 11 – Status quo cost of sentences from 2009 to 2012

Number of previous convictions	Cost impact of custodial sentences	Cost impact of home detention sentences	Cost impact of community sentences
0	$ 1,684,371	$ 232,654	$ 252,050
1	$ 4,539,970	$ 505,191	$ 640,499
Total	**$ 6,224,341**	**$ 737,845**	**$ 892,549**
Sum total = $7,854,735			

Table 12 – Cost of sentences if penalties for 1st and 2nd offences are raised

Number of previous convictions	Cost impact of custodial sentences	Cost impact of home detention sentences	Cost impact of community sentences
0	$ 6,737,485	$ 930,615	$ 1,008,200
1	$ 18,159,878	$ 2,020,765	$ 2,561,995
Total	**$ 24,897,363**	**$ 2,951,380**	**$ 3,570,195**
Sum total = $31,418,938			

135. The total estimated cost increase is around $23.6 million over four years or an average of $5.9 million per annum. These are preliminary estimates and further work is needed with the Department of Corrections to determine the full cost impacts of this option.

136. Under this policy option, judges would be expected to issue more severe penalties, placing a strain on the Department of Corrections' resources, albeit not as large as estimated under the option to increase the third and subsequent penalties.

137. The Ministry of Transport recommends that these penalties are reviewed as part of the proposed review of treatment and monitoring measures.

Enforcement

138. The existing roadside testing process is effective in supporting a high conviction rate for drivers caught for drink-driving offences (approximately 95 percent of prosecutions are successful). However, the process can be time consuming, which in turn can restrict the numbers of drivers who can be screened.

139. The options considered have the potential to offer improvements and benefits for the enforcement regime of varied magnitudes. However, the options are not expected to contribute significantly to road safety in isolation. They have been formulated with the intent of removing opportunities for drivers to frustrate the testing and prosecution processes, and reducing the number of blood tests elected which will have flow on effects for Police roadside enforcement efficiency and road safety outcomes.

140. The Ministry of Transport also considered options to address a problem relating to a small group of drivers who fail an evidential breath test and exercise their right to a blood test in the knowledge that they will be unable to provide an adequate blood specimen. The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill, which aims to address this problem, is currently being considered by the Transport and Industrial Relations Committee.

Preferred options

141. The following preferred options will result in small roadside efficiency gains for Police enforcement. Efficiency gains to Police roadside testing procedures will in turn contribute, albeit modestly, to minimising the harm and social cost resulting from alcohol-related crashes.

Disclosure of cost recovery prior to election of a blood test

142. Currently, drivers are asked if they wish to elect a blood test to verify the result of their evidential breath test. They are not informed before they make their decision of the possibility that the costs of administering the blood test[47] may be recovered from them by the courts if they fail the blood test. This practice is to avoid the possibility of drivers being discouraged from exercising their right to elect a blood test by cost issues.

143. Disclosing the costs to be recovered from a driver electing an evidential blood test may result in flow on effects in terms of Police roadside efficiency. The disclosure of cost information may reduce the numbers of drivers who choose to elect a blood test, thereby reducing costs for the Police.

144. This could result in savings to the Police at the roadside of 1625 hours per annum.[48] This is based on a 25 percent reduction in the number of evidential blood tests elected at the roadside and equates to the equivalent of 0.84 of a full-time police officer's time per annum.

145. The non-disclosure of potential blood test costs has been criticised in a number of court cases and also by drivers themselves who state they would have made a different choice had they known of the likely costs beforehand.[49] In any other application in which a person could be charged a cost for a service they have chosen, they would be entitled to be given some indication of the likely costs of the service beforehand.

146. As Parliament has legislated for the costs of elected blood tests to be recovered from drivers at the time of sentencing, the right to a blood test is not absolute. Anecdotally, drivers would want to know what the conditions and consequences are of electing a blood test. The disclosure of the costs is not providing any additional information than what would be available should the person read the statute.

147. Therefore, on balance, a provision in the legislation for Police to outline the potential costs to drivers prior to them electing a blood test is recommended. The legislation should also make it clear that failure to inform a driver of these potential costs should not constitute a defence.

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[47] These costs could be in the range of $200 to $300. This includes medical expenses for the doctor or nurse to take the specimen and the costs of the approved laboratory to analyse it (the analyst's fee is $92, but the medical expenses vary).

[48] Approximate only. This is based on average time spent at the roadside completing 2011/12 non-hospital blood tests. It excludes time spent serving a summons and Police Prosecution Service time involved in defended hearings.

[49] Anecdotal evidence provided by the Police.

Amend the 10 minute wait period

148. According to section 72(1)(b)(ii) of the Act drivers who have failed an evidential breath test have a 10 minute period in which to decide whether or not to elect a blood test. This allows them to spend the time in 'quiet contemplation' of whether they wish to elect a blood test. The driver may seek independent legal advice during the 10 minute period, but is not limited to do so only during that part of the process.

149. The Ministry of Transport does not recommend removal of the 10 minute period. However, clarifying the requirements would reduce opportunities for drivers to frustrate the alcohol testing process by creating opportunities to draw out the 10 minute period through multiple restarts.

150. The 10 minute period has previously been the focus of a number of legal challenges, some of which still occur. The following scenarios have evolved as a result of case law and attempts to avoid legal challenges:

150.1. [redacted]

Withheld pursuant to Section 6(c) of the Official Information Act 1982

150.2. [redacted]

151. Information on the number of defended hearings a year which relate to improper application of the 10 minute period is not available. However, the Police has advised that the 10 minute period is used frequently as a defence in relation to the rights of the driver who has been detained.

152. There is no basis in statute for having to continue with the remainder of the 10 minute period if an earlier decision is reached. Neither is there any statutory requirement for the 10 minute period to have to be restarted because the driver has engaged in conversation with the officer.

153. The following clarifications to the law are recommended:

- The driver is given one 10 minute period in which to make their decision with no further restarts of the 10 minute period.
- If the driver makes their decision in less than 10 minutes, the 10 minute period is terminated, and process continues on the basis of the driver's decision about the blood test.

Introduce a rebuttable presumption - The Land Transport (Admissibility of Evidential Breath tests) Amendment Bill

154. The Land Transport (Admissibility of Evidential Breath tests) Amendment Bill attempts to deal with a problem relating to a small group of drivers who fail an evidential breath test and exercise their right to a blood test. When a doctor or nurse attempts to extract a blood specimen, they are unable to obtain a sufficient specimen for a laboratory analysis as a result of the driver's medical or physical condition. There is anecdotal evidence that a small number of drivers (around 20 drivers per year) have been able to avoid a prosecution and conviction via this means.

155. The Land Transport (Admissibility of Evidential Breath tests) Amendment Bill proposes that if a blood specimen cannot be taken for any reason, the result of a previous failed evidential breath test should be admissible as evidence for a prosecution.

156. The Land Transport (Admissibility of Evidential Breath tests) Amendment Bill, as currently drafted, has significant deficiencies. The Bill's wording "if a blood specimen cannot be taken for any reason" goes well beyond the small group of drivers who are its intended target group. The proposal in the Bill has been found by the Attorney General to be inconsistent with the New Zealand Bill of Rights Act 1990. The Bill could also be relatively easily circumvented if a driver refused or failed to undergo the evidential breath test but agreed to the blood test. In these cases, there would be no evidential breath test result to fall back on, for a prosecution, if a blood specimen could not be obtained.

157. The Act could include what is known in law as a rebuttable presumption, in order to provide the ability to sanction drivers who repeatedly seek to exploit this loophole. This provision would not be available for first time offenders. A rebuttable presumption is founded on the basis that a driver, having previously avoided a prosecution due to a medical/physical inability to provide an adequate blood specimen, is likely to elect a blood test on a subsequent occasion. If a blood specimen cannot be obtained for a second time, the law would provide for a presumption that the driver, having foreknowledge of this probable outcome, had in effect refused the blood test.

158. The driver would be charged with refusing to permit a blood specimen to be taken. This presumption would be open to rebuttal (that is, it could be challenged) by the driver. The court would exercise its discretion as to whether or not the driver had effectively challenged and rebutted the presumption that he/she had refused the blood test.

159. As the decision about the presumption would ultimately rest with the court, it poses fewer New Zealand Bill of Rights Act 1990 issues and a low risk of disturbing other provisions relating to the alcohol testing process. The Land Transport (Admissibility of Evidential Breath tests) Amendment Bill as drafted is perceived to disturb the alcohol testing process further than a rebuttable presumption.

160. This option would require the Police to record, on their existing centralised database, those drivers who have previously avoided a prosecution on the basis of an inability to provide a sufficient blood specimen. This is so the presumption could be applied on a second or subsequent occasion. As the

expected number of cases is expected to be small, the costs are likely to be low.

161. It is difficult to quantify the perceived effects of the intervention as the policy is applied through court discretion. However, the maximum benefit will be the availability of sanctions for the estimated 20 drivers currently avoiding prosecution.

Options considered but not progressed

Increase the level of investment in roadside enforcement

162. The option of increasing the overall spend on Police enforcement activities was analysed as a means of increasing the deterrent effect of the current regime and reducing the number of crashes related to alcohol. However, it can be difficult to separate out the effects of extra enforcement from other measures, such as education, or general societal changes.

163. A recent report by the Office of the Auditor-General into the enforcement of drink-driving laws[50] noted that there is a weak positive trend between breath tests carried out by the Police and alcohol-related crashes from 1994 to 2012. Given the length of time the current random breath testing regime has been in place, it is possible that New Zealand is nearing a point at which the additional benefit of increased investment in enforcement through random breath testing is marginal and unlikely to outweigh the investment cost.

164. Due to the lack of sufficient data it is difficult to assess to what extent additional investment would address the overall road safety problem.

165. The New Zealand Transport Agency and the Police are addressing their key performance indicators to assess the level of adequate enforcement spend. In the absence of information to enable analysis of the appropriate level of investment in enforcement, changes to the overall spend are not recommended.

Higher penalties for the election and failure of a blood test

166. The Ministry of Transport analysed an option to reduce incentives to elect a blood test by introducing a regime that would apply a higher penalty should a driver elect and fail an evidential blood test. However, there are likely to be New Zealand Bill of Rights Act 1990 implications from imposing a greater penalty in this instance as it would unfairly prejudice an individual's decision to challenge the results of an evidential breath test. The Bill of Rights implications would create significant impacts on individual freedoms without achieving proportionate roadside safety gains.

167. An alternative option was considered to apply court-based penalties for first and second offences to infringement offences in the 51 to 80mg per 100ml range where a driver has elected and failed a blood test. This would help to reduce the number of additional blood tests elected by the new offenders processed by the Police and therefore reduce the pressure on roadside enforcement resources.

[50] New Zealand Police: Enforcing drink driving laws 2013, Office of the Auditor-General, p25.

168. The Ministry of Transport identified serious concerns in relation to applying court-based penalties, which include:

    168.1. Consistency with the New Zealand Bill of Rights Act 1990. It would place obstacles in the way of a person challenging a subsequent prosecution (by way of disincentives).

    168.2. Consistency with general criminal justice policy. A higher penalty for the same offence, which applies only where a driver challenges the evidence, is objectionable as a matter of general criminal justice principle relating to fairness.

    168.3. Disturbing previous superior court decisions. If the judiciary perceive that drivers are being deprived of their right to challenge breath tests through blood tests, there is a risk that judges may allow technical or other defences instead.

    168.4. Adverse public reaction. The integrity of the system could be undermined because the public is likely to consider that the approach is unfair. Drivers could receive a more severe penalty for the same offence as another driver because they choose to exercise their only right to challenge the breath test result.

Removal of the blood test from the roadside testing process

169. Partially or fully removing the right to an evidential blood test was investigated. This would result in either complete removal of evidential blood tests or the availability of the blood tests for a limited number of drivers. The option would help to alleviate the pressure on roadside testing, resulting from the expected increase in the number of drivers being processed under a lower limit.

170. However, a key issue arose with the removal of the right to challenge the results of an evidential breath test. This would be inconsistent with the New Zealand Bill of Rights Act 1990. Any efficiency benefits achieved at the roadside may be offset across the wider justice sector as a consequence of a likely increase in cases being challenged in court. The costs savings generated for Police enforcement activities would be more than offset by associated cost increases to other government agencies.

171. Removal of the right to challenge the result of an evidential breath test would also compromise public perception of the integrity and fairness of the testing regime. As a result of these considerations, on balance, the Ministry does not recommend this option.

Consultation

172. No recent consultation has been conducted on the options discussed in this paper. However, extensive consultation has occurred previously on the recommended option to lower the adult BAC limit to 50mg per 100ml. Public perceptions of policy change has also been gauged via surveys.

173. The public will also have the opportunity to comment on the proposed changes when they are presented before the Transport and Industrial Relations Committee.

174. There has been extensive media coverage of drink-driving in New Zealand which shows a significant majority of the public to be in favour of lowering the adult BAC limit.

Development of Safer Journeys (2009)

175. Consultation on the Safer Journeys discussion document occurred in 2009. During this consultation period, Ministry of Transport officials attended over 40 meetings across New Zealand. A Safer Journeys website was also established where people could exchange their views on priority areas and Safer Journeys within a public forum. Almost 400 people joined the forum and posted more than 1000 notes.

176. More than 1500 submissions were received and additionally more than 1200 members of the general public and almost 20 key stakeholders ranked the 62 initiatives outlined in the Safer Journeys discussion document. Of these submissions:

- Three-quarters supported lowering the adult BAC limit and the initiative was ranked the sixth highest preferred initiative out of the 62 suggested initiatives.
- About 25 percent of individuals opposed lowering the adult BAC limit. A significant number of individual submissions opposing a lowered adult BAC limit were from the hospitality industry.
- Reasons for supporting a lowered adult BAC limit included that the current adult BAC limit allows people who are significantly impaired to drive legally and that this sends a message that it is acceptable to drink and drive.
- Those who preferred the adult BAC limit to stay at 80mg per 100ml often stated that it would penalise responsible drivers, rather than focus on the issue of repeat drink-drivers who drive well above the existing adult BAC limit.

Law Commission consultation paper on lowering the adult BAC limit to 50mg per 100ml

177. In 2009 the Law Commission released a consultation paper: Alcohol in our Lives[51] and received 1240 submissions. Of those who submitted, 90 percent supported having an adult BAC limit of 50mg per 100ml, 1.5 percent were opposed, and the remainder made no direct comment, but supported strengthening alcohol countermeasures including an adult BAC limit of 50mg per 100ml.

[51] Law Commission. (2009). Alcohol In Our Lives: An Issues Paper On The Reform Of New Zealand's Liquor Law. Law Commission, Wellington. Available from http://www.lawcom.govt.nz/sites/default/files/publications/2009/07/Publication_154_437_Alcohol%20in%20our%20lives%20-%20Issues%20Paper%2015.pdf.

Ministry of Transport 2013 Public Attitudes Survey

178. Responses to the Ministry of Transport's 2013 Public Attitudes to Road Safety Survey widely acknowledge alcohol as a major road safety problem; 60 percent of respondents favoured a lower adult BAC limit for driving. This proportion is not statistically different from the responses received in 2010. In 2006, only 40 percent of respondents favoured a lower adult BAC limit.

179. In 2013, 43 percent of respondents thought the adult BAC limit should be lowered from 80mg per 100ml to 50mg per 100ml. A further 18 percent wanted it lowered to zero. 31 percent thought the limit should be left as it is. Only 2 percent were in favour of raising the legal limit (the remaining 5 percent said they had no opinion on the subject).

New Zealand Automobile Association 2013 Members Survey

180. The New Zealand Automobile Association carried out a membership survey on the topic of alcohol in 2013.[52] 72 percent of respondents believe that only two or fewer drinks should be consumed in a two hour social situation before driving. 63 percent thought the current limit of 80mg per 100ml permitted too much alcohol before driving. 19 percent thought a limit of 50mg per 100ml permitted too much alcohol to be consumed before driving. Their survey results also failed to show any statistically significant differences between the views of rural and urban members.

181. The New Zealand Automobile Association has indicated that it supports a lower adult BAC limit, provided an infringement regime is put in place for the new 51 to 80mg per 100ml offence range.

Conclusions and recommendations

182. There is a clear road safety benefit from introducing a package of measures to tackle the harm resulting from alcohol-related crashes. While a lower adult BAC limit would primarily target those in the 51 to 80mg per 100ml range, some road safety benefits can be expected among drivers with a high BAC level.

183. The estimated net present value of the option to lower the adult BAC limit to 50mg per 100ml is $200 million over 10 years with a national benefit-cost ratio[53] of 10:1. The reduction in alcohol-related trauma per annum is estimated to be around three fatalities and 64 minor and serious injuries.

184. In order to target drivers with a high BAC level as well as repeat drink-drivers, higher penalties were considered. However, given the costs involved with any proposed increase in penalties, a review of these measures against other sanctions (treatment and monitoring) which are available for high risk drivers would provide a more effective means of identifying options that could target high BAC and repeat drink-drivers.

185. The Ministry of Transport recommends the following options on the basis that they achieve road safety benefits without unnecessarily infringing on private benefits and individual freedoms.

[52] New Zealand Automobile Association. (2013). AA Members survey opinion on the Blood Alcohol Concentration Limit.
[53] An estimate of the ratio of total benefits to total costs resulting from the policy change.

185.1. Lower the adult BAC limit from 80mg per 100ml to 50mg per 100ml with infringement penalties applied for offences of having a BAC between 51 to 80mg per 100ml. The Ministry of Transport and the Police, in consultation with the Ministry of Justice, would review the adequacy of the infringement regime in deterring offending once three years of data is available about the new regime.

185.2. Extend the scope of the Safer Journeys Action Plan 2013-15 review of alcohol interlocks in 2014 to include rehabilitation and monitoring measures, along with a review of the offences and penalties regime.

185.3. Make the following changes to the Police roadside testing regime:

- Enable the Police to disclose the possibility that the costs of administering a blood test may be recovered from drivers if they fail the blood test.
- Amend the 10 minute wait period so that a driver is given one 10 minute period in which to make their decision with no further restarts of the 10 minute period, and if the driver makes their decision in less than 10 minutes, the 10 minute period is terminated.
- Introduce a rebuttable presumption which would provide for a presumption that a driver, who when electing a blood test had foreknowledge of the probable outcome that they would not be able to provide an adequate blood sample and therefore had in effect refused the blood test. This would partially deal with the loophole identified in the Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill which is currently being considered by the Transport and Industrial Relations Committee.

Implementation

186. Subject to Cabinet's agreement, a Land Transport Amendment Bill will be introduced into the House on 18 November 2013. The proposed changes will need to take effect three months from when the Act receives Royal Assent. This would allow the relevant agencies sufficient time to prepare for the changes.

187. There would need to be a comprehensive publicity campaign prior to the changes, which would be conducted by the New Zealand Transport Agency. The Police would need time to put in place new procedures, conduct training for officers, re-programme the breath screening devices, reprint forms and make IT changes. The Police estimate they would need at least three months to prepare for implementation.

188. A communications plan will be developed by the New Zealand Transport Agency in consultation with the Police and the Ministry of Transport to ensure the public is aware of the changes and the reasons for them. The Police and the New Zealand Transport Agency will also revise all relevant material including the *Official New Zealand Road Code*, fact sheets and website information.

Monitoring, evaluation and review

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

190. After the legislation has been in force for three years, the Ministry of Transport will provide a report to the Minister of Transport on the effectiveness of the proposed measures.

191. The Police are also progressing work to evaluate the impact of traffic law enforcement activity through adopting behavioural outcome measures to determine the impact on road users' behaviour and road safety. It is likely that these outcomes will have a focus on alcohol.

192. Drink-driving is the most monitored area of road safety statistics in the public domain and the impacts of the proposed changes are also likely to be subject to high media and public scrutiny.

Appendix 1

Current drink-drive offences and penalties

Age of driver and alcohol level	**Infringement or court-based regime**	**Penalties**
Young drivers (aged under 20)		
First-tier offences 0 to 30 mg of alcohol per 100 ml of blood; or 0 to 150 micrograms of alcohol per litre of breath	Infringement offence	Infringement fee of $200 and 50 demerit points (incurring 100 demerit points over a two year period will result in a three month licence suspension)
Second-tier offences 31 to 80 mg of alcohol per 100 ml of blood; or 151 to 400 micrograms of alcohol per litre of breath	Court-based offence (Category two)	Fine up to $2,250 or a prison sentence up to three months; and a mandatory disqualification of at least three months and 50 demerit points (if disqualification imposed is less than six months)
Third-tier offences Exceeds 80 mg of alcohol per 100 ml of blood; or Exceeds 400 micrograms of alcohol per litre of breath	Court-based offence (Category two or three)	Adult penalties apply (see below)
Adult Drivers (aged 20 and over)		
First-tier offences*- first and second offences* Exceeds 80 mg of alcohol per 100 ml of blood; or Exceeds 400 micrograms of alcohol per litre of breath; or Driving under the influence of drink or drugs or both so as to be incapable of proper control of a motor vehicle; or Refuses or fails to permit a blood specimen to be taken	Court-based offence (Category two)	Fine of up to $4,500 or a prison sentence of up to three months; and a mandatory disqualification of at least six months*
Second-tier offences *– third or subsequent offences* Exceeds 80 mg of alcohol per 100 ml of blood; or Exceeds 400 micrograms of alcohol per litre of breath; or Driving under the influence of drink or drugs or both so as to be incapable of proper control of a motor vehicle; or Refuses or fails to permit a blood specimen to be taken	Court-based offence (Category three)	Fine of up to $6,000 or a prison sentence of up to two years; and a mandatory disqualification of more than one year*

*Additional sanctions (mandatory licence suspension and vehicle impoundment) that are imposed administratively by the New Zealand Police apply to certain high alcohol level and repeat offences.