

Land Transport Amendment Bill

Government Bill

Explanatory note

General policy statement

New Zealand drivers who are alcohol-impaired continue to cause considerable harm. 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 drivers (aged 20 years and over) with some level of alcohol impairment. The total social cost for these fatalities and injuries was about \$446 million (in 2013 dollars). 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.

To help address the problem of alcohol-impaired drivers, the Land Transport Amendment Bill 2013 lowers the adult legal alcohol limits from 400 micrograms (mcg) of alcohol per litre of breath to 250mcg, and from 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood to 50mg.

Lowering the breath and blood legal alcohol limits for adults acknowledges that drivers put themselves and other road users at risk when driving in the 251 to 400mcg of alcohol per litre of breath range (51 to 80mg per 100ml of blood) because their cognitive and driving abilities are impaired. Furthermore, research suggests that lowering these limits will also reduce the number of drivers drinking and driving over the current legal limits.

Cost-benefit analysis shows that there is a clear net benefit in reducing these limits. The analysis indicates that, conservatively, an average of 3.4 fatalities and 64 injuries per year could be saved and that the policy would have a positive net present value of \$200 million over 10 years with a national benefit-cost ratio of 10:1. Road safety benefits contribute a large share to this value.

The Bill establishes an infringement regime for breath alcohol offences in the range of 251 to 400mcg of alcohol per litre of breath (51 to 80mg of alcohol per 100ml of blood). The main infringement penalties proposed are a \$200 infringement fee and 50 demerit points. There will be a \$500 infringement fee and 50 demerit points where a blood test is required as a result of failing or refusing to undergo an evidential breath test. The costs of the blood test will also be able to be recovered.

These penalties provide a strong deterrent while recognising that this offending in this range is at the lower end of seriousness. There will be no right to elect a blood test for drivers subject to the adult infringement regime if they fail the evidential breath test.

In addition, the Bill will—

- introduce a rebuttable presumption to apply to a driver who, having previously escaped prosecution due to a medical/physical inability to provide a blood specimen, elects a blood test on a subsequent occasion and is again unable to provide a blood specimen. The presumption is that the driver, having foreknowledge of that probable outcome, had in effect refused the blood test. This change will address a current loophole where some drivers can avoid prosecution because blood cannot be drawn from them for medical reasons.
- amend section 74 of the Land Transport Act 1998 that provides for how blood specimens are to be dealt with. Where a driver wishes to have the reserve specimen analysed by a private analyst, an application must be made within a prescribed time. The wording of the provision is not wide enough to include infringement offences, either the existing youth offences or any new adult offences. If no provision is made, there would be no time limit on applications made for private analysis for infringement offences. Provision needs to be made so that the situation cannot be exploited to hinder successful prosecutions.

- amend section 77 of the Land Transport Act 1998. Section 77 provides for the conclusive presumption that the level of alcohol indicated by an evidential breath test is the same as the level of alcohol at the time of the alleged offence. In specified circumstances, the evidential breath test result is not admissible in evidence. One such circumstance is where an enforcement officer has not given advice to the person tested about the consequences of not electing a blood test, namely that the evidential breath test result will be conclusive of itself. The advice required includes specification of the relevant threshold (400 mcg; 150 mcg). However, although there will be no right for an adult to elect a blood test for an infringement offence, it has been noted that the provision does not presently extend to youth infringement offences. This omission needs to be remedied at the same time.
- adjust New Zealand Police powers to forbid drivers to drive for up to 12 hours and immobilise vehicles. Under the current law, the New Zealand Police have the power to forbid adult drivers who have failed an evidential breath test from driving for up to 12 hours. This is intended to allow time for the driver to sober up. Currently, this provision does not cover alcohol limits below 400mcg.

Departmental disclosure statement

The Ministry of Transport is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2013&no=175> (if it has been provided for publication).

Regulatory impact statement

The Ministry of Transport undertook a regulatory impact analysis as part of the policy development for this Bill. This analysis helped inform the main policy decisions taken by the Government relating to the contents of this Bill. A regulatory impact statement was provided

to the Government prior to its decision to proceed with the introduction of this Bill.

A copy of this regulatory impact statement can be found at <http://www.transport.govt.nz/assets/uploads/about/documents/RIS-safer-journeys-lowering-legal-alcohol-limits-for-driving.pdf>.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement and provides that the Bill comes into force on **1 December 2014**.

Clause 3 provides that the principal Act amended by this Bill is the Land Transport Act 1998.

Clause 4 amends section 11 of the principal Act, which provides that drivers must not exceed specified breath-alcohol and blood-alcohol limits. The amendments reduce the legal breath-alcohol limit from 400 to 250 micrograms of alcohol per litre of breath, and the blood-alcohol limit from 80 to 50 milligrams of alcohol per 100 millilitres of blood.

Clause 5 amends section 56 of the principal Act, which establishes offences for driving in contravention of specified breath-alcohol and blood-alcohol limits. The amendments establish new infringement offences relating to driving or attempting to drive a motor vehicle with a breath-alcohol or blood-alcohol concentration that is between the new lower limit being introduced by *clause 4*, and the existing limit (above which a criminal offence is committed). The result, for drivers aged 20 years or more who do not have alcohol interlock or zero alcohol licences, will be that—

- driving with a breath-alcohol concentration between 251 and 400 micrograms of alcohol per litre of breath is an infringement offence:
- driving with a breath-alcohol concentration above 400 micrograms of alcohol per litre of breath continues to be a criminal offence:
- driving with a blood-alcohol concentration between 51 and 80 milligrams of alcohol per 100 millilitres of blood is an infringement offence (with 2 different penalties depending on the circumstances in which the blood test is taken):

- driving with a blood-alcohol concentration above 80 milligrams of alcohol per 100 millilitres of blood continues to be a criminal offence.

The penalties for these new infringement offences (which will be specified in the Land Transport (Offences and Penalties) Regulations 1999) are set out in *Schedule 2*. They are—

- for driving with a breath-alcohol concentration in the new infringement offence range, a \$200 fine and 50 demerit points:
- for driving with a blood-alcohol concentration in the new infringement offence range,—
 - a \$500 fine and 50 demerit points, if the blood test was taken after the person failed or refused to undergo an evidential breath test; or
 - a \$200 fine and 50 demerit points, if the blood test was taken in other circumstances.

Clause 6 amends section 60 of the principal Act, which relates to failure or refusal to permit a blood specimen to be taken. The amendment applies to a person who is required to permit a blood specimen to be taken because they failed or refused to undergo an evidential breath test, or because they elected to take a blood test after failing an evidential breath test. If such a person has previously been medically or physically unable to provide a blood specimen, and they are again medically or physically unable to do so, they will be presumed to have refused to permit a blood specimen to be taken.

Clause 7 amends section 67 of the principal Act, which provides that certain persons who undergo blood tests will be liable to pay the blood test fee and any associated medical expenses. The amendment extends the requirement to pay those fees to a person who is issued with an infringement notice for an offence against *new section 56(2A) or (2B)* (which relate to driving with a blood-alcohol concentration of 51 to 80 milligrams of alcohol per 100 millilitres of blood).

Clause 8 amends section 69 of the principal Act, which specifies who must undergo evidential breath tests. The amendment inserts *new subsection (1A)*, which requires an enforcement officer to provide specified advice to a person who fails or refuses to undergo an

evidential breath test when required to do so. The person must be advised—

- that if they continue to fail or refuse to undergo the evidential breath test, they will be required to undergo a blood test:
- that if the blood test establishes that the person has committed an offence against this Act, the person will be liable to pay a blood test fee and associated medical expenses:
- that if the result of the blood test indicates that the proportion of alcohol in the person's blood exceeds 80 milligrams of alcohol per 100 millilitres of blood, the person may be charged with an offence against section 56(2):
- that if the result of the blood test indicates that the proportion of alcohol in the person's blood is in the new infringement offence range, the person may be charged with an infringement offence:
- of the infringement fee payable.

If this advice is not provided, the result of any blood test that is taken will not be admissible evidence in proceedings for an offence.

Clause 9 amends section 70A of the principal Act, which deals with a person's right to elect a blood test. The amendment provides that a person who undergoes an evidential breath test may elect to have a blood test if—

- the result of the test indicates that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath; or
- the person is apparently younger than 20; or
- the person holds an alcohol interlock licence or a zero alcohol licence.

The amendment also specifically provides that a person who undergoes an evidential breath test does not have the right to elect a blood test if the result of the test indicates that the proportion of alcohol in the person's breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms. This does not apply to a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence.

Clause 10 amends section 72 of the principal Act, which specifies who must give blood specimens at places other than a hospital or a surgery. The amendment ensures that the section does not apply to

a person (other than a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence), if the result of that person's breath alcohol test indicated a proportion of alcohol in the range of 251 to 400 micrograms of alcohol per litre of breath.

Clause 11 amends section 74 of the principal Act, which sets out the procedure for dealing with blood specimens. The amendment establishes the time limit within which a person may apply to have a blood specimen analysed by a private analyst. In the case of a blood specimen that indicates that an infringement offence was committed if the defendant wishes to have the blood specimen analysed by a private analyst, he or she must apply no later than 28 days after the date on which he or she is served with a reminder notice in respect of that offence.

Clause 12 amends section 77 of the principal Act, which establishes certain presumptions relating to alcohol-testing. Currently that section provides that the results of a positive evidential breath test are inadmissible in proceedings for an offence if—

- the person who underwent the test advises that he or she wishes to undergo a blood test, and permits a blood specimen to be taken in accordance with section 72(2); or
- the enforcement officer fails to advise the person—
 - that the test was positive; and
 - that, if the person does not request a blood test within 10 minutes, that positive result could of itself be conclusive evidence that an offence was committed.

The amendments set out more clearly the advice that must be provided about what may happen if a person does not request a blood test within 10 minutes of being advised of a positive breath test, and introduce new requirements as to the advice that must be provided for an evidential breath test to be admissible evidence of the commission of an infringement offence.

Clause 13 amends section 121 of the principal Act, which sets out when an enforcement officer may immobilise a vehicle or forbid a person to drive. Currently an enforcement officer may immobilise a vehicle or forbid a person to drive if the result of an evidential breath test indicates that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath. The

amendment will allow an enforcement officer to immobilise a vehicle or forbid a person to drive if it appears to the enforcement officer that the result of an evidential breath test is positive.

Clause 14 and *Schedule 1* set out consequential amendments to the principal Act, to align other references to the existing breath-alcohol limits with the new limits.

Clause 15 and *Schedule 2* set out consequential amendments to the Land Transport (Offences and Penalties) Regulations 1999. The changes set out the penalties for committing the new infringement offences.

Hon Gerry Brownlee

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Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Land Transport Amendment Act **2013**.
- 2 Commencement**
This Act comes into force on **1 December 2014**. 5
- 3 Principal Act**
This Act amends the Land Transport Act 1998 (the **principal Act**).

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|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Part 1 | | |
| Amendments to principal Act | | |
| 4 | Section 11 amended (Drivers not to exceed specified alcohol limits) | 10 |
| (1) | In section 11(a), replace “400” with “250”. | |
| (2) | In section 11(b), replace “80” with “50”. | |
| 5 | Section 56 amended (Contravention of specified breath or blood-alcohol limit) | 15 |
| (1) | After section 56(1), insert: | |
| “(1A) | A person commits an infringement offence if the person drives or attempts to drive a motor vehicle on a road while the proportion of alcohol in the person’s breath, as ascertained | 20 |

by an evidential breath test subsequently undergone by the person under section 69, exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.”

- (2) After section 56(2), insert: 5
- “(2A) A person commits an infringement offence if the person drives or attempts to drive a motor vehicle on a road while the proportion of alcohol in the person’s blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72(c) or 73, exceeds 50 milligrams of alcohol per 100 millilitres of blood but does not exceed 80 milligrams of alcohol per 100 millilitres of blood. 10
- “(2B) A person commits an infringement offence if—
- “(a) the person fails or refuses to undergo an evidential breath test after being required to do so under section 69; and 15
- “(b) analysis of a blood specimen subsequently taken from the person under section 72(1)(a) indicates that the person drove or attempted to drive a motor vehicle on the road while the proportion of alcohol in the person’s blood exceeded 50 milligrams of alcohol per 100 millilitres of blood but did not exceed 80 milligrams of alcohol per 100 millilitres of blood.” 20
- 6 Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test) 25**
- After section 60(3A), insert:
- “(3B) **Subsection (3C)** applies to a person who—
- “(a) is required to permit a blood specimen to be taken under section 72(1)(a) or (b); and 30
- “(b) when required, on a previous occasion, to permit a blood specimen to be taken under section 72(1)(a) or (b), was medically or physically unable to provide a blood specimen.
- “(3C) A person described in **subsection (3B)** who is medically or physically unable to provide a blood specimen is presumed to have refused to permit a blood specimen to be taken.” 35

7 Section 67 amended (Blood test fee)

(1) After section 67(1), insert:

“(1A) A person who commits an infringement offence against **section 56(2A) or (2B)** is liable to pay any blood test fee that applied on the day on which the offence was committed and any associated medical expenses, and the blood test fee and any associated medical expenses are deemed to be an additional infringement fee imposed on the person for the offence.”

(2) In section 67(2), replace “subsection (1)” with “subsections (1) and **(1A)**”.

(3) In section 67(3), replace “subsection (1)” with “subsections (1) and **(1A)**”.

8 Section 69 amended (Who must undergo evidential breath test)

After section 69(1), insert:

“(1A) If a person who is required to undergo an evidential breath test under this section fails or refuses to do so, an enforcement officer must, without delay, advise the person—

“(a) that if the person continues to fail or refuse to undergo the evidential breath test, the person will be required to undergo a blood test under section 72(1)(a); and

“(b) that if the blood test establishes that the person has committed an offence against this Act, the person will be liable to pay a blood test fee and associated medical expenses; and

“(c) that if the result of the blood test indicates that the proportion of alcohol in the person’s blood exceeds 80 milligrams of alcohol per 100 millilitres of blood, the person may be charged with an offence against section 56(2); and

“(d) that if the result of the blood test indicates that the proportion of alcohol in the person’s blood exceeds 50 milligrams of alcohol per 100 millilitres of blood, but does not exceed 80 milligrams of alcohol per 100 millilitres of blood, the person may be charged with an infringement offence under **section 56(2B)**; and

“(e) of the infringement fee payable for a breach of **section 56(2B)**.”

“(1B) The result of a blood test is not admissible in evidence in proceedings for an offence against this Act if the advice referred to in **subsection (1A)** is not provided.”

9 Section 70A replaced (Right to elect blood test)

Replace section 70A with:

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“70A Right to elect blood test

“(1) A person has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in section 77(3)(a) (which sets out the conditions of the admissibility of the test), to elect to have a blood test to assess the proportion of alcohol in his or her blood, if the result of that person’s evidential breath test appears to be positive, and—

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“(a) the result of the person’s evidential breath test indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath; or

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“(b) the person is apparently younger than 20; or

“(c) the person holds an alcohol interlock licence or a zero alcohol licence.

“(2) A person does not have the right to elect to have a blood test to assess the proportion of alcohol in his or her blood if the result of the person’s positive evidential breath test indicates that the proportion of alcohol in the person’s breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.

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“(3) **Subsection (2)** does not apply to a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence.”

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10 Section 72 amended (Who must give blood specimen at places other than hospital or surgery)

After section 72(1), insert:

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“(1AA) Subsection (1)(b) does not apply in the case of a person (other than a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence) if the result of the evidential breath test under section 69(4) indicates that the proportion of alcohol in the person’s breath

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exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.”

11 Section 74 amended (Procedure for dealing with blood specimens)

Replace section 74(7)(a)(iii) with: 5

“(ia) in the case of an infringement offence, the date on which the defendant is served with a reminder notice in respect of the infringement offence; or

“(iii) in any case to which subparagraph (i), (ii), or **(ia)** does not apply, the date on which the defendant is first charged in court with any such offence; and” 10

12 Section 77 amended (Presumptions relating to alcohol-testing)

Replace section 77(3) with: 15

“(3) Except as provided in subsections **(3B)** and (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections 56 to 62 if—

“(a) the person who underwent the test is not advised by an enforcement officer, without delay after the result of the test is ascertained,— 20

“(i) that the test was positive; and

“(ii) of the consequences specified in **subsection (3A)**, so far as applicable, if he or she does not request a blood test within 10 minutes; or 25

“(b) the person who underwent the test—

“(i) advises an enforcement officer, within 10 minutes of being advised of the matters specified in **paragraph (a)**, that the person wishes to undergo a blood test; and 30

“(ii) complies with section 72(2).

“(3A) The consequences referred to in **subsection (3)(a)(ii)** are—

“(a) that the positive test could of itself be conclusive evidence to lead to that person’s conviction for an offence against this Act if— 35

- “(i) the test indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath; or
- “(ii) the person is younger than 20 and the proportion of alcohol in the person’s breath exceeds 150 micrograms of alcohol per litre of breath; or 5
- “(iii) the person holds an alcohol interlock licence or a zero alcohol licence:
- “(b) that the positive test could of itself be conclusive evidence that the person has committed an infringement offence against this Act if the person is younger than 20 and the test indicates that the person’s breath contains alcohol but the proportion of alcohol does not exceed 150 micrograms of alcohol per litre of breath. 10
- “(3B) **Subsection (3)** does not apply if the result of a positive evidential breath test indicates that the proportion of alcohol in a person’s breath (other than a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence) exceeds 250 micrograms of alcohol per litre of breath, but does not exceed 400 micrograms of alcohol per litre of breath.” 15 20

13 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)

In section 121(3), replace “where the result of an evidential breath test undergone by the person indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath,” with “where the person has undergone an evidential breath test and it appears to the enforcement officer that the test is positive,” . 25

Part 2

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Consequential amendments

- 14 Consequential amendments to principal Act**
Amend the principal Act as set out in **Schedule 1**.

15 Consequential amendments to regulations

Amend the regulations listed in **Schedule 2** as set out in that schedule.

Schedule 1
Consequential amendments to principal Act

s 14**Section 2**

In section 2(1), definition of **positive**, paragraph (c), replace “400” with “250”. 5

Section 57AA

In section 57AA(1) and (4), replace “400” with “250”.
In section 57AA(2) and (5), replace “80” with “50”.

Section 64

In section 64(3)(a)(iii), replace “400” with “250”.
In section 64(3)(b)(iii), replace “80” with “50”. 10

Section 69

In section 69(1)(ab), replace “400” with “250”.

Section 79

In section 79(4)(c)(ii), replace “80” with “50”. 15

Section 167

In section 167(2)(a)(ii), replace “56(1), 56(2),” with “56, 57,”.

Section 209

Repeal section 209(2A), (2B), and (2C). 20

Schedule 2**s 15****Consequential amendments to Land
Transport (Offences and Penalties)
Regulations 1999****Schedule 1****5**

In Schedule 1, after the item relating to section 55A(2) of the Land Transport Act 1998, insert:

56(1A)	Driving or attempting to drive with breath-alcohol concentration exceeding 250 micrograms but not exceeding 400 micrograms of alcohol per litre of breath	—	—	200	—
56(2A)	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood	—	—	200	—
56(2B)	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood, and failing or refusing to undergo evidential breath test when required	—	—	500	—

Schedule 2

In Schedule 2, after the third item relating to section 52(1)(c) of the Land Transport Act 1998, insert:

- | | | |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 56(1A) | Driving or attempting to drive with breath-alcohol concentration exceeding 250 micrograms but not exceeding 400 micrograms of alcohol per litre of breath | 50 |
| 56(2A) | Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood | 50 |
| 56(2B) | Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood, and failing or refusing to undergo evidential breath test when required | 50 |