

Departmental Disclosure Statement

Land Transport Amendment Bill 2013

2013 No 175

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 November 2013.

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Part One: 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:

- a. 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.
- b. 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.

- c. Amend section 77 of the Land Transport Act. 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.
- d. Clarify 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Ministry of Transport, <i>Lowering Legal Alcohol Blood Concentration Benefit Cost Report</i> (November 2013) – accessible at http://www.transport.govt.nz</p> <p>Ministry of Transport, Regulatory Impact Statement titled <i>Safer Journeys: Lowering the Legal Alcohol Limits for Driving</i> (November 2013) – accessible at http://www.transport.govt.nz</p> <p>Minister of Transport, <i>Cabinet Paper: Safer Journeys – Lowering the Legal Alcohol Limits for Adult Drivers</i> (November 2013) – accessible at – http://www.transport.govt.nz</p> <p>University of Waikato, <i>Driver risk from blood alcohol levels between 50 and 80mgs/100ml</i> (2013) – accessible at – http://www.nzta.govt.nz</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Ministry of Transport, Regulatory Impact Statement titled <i>Safer Journeys: Lowering the Legal Alcohol Limits for Driving</i> (November 2013) – accessible at http://www.transport.govt.nz</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>Members of the Ministry of Transport's Regulatory Impact Statement Evaluation Panel reviewed the Regulatory Impact Statement titled <i>Safer Journeys: Lowering the Legal Alcohol Limits for Driving</i>.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
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The Regulatory Impact Statement does not address the policy on drivers subject to the adult infringement regime not being able to elect a blood test when they fail an evidential breath test. It does, however, address the more general option of the blood test being removed as an element of the drink driving enforcement framework.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Analysis on the size of the potential costs and benefits and the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth can be found in the following reports:</p> <p>Ministry of Transport, <i>Lowering Legal Alcohol Blood Concentration Benefit Cost Report</i> (November 2013) – accessible at http://www.transport.govt.nz</p> <p>Ministry of Transport, Regulatory Impact Statement titled <i>Safer Journeys: Lowering the Legal Alcohol Limits for Driving</i> (November 2013) – accessible at http://www.transport.govt.nz</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Analysis on how the potential costs or benefits are likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards, or the nature and level of regulator effort put into encouraging or securing compliance, can be found in the following reports:</p> <p>Ministry of Transport, <i>Lowering Legal Alcohol Blood Concentration Benefit Cost Report</i> (November 2013) – accessible at http://www.transport.govt.nz</p> <p>Ministry of Transport, Regulatory Impact Statement titled <i>Safer Journeys: Lowering the Legal Alcohol Limits for Driving</i> (November 2013) – accessible at http://www.transport.govt.nz</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The provisions of the Bill do not affect New Zealand's international obligations, and are relevant only to domestic law.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The provisions of the Bill apply generally to the New Zealand public and do not impact on the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

(a) Clause 5 and Schedule 2 create infringement offences and penalties for adult drivers who are found to have alcohol levels in the range of 251 to 400mcg of alcohol per litre of breath or 51 to 80mg of alcohol per 100ml of blood. The cost associated with blood tests (being the prescribed blood test fee of \$93 and any medical expenses) will also be recoverable from adult drivers who are required to have a blood test as a result of failing or refusing to undergo an evidential breath test and are found to have an alcohol level in the range of 51 to 80mg of alcohol per 100ml of blood.
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3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was a member of a Departmental Working Party that developed the proposal to lower the legal alcohol limits. The Ministry was also consulted on the Bill of Rights issues within the draft Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>There has been extensive consultation on whether to lower the adult BAC limit in recent years, particularly as part of the development of New Zealand's Road Safety Strategy 2010-2020, Safer Journeys, in 2009.</p> <p>Further consultation on the proposals will occur through the select committee stage of the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The New Zealand Police, Ministry of Justice, Department of Corrections, New Zealand Transport Agency and Accident Compensation Corporation contributed to the development of the policy through their membership of a Departmental Working Party.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
(b) The rebuttable presumption of refusal of a blood test would provide a defence to a driver from whom a blood specimen could not be obtained on a second or subsequent occasion, to provide evidence that their actions did not constitute a refusal in fact.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill does not extend to adult drivers who are found to have an alcohol level in the adult infringement range of 251 to 400mcg of alcohol per litre of breath, the right to elect a blood test. Such a right applies presently to all drivers who fail an evidential breath test including those under the age of 20 years who are found with an alcohol level in the youth infringement range of 1 to 150mcg of alcohol per litre of breath. Accordingly, adult drivers found to have an alcohol level in the range of 251 to 400mcg will be exceptions to the usual principle that a blood test can be elected that would render the evidential breath test result inadmissible.</p> <p>This is intended to create a self contained regime applying to adults in the infringement range of 251 to 400mcg of alcohol per litre of breath. This is expected to support the effectiveness of the enforcement regime in light of the decision to lower the legal alcohol limits for adult drivers.</p>	