

# Regulatory Impact Statement

## Land Transport Act 1998 – Proposed Minor Amendments

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Transport.

*Safer Journeys*, the government's road safety strategy to 2020, sets a vision of "a safe road system increasingly free of death and serious injury".

The Land Transport Act 1998 (the Act) is the primary legislation governing road safety. As a result of practical experience and review, 11 issues have been identified that relate directly to the effectiveness of certain provisions in the Act and, therefore, on the ability of the Act to support and contribute to the achievement of the government's road safety objectives.

Each of the issues is analysed separately, and appropriate recommendations to amend the Act are made, which are intended to:

- clarify some interpretations in the Act or the intent of the legislation; or
- improve its operation or to enable it to operate as originally intended; or
- remove inconsistencies.

None of the issues discussed or the recommendations proposed impose additional costs on business, or impair property rights, market competition or the incentives on business to innovate and invest, or override fundamental common law principles.

Alan Davies

# **Proposals to clarify the interpretation or intent of the Act, to improve its operation, or to remove inconsistencies**

## **Amendments to the Work Time regime**

### **Status quo and problem definition**

In general, the heavy vehicle work time regime, implemented by amendments to the Act and by the introduction of the Land Transport Rule: Work Time and Logbooks 2007 (the Rule), is working well.

Experience with the regime has shown that four problems need to be addressed that relate to amending three interpretations and a section in the Act, and to removing an ambiguity.

All work time restrictions and rest obligations are based on a 24-hour period (termed a “cumulative work day”) and a series of such periods (termed a “cumulative work period”). To provide greater certainty for industry, a cumulative work day is measured forward from the end of a minimum continuous rest of 10 hours, while a cumulative work period is measured forward from the end of a minimum continuous rest period of 24 hours.

The first problem arises where there is no 10-hour break between work days, or 24 hours between work periods. This makes it very difficult for the New Zealand Police (the Police) to prove the actual time that a cumulative work day or work period commenced and, thereby, the point at which the allowable work time hours for the day, or period, were exceeded. It is thought that some drivers, with encouragement from their managers, are seeking to avoid or challenge a prosecution on those grounds.

The second problem relates to the interpretation of work time and whether a period spent driving a heavy vehicle counts as work time. The previous legislation made it clear that any driving of a heavy vehicle over 3.5 tonnes, for whatever purpose, was “driving time”. In 2002, the government considered a review of the regime and, in relation to this aspect, decided that the approach in the previous legislation was to continue. However, the interpretation of “work time” in the Act is not clear as it includes the driving of a heavy vehicle in a list of “work-related duties”. Contrary to the policy objective, this has been applied on occasions so that driving of heavy vehicles counts towards work time only when the driving is in relation to paid employment.

The third problem arises because while variations to work time limits are listed in the Rule, or are granted by the New Zealand Transport Agency (NZTA), the Act does not provide an explicit link to the effect that a variation may have of extending a cumulative work day or period beyond the limits set out in the Act.

The fourth problem stems from the fact that while the Act provides for alternative fatigue management schemes (formal arrangements between a licensed transport service operator and the NZTA), section 30ZA(1)(c) of the Act has an ‘all or nothing’ approach. Consequently, those operators that would prefer to set up such a scheme for a specified part of their operation are precluded from doing so by the current wording of that section. An example of this is certain operators who do not wish to exceed the number of work hours in a day, but wish to re-arrange drivers’ 30-minute rest periods to better reflect a normal work day. At present, two 30-minute rest breaks are required. A better mix of rest periods would be a 15-minute morning break, a 30-minute lunch break and a 15-minute ‘afternoon tea’ break. The NZTA is satisfied this creates no significant safety risks, but considers itself unable to

approve these variations under the current wording of the Act. A rest break schedule of this nature would benefit the industry.

## **Objective**

The proposals are designed to:

- make the legislation more explicit and precise so that the intent of the law is clear;
- enable it to be applied as originally intended;
- prevent two defences being availed of which have been used by a minority of those who have breached the law to frustrate the intent of the law;
- permit a degree of flexibility in managing driver fatigue without compromising road safety; and
- make two minor technical amendments.

No new penalties would be imposed.

## **Proposed solution**

To achieve the objective, it is proposed that the following amendments are made to the Act:

- the interpretation of “cumulative work day” and “cumulative work period” in section 2 are redrafted so that:
  - the current definitions are unchanged, but an added requirement is inserted for where a driver does not have a 10-hour or 24-hour rest (as appropriate) in these cases; and
  - in relation to an offence relating to a failure to comply with work time requirements or rest time requirements, where no continuous rest period of at least 10 hours or 24 hours is taken, then a “cumulative work day” or “cumulative work period” will start at the commencement of any work time and continue until such time as a continuous period of rest of at least 10 hours or 24 hours is taken; (The work day or work period would commence from when a work time period starts and would continue until either a 10-hour or a 24-hour break is taken. This will allow the Police to enforce work time and rest time requirements where a driver fails to have a minimum 10-hour or 24-hour rest break).
- the interpretation of “work time” in section 2 is amended to make clear that all driving of a heavy vehicle is work time; and
- section 30ZA is amended to:
  - allow an alternative fatigue management scheme to apply to licensed transport service operators by way of formal arrangements between the NZTA and the operators concerned. Fatigue is a major cause of road trauma. Arrangements that can permit alternative work breaks being taken in a controlled manner can improve management of fatigue and assist road safety;
  - remove an incorrect reference to work time limits stated in the Land Transport Rule: Work Time and Logbooks 2007; and

- specify that a variation granted under the Land Transport Rule: Work Time and Logbooks 2007, or by the NZTA, may vary the length of a cumulative work day or cumulative work period.

## **Regulatory Impact Analysis**

The amendments proposed will have the following impacts:

- the redrafting of the interpretations of both “cumulative work day” and “cumulative work period” will bring a greater clarity and precision to the law and will remove any ambiguity about when rest breaks are mandatory. It will improve the ability to enforce these provisions which, in turn, will force errant drivers to comply with the restrictions, close a loophole and assist to reduce driver fatigue, a major concern of road trauma;
- similarly, the clarification of the section 2 interpretation of “work time” will ensure the regime operates as intended and will also help to address driver fatigue; and
- the amendment to section 30ZA to allow an alternative fatigue management scheme to apply to licensed transport service operators will enable those operators to better manage the use of their fleet and drivers, and driver fatigue.

The two other proposed amendments to section 30ZA are technical.

Clarifying the interpretations may simplify proceedings and reduce costs by greatly reducing the ability to seek to avoid or challenge prosecutions because of the difficulties in proving when a work day or work period commenced. Any additional costs that might arise for the Police from enforcing the law are able to be met from current resources.

## **Recommendations**

Officials recommend that, to address the four problems outlined above, the following amendments are made to the Land Transport Act:

- the interpretations of “cumulative work day” and “cumulative work period” in section 2 are redrafted so that:
  - the current interpretations are unchanged, but an added requirement is inserted for where a driver does not have a 10-hour or 24-hour rest (as appropriate) in these cases; and
  - in relation to an offence relating to a failure to comply with work time requirements or rest time requirements, where no continuous rest period of at least 10 hours has been taken, then a “cumulative work day” will start at the commencement of any work time and continue until such time as a continuous period of rest of at least 24 hours is taken;
- the interpretation of work time in section 2 is amended to make clear that any driving of a heavy vehicle, for whatever purpose, is work time; and
- section 30ZA is amended:
  - to remove an incorrect reference to work time limits stated in the Land Transport Rule: Work Time and Logbooks 2007;
  - to specify that a variation granted under the Land Transport Rule: Work Time and Logbooks 2007, or by the NZTA, may vary the length of a cumulative work day or cumulative work period; and

- to allow an alternative fatigue management scheme to apply to licensed transport service operators.

## **Chain of Responsibility Offences**

### **Status Quo and Problem Definition**

Chain of Responsibility (CoR) offences are those committed in a vehicle subject to work time limits (for example, heavy trucks) and are directed against parties, other than the driver, who are found to have had a role in causing or requiring the offence to occur. An example would be a large company setting a delivery contract for an owner-driver that would require the owner-driver to speed, or breach work time limits, to meet it. This serves to ensure that people who have the ability to prevent this offending, through their not causing or requiring it to occur, can be held to account.

There are two categories of offences covered by CoR offences:

- causing or requiring a vehicle to exceed its maximum legal weight; and
- causing or requiring a driver to:
  - exceed work time limits or fail to comply properly with any requirements relating to logbooks; and
  - exceed a speed limit.

CoR offences were introduced into the Act in 2005 and came into effect on 21 June 2005 for exceeding weight limits and speeding, and from 1 October 2007 for work time and logbook offences.

CoR offending is currently subject to section 14 of the Summary Proceedings Act 1957, which creates a statutory limit of 6 months from the date of an alleged offence for a prosecution to be initiated. The Land Transport Act already specifically excludes work time and logbook offences from the operation of section 14 of the Summary Proceedings Act.

To date, a number of investigations of possible CoR offences have been initiated, but there have been few prosecutions.

The issue is the difficulties enforcement staff have reported that arise because these investigations occur sometime after the event and can be complex, especially where the allegations involve the actions of large companies. This means that the time restriction comes into force to preclude further investigation.

### **Objective**

The objective is to enable suspected breaches of the CoR legislation to be completed and prosecutions initiated where this is appropriate. This is intended to encourage adherence to the law and improve road safety.

### **Proposed solution**

The problem will be addressed by amending the Act so that it is made explicit that the exclusion of the operation of section 14 of the Summary Proceedings Act 1957 is extended to include Chain of Responsibility offences.

## **Regulatory Impact Analysis**

Addressing the issue will mean some additional enforcement costs will arise from undertaking investigations, but these costs can be met from current resources.

The measure will have no cost impact on the industry, and any closer adherence to the law should improve road safety if truck drivers have to take less risks.

## **Recommendation**

Officials recommend that the Land Transport Act is amended to extend the exclusion of the operation of section 14 of the Summary Proceedings Act to include Chain of Responsibility offences.

## **Improving the effectiveness of driver licence reinstatement**

### **Status quo and problem definition**

A person is required to surrender their licence card when their driver licence is suspended or they are disqualified from driving. Their licence card is reissued when the person is again entitled to drive.

The cost of administering this process (support functions, in-person document service, IT system functionality, surrender and re-issue of driver licences) is currently met through fees charged to all licensed drivers. This was not considered to be equitable, and a new provision was included in the Land Transport (Enforcement Powers) Amendment Act 2009 that introduced a process for reinstating a driver licence following a period of licence suspension or disqualification, and a fee for this. This process will include requiring the licence holder to pay a reinstatement fee before their licence card is reissued. The amendment is not yet in force.

A reinstatement fee of \$65.00 (GST inclusive at 12.5 percent) is expected to come into force on 31 January 2011.

Two problems have been identified in relation to the driver licence reinstatement regime:

- the legislative provisions do not ensure that all people who are required to pay a reinstatement fee do so; and
- the reinstatement regime is not consistent with the objective that all traffic offenders bear all direct and indirect costs of the licence suspension or disqualification.

### *Potential evasion of the requirement to pay a fee*

The first problem is the loophole whereby a person can evade paying a reinstatement fee at the end of a period of licence suspension or disqualification. This loophole exists because the legislation refers to the licence card, rather than to the licence status or record. The licence status or record is the official record of entitlement to drive referred to by the NZTA and by the Police, during road side checks as to the legal ability of a person to drive.

The reinstatement fee is 'triggered' by the offender reapplying for their licence card at the conclusion of the suspension or disqualification. Thus, if a suspended or disqualified driver retains their licence card and continues to drive with it once their suspension or disqualification ends, they can avoid the requirement to pay the driver licence reinstatement fee.

Currently, only 39 percent of all people required to surrender their licence card do so and, consequently, have an incentive to pay the reinstatement fee. If this loophole remains then more people will become aware that if they do not surrender their licence card then they can evade paying a reinstatement fee. This will have a further adverse impact on the effectiveness of the regime, and on fee revenue.

Table 1 below sets out the estimated transaction volumes and revenue of the reinstatement fee per year, under the current legislation. The NZTA has modelled licence card surrender rates of 39, 25 and 20 percent to gauge the likely reinstatement fee revenue if the legislation remains unchanged. These rates are at or less than the current level of licence surrender to reflect the likely reduction in surrender rates as people become aware of the loophole and do not surrender their card when required to do so.

Table 1: Transaction volumes and revenues from reinstatements per year, under current legislation

	Licence card surrender rate		
TRANSACTIONS	39 percent (current rate)	25 percent	20 percent
Compliant	15,830	10,212	8,169
Non-compliant	25,017	30,635	32,678
Total	40,847	40,847	40,847
Revenue foregone (excluding GST)	\$1,427,220	\$1,832,892	\$2,018,845

Note: the estimated figures for revenue foregone take account of the fact that non-compliant card holders will be required to pay the fee when they renew their licences at the end of the 10 year licence validity period.

As shown above, if the legislation is implemented without amendment, there is likely to be an increasing amount of foregone revenue. If the compliance rate remained at the current level of 39 percent, the foregone revenue would be \$1.43 million (excluding GST) per annum. At a 75 percent non-compliant figure the revenue foregone increases to \$1.83 million, and at 80 percent to \$2.02 million per annum.

The decreasing compliance with the requirement to surrender a card increasingly compromises the integrity and utility of the reinstatement regime. Shortfalls in fee revenue have to be meeting by all driver licence holders.

Changes to the legislative provisions of the reinstatement regime are required to achieve the forecast driver licensing and driver testing revenue, as set out in the Cabinet paper considered by Cabinet on 24 May 2010 on proposed new driver licensing and driver testing fees [CAB Min (10) 18/6 refers]. Failure to achieve the forecast revenue from the reinstatement fee will likely result in a deficit in driver licensing and driver testing services, and may compromise the ability of the NZTA to deliver the current level of service in the longer term.

*Inconsistent application of the reinstatement fee to disqualified drivers*

The second problem is that the regime is not consistent with the objective that traffic offenders should bear the direct and indirect costs arising from their licence suspension or disqualification. This means that the requirement to pay a fee does not apply equitably to all drivers who have had their licence suspended or who have been disqualified from driving.

This problem arises because drivers who have been disqualified or suspended for longer than 12 months are not required to pay a reinstatement fee. As the costs to the driver licensing system arising from these disqualifications and suspensions are not being recovered from the offenders, there is a perverse anomaly whereby those who are disqualified or suspended for the longer period of time are still incurring the costs but do not have to pay the fee.

Further, while drivers who are disqualified for longer than 12 months are required to pay fees in order to requalify, these fees do not cover the costs incurred to disqualify the driver initially. Thus, the driver licensing system continues to bear the costs associated with disqualifying drivers when the disqualification period is longer than 12 months.

## **Objectives**

The objective is to ensure that those driver licence holders who have their licences suspended or who are disqualified from driving, bear the direct and indirect costs of their suspension or disqualification. Further, a consistent regime needs to apply equally and equitably to all drivers who have had their licence suspended or who have been disqualified from driving irrespective of the duration but excluding mandatory 28-day licence suspensions.

## **Proposed solution**

To address the two problems identified above, it is proposed that:

- the legislation is amended to remove the loophole that enables suspended or disqualified drivers to evade the requirement to pay a reinstatement fee if they fail to surrender their licence card. In relation to licence suspensions or disqualifications, this would be achieved by the Act referring to the licence status or record of the person, rather than, as at present, to their driver licence card; and
- the scope of the application of the reinstatement fee is extended to include all suspended and disqualified drivers including those disqualified or suspended for longer than 12 months. This will not include drivers subject to a mandatory 28-day suspension, as they are likely to be subject to a further court-imposed penalty.

## **Regulatory Impact Analysis**

The proposed solutions will have the following impacts:

### *Costs*

Suspended or disqualified drivers who would otherwise be able to evade the reinstatement fee will be required to pay the fee, and drivers disqualified for longer than 12 months will be required to pay a reinstatement fee in addition to any existing requalification test or course fees.

The NZTA already incurs the costs relating to suspending and disqualifying drivers. These costs have historically been cross-subsidised by other user groups. This cross-subsidisation ceased with the introduction of the Land Transport (Enforcement Powers) Amendment Act 2009.

### *Benefits*

As the Police have roadside access to details of a person's driver licence status or record and as the NZTA administers the regime by reference to that status or record, amending the Act to refer to that status or record rather than to the driver licence card will permit real time



enforcement of the law and assist in removing from the road drivers who, at the time of their apprehension, are either suspended or disqualified from driving.

The changes will promote equity in the application of fees to all suspended and disqualified drivers. Greater consistency in application of fees will reduce complaints and queries.

Removing the loophole that enables a person to avoid paying a reinstatement fee and extending the scope of the fee to include all suspended and disqualified drivers will meet the costs the NZTA incurs administering the licence records for suspended and disqualified drivers. It will also reduce the potential increased loss of fee revenue and enable the NZTA to achieve the forecast driver licensing and driver testing revenue.

## **Recommendations**

Officials recommend that appropriate amendments are made to the Act that would:

- change the reference from driver licence card to driver status or record to address the loophole whereby people can avoid paying the reinstatement fee by not surrendering their driver licence card when suspended or disqualified; and
- extend the scope of the reinstatement fee to require those drivers who are disqualified or suspended from driving for over 12 months to ensure that all traffic offenders meet the direct and indirect costs of their licence suspension or disqualification.

## **Limited driver licences issues**

### **Status quo and problem definition**

The Act provides for some disqualified or suspended offenders to obtain, in certain circumstances, a limited licence to entitle them to drive, subject to conditions, during that period of sanction. Section 103 states that unlicensed offenders and some recidivist offenders are not entitled to a limited licence, and section 104 sets down that a mandatory 28 day stand-down period must be served before a limited licence may be obtained.

Provided an offender is not specifically precluded from obtaining a limited licence and the Court is satisfied that there is undue or extreme hardship, then the Court makes an order authorising the offender to obtain a limited licence. The offender presents the order to the NZTA, which then issues the limited licence.

The Act requires the NZTA to be “satisfied that the holder is eligible” before issuing a limited licence. Crown Law advice to the NZTA is that, under current law, the NZTA must issue the limited licence, even when the criteria in sections 103 or 104 have not been met. Given this advice, the NZTA is compelled to issue these licences. Its only recourse is to go back to the Court that made the order, to seek an amendment or withdrawal of the order. This is costly.

The problem that needs to be rectified stems from the NZTA becoming aware when processing a limited licence application that the applying offender is specifically precluded from obtaining a limited licence by sections 103 and 104 of the Act. Despite this, orders have been issued for a limited licence when the offender has never held a licence and has not passed any driving tests - examples include an offender who was authorised to drive buses and taxis when they had never held a passenger endorsement, and persons authorised to drive trucks when they had never held a heavy vehicle licence.

Clearly, the ability for offenders to obtain a limited licence contrary to the Act impacts directly on the constraints and sanctions in the Act, and reduces respect for the law and road safety.

## **Objective**

The objective is to make clear that the Act precludes those drivers who are specifically excluded by sections 103 or 104 of the Act from obtaining a limited driver licence.

## **Proposed solution**

To achieve the intent of sections 103 and 104 of the Act, it is proposed that the Act is amended to make clear that the Act precludes those drivers who are specifically excluded by sections 103 or 104 of the Act from obtaining a limited driver licence.

## **Regulatory Impact Analysis**

The proposed amendments to the Act will not add to the NZTA's costs as it is already processing orders from offenders that the Act intended to preclude from being issued with a limited licence. There is the prospect for some reduction in costs to both the Courts and the NZTA if the amended legislation means that clearly precluded drivers do not seek to have a limited licence issued. Similarly, such drivers may save legal fees if they do not engage lawyers in a quest to have a Court grant an order that a limited licence is issued to them.

The amendments have the potential to enhance road safety if, as was intended, ineligible and unlicensed drivers cannot be issued with a limited licence while their suspension or disqualification remains current.

## **Recommendation**

To ensure that the Act is applied as was intended, officials recommend that:

- section 105 of the Act is amended to make clear to a Court that it must take account of the eligibility provisions in sections 103 and 104 before making an order that a limited licence is granted; and
- the Act provides that where the NZTA becomes aware that an offender does not meet the limited driver licence eligibility criteria, then the NZTA may decline to issue the licence. The onus will then be placed on the offender to refer the matter back to the Court via the exercise of their right of appeal, as is already provided for in section 106.

## **Notice of driver licence suspension**

### **Status quo and problem definition**

Sections 88 to 91 of the Act govern the administration of the demerit points system. These sections require the NZTA to record demerit points against a person and, when a total of 100 or more demerit points have effect against a person, give the person notice in writing that either suspends the person's licence or disqualifies the person from holding or obtaining a licence.

The legislation governing the serving of demerit point suspensions and disqualifications is unduly prescriptive, for example the NZTA, through its agent, must have been unsuccessful in serving the notice before an enforcement officer (the Police) may attempt service. This impacts directly on the ability of the legislation to achieve its purpose. For example:

- lawyers have appealed demerit point suspension notices served by the Police on the grounds that the NZTA has not made all reasonable prior attempts to serve the notice; and
- where the NZTA has not yet attempted to serve a demerit point suspension notice and the Police stop that offender at the roadside, the Police are unable to serve the notice. This allows the offender to continue driving and, possibly, accumulating more fines and demerit points.

### **Objective**

The objective of the proposed amendments is to remove the impediments that the prescriptive nature of the provisions governing the serving of demerit point suspensions and disqualifications place on the efficient and effective administration of the legislation.

### **Proposed solution**

Amending the Act to remove the prescriptive impediments to the serving of demerit points based licence suspensions and disqualifications will better permit the legislation to serve its intended purpose and facilitate road safety.

### **Regulatory Impact Analysis**

The prescriptive nature of the legislation imposes unnecessary administrative costs on the NZTA and the Police by requiring evidentiary proof of minor technical or administrative details or by delaying service until the details are met. It prevents notices being served at first opportunity and provides those drivers that seek to take advantage of the prescriptive nature of the legislation to continue to drive, contrary to the intent of the Act and to the interests of road safety.

Removing the scope to delay the service of the notices and to appeal to the Court on the basis of technical arguments will reduce the time that the Police and the NZTA, or its agent, have to spend in relation to preparing for attendance at Court and attending the Court, and court time and costs because the Court would no longer be required to hear cases based on purely technical arguments. It might also save offenders costs if they no longer have the ability to challenge an order based on technical arguments. No new penalties are proposed.

### **Recommendation**

The prescriptive issue can be remedied by straightforward amendments to the Act that would give the NZTA and the Police increased flexibility to administer the issuing of driver licence suspension notices by the most efficient and cost effective processes.

Against this background, officials recommend that:

- section 90 of the Act is amended to permit the Police to serve demerit point suspension notices on behalf of the NZTA without the need for the NZTA to first have attempted (unsuccessfully) to serve that notice;
- section 90 is further amended to make it clear that the effect of a demerit point suspension notice having been served is that the person is not entitled to drive or hold or obtain a driver licence for the period of 3 months from the date the notice is given to the person. This is irrespective of whether or not a current driver licence is held by the

offender on the date of a notice being served. Furthermore, the person must reinstate their licence before being entitled to return to driving; and

- in relation to the amendments made to section 90 of the Act by the Land Transport (Enforcement Powers) Amendment Act 2009 that are scheduled to be brought into effect by Order in Council, the requirement that the NZTA notify the cancellation of licence cards is removed and replaced by a provision that states the licence remains of no effect until the reinstatement fee is paid.

## **Providing for alternative processes for taking blood specimens**

### **Status quo and problem definition**

The provisions in the Act that deal with the taking of blood specimens to enforce drink and drug impaired driving offences are based on the assumption that a needle and syringe alone will be used to extract the blood specimen (the specimen is then divided into two parts and each part placed in two separate bottles).

Consequently, the current wording precludes alternative processes being introduced, irrespective of whether the alternative process is more efficient or has the potential to reduce safety concerns associated with the use of needles and syringes.

With regard to safety, some medical officers have advocated the use of a 'vacutainer'<sup>1</sup> to extract blood specimens. Vacutainers are commonly used in hospitals, medical laboratories, and doctors' surgeries for taking multiple blood specimens from a single needle. These devices are less likely to expose the medical officer who takes the specimen to a risk of needle-stick injury that can cause serious infection.

### **Objective**

The objective is to enable suitable and/or safer specimen-taking processes to be used when it has been determined that such an alternative process is superior to and/or safer than using needles and syringes.

### **Proposed solution**

It is not desirable that the Act precludes the uptake of those alternative processes that have determined to be superior to and/or safer than using needles and syringes.

However, the use of vacutainers, or any other alternative process, would be permitted only when they can be demonstrated to meet all requirements relating to handling, transporting, storing and analysis of the specimen, and Police prosecutions. The Institute of Environmental Science and Research Ltd, which analyses blood specimens for the Police, has undertaken considerable work on this issue but has yet to identify a vacutainer that meets all of the necessary requirements.

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<sup>1</sup>A vacutainer has a double-ended needle. One end of the needle is inserted into a vein in the arm, and a glass or plastic tube (shaped like a test-tube) is attached to the needle at the other end which is pushed through the rubber seal at the top of tube. The operator draws the blood specimen straight into the tube. If more than one specimen is required, the operator replaces the full tube with an empty one and fills the replacement tube.

Therefore, it is not recommended that any particular new process be mandated by an amendment, but that enabling amendments are made to the Act that would permit alternative devices being used in the future.

### **Regulatory Impact Analysis**

The proposed solution does not give rise to additional costs as it does not change the current blood sample-taking process. Rather, will result in enabling amendments being made to the Act that would permit alternative devices being used in the future.

As well as meeting all the requirements noted above, more efficient alternative processes have the potential to reduce safety concerns associated with the use of needles and syringes.

### **Recommendation**

Officials recommend that the Land Transport Act is amended to enable the process for extracting blood specimens to be specified by Notice in the *New Zealand Gazette*. This will make the Act more flexible and enable superior and/or safer procedures for taking blood specimens than needles and syringes alone.

Initially, the Notice in the *New Zealand Gazette* would prescribe the current process.

It is also recommended that other consequential wording changes are made to associated provisions in the Act that relate to the handling of blood specimens so that more generic terminology is used that is consistent with the current process as well as any alternative processes that may be approved in the future.

## **Responsibility for towing and storage costs of unclaimed impounded vehicles**

### **Status quo and problem definition**

The Police have the power to impound motor vehicles for certain traffic offences. Impounded vehicles are held by private sector storage providers and may be collected from the storage provider once the impoundment period has expired and the towing and storage fees (currently \$350) have been paid. About 30 percent of vehicles are unclaimed.

While storage providers are authorised to recover the unpaid fees from the owner, the only way by which the vehicle owner can be identified is via the Motor Vehicle Register, which lists “registered owners”.

The problem arises from registered owners of unclaimed impounded vehicles arguing successfully that a listing on the Motor Vehicle Register is not proof of title, or that they had sold the vehicle some time previously but had neglected to notify the sale to the Registrar of Motor Vehicles (which is in itself an offence). The Courts have supported these arguments.

This means that vehicle storage providers can not recoup the outstanding fees and have expressed considerable concern to the Ministry of Transport about this.

### **Objective**

The objective is to remove a loophole by which the payment of mandated fees is able to be avoided and to enable the vehicle storage providers to recoup the fees at the time the stored vehicle is recovered.

## **Proposed solution**

The problem would be resolved by amending section 97 of the Act so that the person registered as the owner (or from 1 November 2010, the “registered person”) of a vehicle at the time of impoundment of a vehicle is made liable for the towing and storage costs stemming from the impoundment.

## **Regulatory Impact Analysis**

Once the law is amended, the only costs that will arise will be the fees that the “registered owner” (or “registered person”) of an impounded vehicle will need to pay, as the law intended, to the private vehicle storage provider concerned, before the vehicle is released.

As this change will create a direct nexus between the stored vehicle and the person responsible for paying the storage fee, it will reduce the costs to storage providers to collect the fees due.

## **Recommendation**

Officials recommend that section 97 of the Act is amended so that the person registered as owner (or from 1 November 2010, the “registered person”) of a vehicle at the time of impoundment of a vehicle is liable for the towing and storage costs stemming from the impoundment.

## **Fee for driver licence information requests**

### **Status quo and problem definition**

The NZTA receives many legitimate requests for information from the driver licence register. In 2009, there were some 16,000 requests for information regarding offences and demerit points recorded against a driver’s licence record. As the NZTA is responsible for recording demerit points, such requests cannot be declined.

The problem is that, while the NZTA incurs costs processing these requests, the Act does not allow the NZTA to charge for all information requested. This means that other driver licence holders are subsidising the direct or indirect costs incurred by those who make such requests for which a fee cannot be charged.

### **Objective**

The objective is to extend the existing information request fee (currently \$9.10) to be charged in all instances where information is provided from the driver licence register (other than organ donor information which will continue to be provided to medical practitioners free of charge). This is to meet the cost of providing the information.

### **Proposed solution**

The problem can be resolved by amending section 199 of the Act to extend the current fee charging regime to apply in all instances where information is provided from the driver licence register. It also needs to be clarified that the fee applies irrespective of whether it is the licence holder or a third party who requests the information.

## **Regulatory Impact Analysis**

A change to the Act will mean that the fee will fall on those making a request, and the NZTA will be able to recoup the costs of the current “free” service from those who apply for the information, rather than from other driver licence holders as at present.

No IT development or other costs will be incurred by the NZTA as the result of the changes being recommended. The legislation permits the NZTA to waive all or part of the fee in extenuating circumstances.

The fee of \$9.10 is to increase to \$10.90 from 1 July 2010.

## **Recommendation**

Officials recommend that section 199 of the Act is amended to:

- extend the existing information request fee to be chargeable in all instances where information is provided from the driver licence register; and
- clarify that the fee applies irrespective of whether it is the licence holder or a third party who requests the information.

Officials do not propose any change in the range of information that is currently being released by the NZTA. Rather officials propose that demerit point information can be released to the licence holder or a third party acting with the licence holder’s consent.

## **Inclusion of the section 57A offence as a previous offence for mandatory licence suspension and vehicle impoundment**

### **Status quo and problem definition**

The problem to be resolved relates to the inadvertent omission of a reference to the new section 57A drug driving offence in sections 95(1)(a)(i) and 96(1)(d)(ii) of the Act when amendments were made to include the drug driving provisions. That omitted offence should be included among those to be counted as a previous offence within the last 4 years for mandatory licence suspension and vehicle impoundment, in accordance with the so-called *Three Strikes* regime.

The *Three Strikes* regime provides a graduated response to repeat drink drive offences that are detected by the Police:

- if a driver is detected driving with a high breath or blood alcohol level (in excess of 130mg alcohol/100ml blood or 650 micrograms alcohol/litre of breath) their licence is suspended by the Police for 28 days;
- if the driver has a conviction for a previous drink or drug impaired driving offence within the last 4 years, the 28-day licence suspension is applied at levels beyond the current adult legal limit (at 80 mg alcohol/100ml blood or 400 micrograms alcohol/litre breath); and
- if the driver has two or more previous drink or drug impaired driving convictions within the last 4 years, the 28-day licence suspension and a 28-day vehicle impoundment is applied at levels beyond the current adult legal limit (at 80 mg alcohol/100ml blood or 400 micrograms alcohol/litre breath).

## **Objective**

The objective is to remedy an oversight so that all the offences that are to be applied in relation to the application of the graduated response under the *Three Strikes* regime are taken into account when that regime is being applied.

## **Proposed Solution**

The problem will be resolved by appropriate amendments being made to sections 95(1)(a)(i) and 96(1)(d)(ii) of the Act so that they contain the necessary cross-reference to the previously omitted section 57A offence.

## **Regulatory Impact Analysis**

The change proposed will mean the *Three Strikes* regime will be able to be applied as was intended. This will enhance road safety.

Some very limited costs will arise in taking into account the currently excluded offences when the policy is being applied on any particular occasion, but these costs can be met from current resources.

## **Recommendation**

Officials recommend that appropriate amendments are made to sections 95(1)(a)(i) and 96(1)(d)(ii) of the Act so that they contain the necessary cross-reference to the previously omitted section 57A offence.

## **Summary Proceedings Act 1957, Schedule 1 Part 2**

### **Status quo and problem definition**

While alcohol and drug related driving offences are indictable offences (i.e. they can be heard by a jury), they can also be dealt with summarily (i.e. heard by a Judge alone).

Because amendments to the Land Transport Amendment Act 2009 to include two new drug related driving offences were made at a late stage, consequential changes to update the table in Schedule 1 Part 2 of the Summary Proceedings Act 1957 were overlooked at that time. This means that the drug related driving offences can only be laid and tried before a jury. This situation needs to be remedied.

### **Recommendation**

It is recommended that this oversight is addressed by an appropriate amendment being made to the table in Schedule 1 Part 2 of the Summary Proceedings Act 1957 through the Land Transport Amendment Bill.

## **Certificates in blood alcohol proceedings**

### **Status quo and problem definition**

When the provisions relating to the drug related driving offences were included in the Act, changes were made to section 73(5)(a)(i) and (ii) to widen the criteria under which a medical practitioner can take blood specimens from people who are in hospital or in a doctor's



surgery. The criteria now extend beyond situations that are not solely related to those persons whom the medical practitioner has reasonable grounds to believe had been involved in a motor vehicle accident.

As the result of a drafting oversight, the new wording in section 73(5)(i) and (ii) was not replicated in section 75(3)(c) which includes the requirements that are specified in certificates in blood alcohol proceedings.

This oversight needs to be corrected by replacing the words currently in section 75(3)(c) with the wording in section 73(5)(a)(i) and (ii).

### **Recommendation**

Officials recommend that to align the drug related driving provisions with those relating to drink driving, the Act is amended by replacing the words currently in section 75(3)(c) with the wording in section 73(5)(a)(i) and (ii).

### **Consultation**

This RIS reflects the outcome of consultations as the proposals were being researched with the following: the New Zealand Transport Agency, the New Zealand Police, the Ministries of Justice, Agriculture and Forestry, Social Development, and Economic Development, the Departments of Labour, Corrections, and Internal Affairs, Institute of Environmental Science and Research Ltd, the Treasury, and Te Puni Kōkiri.

The Ministry of Pacific Island Affairs and the Department of the Prime Minister and Cabinet were informed.

### **Implementation**

A Land Transport Amendment Bill is scheduled for introduction during 2010 and has a priority 2 on the 2010 legislative programme. The Bill will give effect to the government's decisions on *Safer Journeys*, including those outlined in this RIS.

### **Monitoring, evaluation and review**

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