

Chair  
Cabinet Economic Growth and Infrastructure Committee

## **REDUCING ROAD TRAUMA AND THE COST OF DRINK-DRIVE REOFFENDING: MANDATORY ALCOHOL INTERLOCKS**

### **Proposal**

1. I propose the Committee agree to make alcohol interlock sentences mandatory for repeat drink-drivers and drink-drivers with high alcohol levels. The alcohol interlock sentence is currently discretionary for these offenders.
2. I also propose some technical amendments to improve the alignment of the alcohol interlock sentence with other sanctions, and a minor unrelated adjustment to the 28-day mandatory licence suspension sanction.

### **Executive summary**

*Drink-driving and drink-drive reoffending continues to be a significant problem*

3. The recent upward trend in the road toll emphasises the continual need to identify road safety interventions that are likely to reduce road trauma. Drink-driving is a significant contributing factor in motor vehicle crashes in New Zealand, with an average of 53 deaths per year between 2011 and 2014.
4. As well as road trauma, drink-drive offending places a significant cost on the Crown through Police enforcement action, court processes and the cost of sentences. There were nearly 20,000 drink-drive court cases in 2014. Further, around half of these court cases involved an offender with at least one previous drink-drive conviction over the lifetime of their driving. A concerning number of offenders also drive with breath and blood alcohol levels well above the legal limit.
5. The courts tend to impose sentences on repeat offenders that are expensive for the Crown, such as custodial, home detention and other community sentences.
6. In 2014, the courts imposed the following sentences on 9,562 repeat drink-drivers:
  - a. 692 custodial sentences (7 percent)
  - b. 618 home detention sentences (6 percent)
  - c. 5,416 other community sentences (57 percent)
  - d. 2,836 fines (30 percent).

*Alcohol interlocks are very effective at reducing offending but are not being used by the courts*

7. There is a wide range of penalties available for drink-drive offences, and the regime is complicated. A recent review of drink-drive penalties concluded that the traditional penalties of imprisonment and fines are limited in preventing the most serious and repeat drink-drive offences. Cabinet requested the review in December 2013 when it approved the proposal to reduce the breath and blood alcohol limits for adult drivers [CAB Min (13) 38/3 refers].
8. Alcohol interlock sentences have been an option for the courts since 2012. These sentences are available for repeat drink-drivers with 2 or more offences within 5 years, and those found with high alcohol levels (over 3 times the current limit for adult drivers).
9. Under the alcohol interlock sentence, an offender must hold an alcohol interlock licence. The alcohol interlock licence restricts the holder to driving motor vehicles with an interlock fitted. If they are caught driving a vehicle without an interlock, they have committed an offence of driving contrary to the terms of their alcohol interlock licence. The penalties are the same as those that apply to driving while disqualified. After 12 months, the offender can have the interlock removed provided they have met tough exit criteria (the average interlock fitment duration is 18 months).
10. The penalty review confirmed that interlocks are very effective in reducing drink-drive offending. An interlock prevents a motor vehicle being driven if the driver has alcohol on their breath. International research shows that alcohol interlocks can reduce reoffending rates by an average of 60 percent while the devices are fitted. This generates considerable road safety benefits because the interlock must be fitted for at least 12 months. For some, the interlock will be fitted for a longer period if they are unable sustain the required period of alcohol-free driving in order to have the interlock removed. Interlocks also have a residual effect on reducing reoffending and this may be able to be improved in time by more fully integrating the alcohol interlock sentence with rehabilitation measures.
11. Despite their effectiveness, the courts are making little use of the alcohol interlock sentence. At 31 December 2014, only 595 offenders had received an alcohol interlock sentence and 411 drivers had had an interlock fitted. This is around 2 percent of the 20,000 total drink-driving offenders who would have qualified for the sentence in the first 2 years of the regime.

*Moving to a mandatory alcohol interlock sentence to increase their use*

12. Alcohol interlocks provide a unique opportunity to tackle the high numbers of drink-drivers who reoffend. The main reasons for the low use of the sentence appear to include:
  - a. a lack of clarity about when courts should impose the alcohol interlock sentence
  - b. concern about how much offenders must pay to fit and lease interlocks and meet the associated driver licensing costs (around \$2,400 to \$2,800 for the minimum 1-year period an offender must remain on an alcohol interlock licence)
  - c. the requirement for offenders to serve a 3-month disqualification before they can apply for an alcohol interlock licence and have an interlock fitted.
13. My preferred option for increasing uptake would be to make the sentence mandatory. This would mean the courts would have to impose the sentence on eligible offenders, and there would be very few exceptions allowed. The 3-month disqualification requirement would also be replaced. Instead, the offender would face a 28-day stand down period before they could apply for an alcohol interlock licence.
14. There is a risk that there would be offenders who could not afford to complete the mandatory interlock sentence. As a result, I recommend that the mandatory regime be supported by a subsidy scheme of no more than \$4 million per annum. A subsidy scheme of around \$4 million per annum would pay for 35 percent of the costs of 3,930 interlocks for 18 months.
15. Officials will be required to report back on the principles underpinning the subsidy scheme by the end of June 2016. There would be a further report back on the detail of the subsidy scheme by the end of September 2016, which would include advice on the financial implications of the proposals having regard to the detail of subsidy design.
16. I propose that the mandatory alcohol interlock sentence be extended to include repeat drink-drivers who are disqualified indefinitely by the courts. These offenders are ordered to attend an approved alcohol and drug assessment centre under section 65 of the Land Transport Act 1998 (see Table 1 below for a full list of the eligibility criteria).

**Table 1 – Proposed eligibility criteria for the mandatory alcohol interlock sentence**

(Source: Ministry of Transport)

Proposed eligibility criteria	Qualifying Offences
First offenders (existing criteria)	1 high alcohol level conviction in which: <ul style="list-style-type: none"> <li>- the blood alcohol level was at or exceeded 160 milligrams (mg) of alcohol per 100 millilitres (ml) of blood (3.2 x the current blood alcohol limit of 50 mg) or</li> <li>- the breath alcohol level was at or exceeded 800 micrograms of alcohol per litre of breath (3.2 x the current breath alcohol limit of 250 micrograms)</li> </ul>
Repeat offenders (existing criterion)	2 or more convictions for drink-drive offences within 5 years
Drink-drive offenders who are subject to mandatory alcohol and drug assessments and indefinite disqualification under section 65 of the Land Transport Act (additional)	<p><u>Either</u></p> 2 or more drink or drug-driving convictions within 5 years where least one of the alcohol offences has: <ul style="list-style-type: none"> <li>- a blood alcohol level exceeding 200 mg of alcohol per 100 ml of blood (4 x the current blood alcohol limit) or</li> <li>- a breath alcohol level exceeding 1,000 micrograms of alcohol per litre of breath (4 x the current breath alcohol limit) or</li> <li>- the offender refused to comply with the alcohol testing procedure</li> </ul> <p><u>Or</u></p> 3 or more drink or drug driving convictions within 5 years where at least one of the convictions is for a drink-drive offence

17. Cost benefit analysis shows that a subsidy would enhance the benefits of the mandatory interlock regime while still achieving significant net cost savings for the Crown. The Department of Corrections is undertaking a pilot programme where certain offenders have their interlock costs funded by the Crown. The positive early results of the trial indicate that cost was a significant barrier in the previously low uptake of interlocks.

*Mandatory alcohol interlocks would save lives and reduce costs*

18. My preferred option would result in estimated savings of 8 lives, 43 serious injuries and 128 minor injuries per year. This option has a benefit cost ratio (BCR) of 4.7. There would be an estimated 4,250 fewer offences so there would be net savings of around \$21 million each year for the Justice sector.

*Several technical amendments need to be made*

19. I also propose technical amendments to improve clarity and alignment of the alcohol interlock sentence with other sanctions, as well as a minor unrelated adjustment to mandatory 28-day licence suspensions.

*Implemented from mid-2017*

20. The proposed mandatory interlock regime would begin in mid-2017. The Land Transport Act needs to be amended before the new regime can be implemented. There is a Land Transport Bill with a category 3 priority in the 2016 legislative programme (to be passed in 2016 if possible). To ensure the viability of the proposed policy, the subsidy scheme needs to start when the mandatory interlock regime comes into force.
21. If this proposal is not included in this Bill, there will not be a further opportunity to make these improvements for a considerable time. Road users will remain at risk of being harmed by serious and repeat drink-driving.

## **Background**

*Drink-driving continues to be a significant problem*

22. Drink-driving is a significant contributing factor in motor vehicle crashes in New Zealand. For the 4 years between 2011 and 2014, crashes caused by drivers with some level of alcohol resulted on average in 53 deaths, 304 serious injuries and 905 minor injuries per annum. The estimated social costs of these road injuries were around \$495 million per year (in 2014 dollars).
23. Drink-driving imposes significant costs on Police enforcement resources and the criminal justice system. There is a large number of prosecutions and most result in convictions. This offending has a significant impact on the Justice sector pipeline. While the number of cases dealt with by the courts has fallen significantly in recent years, there were still 20,629 court cases in 2014.

*Review of drink-drive penalties in 2015*

24. In December 2013, Cabinet directed the Ministry of Transport, in consultation with Justice sector agencies, to review the criminal penalties for drink-drive offences [CAB Min (13) 38/3 refers]. These are offences where a driver is over 80 mg of alcohol per 100 ml of blood. The *Safer Journeys Action Plan for 2013-2015* also included an action to expand the voluntary use of technology, such as interlocks, and integrate it with treatment plans. The Action Plan was issued under *Safer Journeys*, the Government's road safety strategy for 2010-2020. *Safer Journeys* identified reducing alcohol and drug impaired driving as a priority area and, in particular, the need to address repeat offending and high alcohol level offending.

25. The review of drink-drive penalties took place in 2015 to determine whether any changes could be made to reduce the harm caused by drink-driving.
26. Criminal penalties are used to deter drink-driving and sanction offenders. The drink-drive penalties regime is complex and contains a wide range of potential penalties for offenders. The penalties and their levels depend on several factors including the age of the offender, breath or blood alcohol levels, the number of repeat offences and whether the offending has caused injury or death.
27. Court-imposed penalties include:
  - a. prison sentences
  - b. fines and reparation payments
  - c. community-based sentences
  - d. mandatory minimum periods of driving disqualification
  - e. mandatory alcohol and drug assessments
  - f. vehicle confiscation
  - g. interlocks
  - h. zero alcohol licences.
28. In addition, the Police can impose administrative sanctions. These are mandatory 28-day licence suspensions and 28-day vehicle impoundments for specified offences.

*Reoffending is a significant problem*

29. The review of drink-drive penalties review found about half of drink-drive offenders will be reconvicted of at least one further drink-drive offence over the lifetime of their driving (see Table 2 below).

**Table 2 – Drink-drive cases heard by the courts in 2014**

(Source: Ministry of Justice)

No. of previous drink-drive convictions*	No. of cases	Percentage
0	10,535	51.0
1	4,738	23.2
2	2,582	12.5
3	1,313	6.4
4	665	3.2
5+	796	3.7
<b>Total</b>	<b>20,629</b>	<b>100.0</b>

\*over the lifetime of the person's driving

30. Repeat offenders put the public at risk and, as the number of convictions increase, the courts tend to impose sentences that are expensive for the Crown. In 2014, the courts imposed the following sentences on 9,562 repeat drink-drivers:
  - a. 692 custodial sentences (7 percent)
  - b. 618 home detention sentences (6 percent)
  - c. 5,416 other community sentences (57 percent)
  - d. 2,836 fines (30 percent).
31. The review determined that current penalties have had limited impact on deterring the most serious and repeat drink-driving offenders. Further, it concluded there is limited scope to make more use of such penalties to address reoffending. For example, increasing maximum prison terms is very costly.

*More use should be made of alcohol interlocks*

32. The review recommended that more use be made of interlocks. A study of international literature confirmed that interlocks can reduce reoffending by an average of around 60 percent while fitted. Interlocks also have a residual effect on reducing reoffending and this effect may be able to be improved in time by more fully integrating the alcohol interlock sentence with rehabilitation measures.
33. Interlocks are a unique sanction. For the offender, they are costly, inconvenient to use and carry a social stigma. An interlock may identify a driver as a convicted drink-driver. On the other hand, interlocks also allow offenders to stay engaged in society, for example, by helping them to retain employment or continue to participate in community or family activities.
34. Interlocks are also an effective public safety measure. An interlock forces an offender to change their behaviour in relation to drinking and driving. The interlock prevents a driver from driving if they have consumed alcohol, rather than relying on a drink-driver being apprehended while drinking and driving. This protects the driver, their passengers and other road users from the harm associated with drink-driving.
35. Smart Start Interlocks has advised that it has installed 556 interlocks in New Zealand since 2013 and these interlocks had prevented 2,301 drink-drive events. These are events where a driver has tried to start a vehicle and the interlock has stopped the vehicle being driven following a failed breath test.

## **Barriers to uptake of the alcohol interlock sentence**

### *The requirements of the alcohol interlock sentence*

36. Under the alcohol interlock sentence, an offender must hold an alcohol interlock licence to drive. A 3-month disqualification applies before the licence can be issued. The alcohol interlock licence restricts the holder to driving motor vehicles with an interlock fitted. If they are caught driving a vehicle without an interlock, they have committed an offence of driving contrary to the terms of their alcohol interlock licence. The penalties are the same as those that apply to driving while disqualified.
37. An offender has to hold an alcohol interlock licence for at least 12 months. To have the interlock removed, they must have either a 6-month-violation free period, or a 3-month violation-free period plus a satisfactory alcohol or drug assessment preceding the application for removal. Violations include failed tests administered by the device, tampering with or attempting to circumvent the device, and failing at least twice to take retests administered by the device.

### *The alcohol interlock sentence is not fulfilling its potential*

38. The alcohol interlock sentence was made available to the courts in September 2012 as a discretionary sentence. Since then, the sentence has been used sparingly. As at 31 December 2014, the courts had imposed only 595 alcohol interlock sentences and, of these, 411 offenders had an interlock fitted. This is around 2 percent of a potential pool of around 20,000 drink-drive offenders in the first 2 years of the regime. This falls well below Cabinet's expectations of a 60 percent participation rate by 2013/14, when approving the sentence in 2010.
39. Because the sentence is not being used, interlocks have failed to reach their potential in reducing road trauma and reducing the cost to the Crown of reoffending. The current situation is not financially viable for the firms that lease and fit interlocks. Both of the approved interlock providers have indicated they may withdraw unless uptake rates increase.
40. There are several reasons for the low use of the interlock sentence.

### *There is no direction on sentencing priority*

41. The legislation gives no direction to the courts on the priority that the alcohol interlock sentence should have over and above other mandatory disqualifications that apply for drink-drive offences. The courts have been uncertain about how the alcohol interlock sentence relates to other possible sentences. Further, a possible lack of knowledge about the alcohol interlock sentence among defence counsel and offenders may have contributed to low uptake rates.

*Cost is likely to be a significant barrier*

42. The courts are required to take a range of factors into consideration when determining appropriate sentences. These factors include whether a sentence would be disproportionately severe given the offender's personal circumstances.
43. Cost is often identified as a barrier. The Ministry of Justice has provided information showing that many repeat drink-drivers have low incomes. The Department of Statistics analysed the personal income levels of drink-drivers convicted between January 2011 and March 2012. This suggests that, of the pool of offenders who may qualify for the alcohol interlock sentence, around 50 percent have personal incomes of \$20,000 per annum or less.
44. The offender meets interlock costs. These costs range from around \$2,400 to \$2,800 to be on an interlock for 12 months, as set out in Table 3 below. The cost may be higher for many offenders because of the time some offenders take to meet the exit criteria before the interlock can be removed. The policy of requiring offenders to pay for interlocks themselves is at odds with other forms of sanctions, including imprisonment or electronic monitoring sentences.
45. The costs of the interlock are much higher than the amount an offender is fined. In 2014, the average fine for second-time drink-drivers was \$766 and, for third-time drink-drivers, the average was \$911. The courts are less likely to use fines as the main sentence type as the number of previous convictions increases (see Figure 1 in the appendix). Given such factors, there are few incentives for offenders to raise the possibility of an alcohol interlock sentence in submissions at sentencing.

**Table 3 - Financial costs of interlocks for offenders (to nearest \$)**

(Source: Ministry of Transport)

<b>GST inclusive</b>	<b>Unit cost</b>	<b>Cost for 12 months</b>
<b>Licensing cost</b>		
Alcohol interlock licence application fee	\$200	\$200
Zero alcohol limit licence application fee	\$66	\$66
Reinstatement for standard licence	\$66	\$66
<b>Cost of the device</b>		
Device installation fee (one-off)	\$150 - \$175	\$150 - \$175
Device rental fee	\$150 - \$175 per month	\$1,800 - \$2,100
Device removal fee (one-off)	\$100 - \$135	\$100 - \$135
<b>Total</b>		<b>\$2,382 - \$2,742</b>

### *The alcohol interlock sentence is onerous*

46. There is a mandatory 3-month disqualification before the offender can apply for an alcohol interlock licence. This provides an additional element of deterrence. There are also tough exit criteria and a 3-year zero alcohol licence after the interlock is removed. Such factors may discourage defence counsel from raising the possibility of an alcohol interlock sentence in submissions at sentencing, and dissuade the courts from imposing the sentence.

### **Proposed alcohol interlock sentence changes**

#### *The alcohol interlock sentence should be mandatory*

47. The Ministry of Transport investigated ways to lift the uptake of interlocks during its review of drink-drive penalties in 2015. This included comparing non-mandatory and mandatory approaches to the alcohol interlock sentence, such as keeping the sentence discretionary but removing some of the other onerous aspects of the sentence.
48. The Ministry of Transport also looked at expanding the eligibility criteria. This would involve lowering the blood alcohol threshold for eligibility for the alcohol interlock sentence for first-time offenders from 160 mg per 100 ml to 120 mg per 100 ml. More high-risk drivers would be captured.
49. Based on the cost benefit analysis, the safety gains from having a mandatory and expanded interlock regime were the highest among the options considered. Investigations also showed that subsidising interlocks would also lift uptake.
50. Other jurisdictions that use alcohol interlocks have found that discretionary regimes<sup>1</sup> have low uptake rates that undermine the potential road safety benefits of the sentence. New South Wales has recently brought in a mandatory scheme for repeat offenders and Victoria has progressively expanded its mandatory scheme to include most drink-drivers.
51. Given the expected benefits, my preferred option for increasing the use of interlocks in New Zealand is to make the alcohol interlock sentence mandatory. The courts would have to impose the sentence on eligible offenders, and there would be few exceptions allowed. This would improve uptake rates of the sentence and give the courts clarity on the priority of the alcohol interlock sentence relative to other sentences.

#### *Addressing affordability issues through investing in a subsidy scheme*

52. I propose that the Crown establish a subsidy scheme to avoid any perverse outcomes.

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<sup>1</sup> In the international literature, these are sometimes referred to as 'voluntary' regimes as distinct from 'mandatory' regimes.

53. Making interlocks mandatory will constrain the courts' discretion to take a range of factors into consideration, including the offender's financial position, when determining the most appropriate sentence. This creates concern that mandatory interlocks may lead to unjust and disproportionate sentences, especially for low income people. Some of these offenders may be unable to afford to complete the mandatory alcohol interlock sentence, and remain indefinitely disqualified. As noted earlier, international experience shows that cost is often a barrier to participating in an alcohol interlock programme.
54. Without an interlock, these offenders might also continue to drive while disqualified and, potentially, intoxicated. In some cases, they will place an ongoing burden on the justice system because they will be prosecuted if caught. Under the current arrangements, offenders who do not receive an alcohol interlock sentence normally receive a time-bound disqualification. Providing they are not detected driving illegally during the disqualification period, they would be able to regain their licences once they had completed this period.
55. Under the current alcohol interlock sentence arrangements, private interlock providers are contractually required to operate a financial assistance scheme. Under this assistance scheme, offenders who hold a community services card are eligible for a small discount on the monthly rental, as well as on installation and removal fees. With the low numbers of alcohol interlock sentences, the provider subsidy scheme is not operating effectively. Under a mandatory regime, numbers would increase so the scheme would be more viable for providers.
56. Nonetheless, the provider subsidy scheme is unlikely to be sufficient to address all affordability issues given the low incomes of many repeat offenders.

## **Cost benefit analysis**

### *Cost benefit model independently peer-reviewed*

57. The Ministry of Transport has estimated the costs and benefits of this proposal using a model, which has been independently reviewed by a respected transport economist, Dr Jagdish Guria. Dr Guria has previously advised on many transport-related issues, including the statistical value of life and the social cost of crashes. The model uses international information from a number of different sources as well as domestic information. The model was developed with assistance and data from Justice agencies: the Police, the Ministry of Justice and the Department of Corrections.

### *Benefit assumptions*

58. Under the model, the main benefits arise from:
  - a. reduced crash risk as interlocks prevent drink-driving while they are fitted
  - b. avoiding Justice sector costs through reduced reoffending while the interlocks are fitted.
59. Interlocks also have a positive impact on the long-term behaviour of offenders following removal. However, this impact is small so only makes up a small component of the estimated benefits.

### *Cost assumptions*

60. Even though the regime will be mandatory, the methodology uses conservative assumptions on interlock uptake, assuming 50 percent uptake in year 1 rising to 60 percent by year 10. The model assumes that those who do not fit an interlock would remain indefinitely disqualified and would impose costs on the Justice system by driving while disqualified. Based on the current situation, it is assumed that 40 percent of the offenders not receiving an interlock, and who would be indefinitely disqualified as a result, would drive while disqualified.
61. While interlocks are very effective, the model also takes into account that some offenders will circumvent the interlock, such as using a vehicle without an interlock. The expected benefits were discounted 20 percent to take account of this.

### *Results of the cost benefit analysis*

62. Taking into account potential violations, the cost benefit analysis estimates that a mandatory interlock scheme is worthwhile, with high net benefits. By adding a subsidy, estimated benefits of the mandatory interlock scheme are increased further. Table 4 below sets out a summary of the estimated benefits and costs of the proposed mandatory interlock regime in more detail, assuming a subsidy fund of around \$4 million per annum. This represents the mid-range of estimates.

**Table 4 – Estimated benefits of a subsidised mandatory interlock regime**

(Source: Ministry of Transport)

<b>Benefits</b>	<b>Mandatory (with subsidy) <i>Preferred option</i></b>
Extra interlocks fitted (average per year)	4,250
<b>Mid-range estimate of total benefits</b>	
Net benefit (present value over 20 years)	\$620 m
Benefit to cost ratio	4.7
Safety impact (average reduction in fatalities and injuries per year)	8 fatalities 43 serious injuries 128 minor injuries
<b>Mid-range estimates of <u>net</u> cost savings for the Justice sector (present value over 20 years from 2017 to 2036)</b>	
Police	\$44 m
Justice	\$4 m
Corrections	\$99 m
<b>Total</b>	<b>\$147 m</b>
<b>Mid-range estimates of <u>net</u> cost savings for the Justice sector (average per year when the mandatory interlock regime is fully embedded)</b>	
Police, Justice and Corrections	\$21 m +
<b>Mid-range estimates of subsidy cost (average per year when the mandatory interlock regime is fully embedded)</b>	
<b>Crown</b>	<b>\$4.1 m</b>
<b>Mid-range estimates of reduction in offences (average per year when the mandatory interlock regime is fully embedded)</b>	
Reduction in drink-drive offences while on the interlock	2,570
Reduction in driving while disqualified offences while on the interlock	1,530
Long term reduction in repeat drink-drive offences once the interlock is removed	150
<b>Total</b>	<b>4,250</b>
<b>Estimated reduction in prison sentences</b>	
Average reduction per year	196

*Detail of subsidy amount and scheme to be finalised*

63. The cost benefit model assumes a subsidy fund of \$4 million per annum. This would support the installation of 3,930 interlocks per annum. This equates to around 35 percent of the interlock costs for all offenders who receive the sentence. It is likely to be preferable to target this subsidy to the offenders with the greatest need, rather than applying a universal subsidy. Targeting in this way would not affect the expected benefits of the proposals.
64. I propose that the Committee direct officials to report back by the end of June 2016 on the principles that should underpin the proposed subsidy scheme. This work would investigate whether the current interlock provider funded concession scheme should continue, what interlock cost components the subsidy should cover, such as driver licensing costs and direct interlock costs, and the degree to which access to the funding should be means-tested. I also propose that officials report back on the detail of the subsidy scheme by the end of September 2016.
65. The Ministry of Transport and the New Zealand Transport Agency (the Transport Agency) will need to review the relevant alcohol interlock licensing fees. This review will investigate whether the licensing fees are sufficient to cover any additional administrative costs of the mandatory interlock regime. The subsidy work will need to take the outcome of this review into account.

*Existing eligibility criteria should be retained*

66. Given the existing eligibility criteria for the alcohol interlock sentence target repeat and high alcohol offenders, I propose retaining them, subject to the additional group discussed below (refer to Table 1). However, given the results of the cost benefit analysis, I propose that the merits of expanding the criteria for the mandatory alcohol interlock sentence be investigated once 3 years of data is available.

*Section 65 offenders should also receive a mandatory alcohol interlock sentence*

67. I propose that section 65 drink-drive offenders receive a mandatory alcohol interlock sentence and would be disqualified until they apply for and are issued with an alcohol interlock licence. Section 65 of the Land Transport Act provides a mechanism for serious repeat drink and drug drivers to be directed to alcohol or drug assessment and, if necessary, to treatment for substance misuse or dependency issues. The section 65 order is mandatory if the following qualifying criteria are met:
  - a. 2 or more drink-drive convictions within 5 years in which at least one of the convictions is for a high alcohol level offence<sup>2</sup> or an offence relating to non-compliance with the alcohol or drug testing regime; or
  - b. a 3rd or subsequent drink or drug-driving offence within 5 years.

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<sup>2</sup> A blood alcohol level exceeding 200 mg of alcohol per 100 ml of blood or a breath alcohol level exceeding 1,000 micrograms of alcohol per litre of breath (4 x the current adult limits).

68. Section 65 offenders are disqualified indefinitely from holding or obtaining a driver licence until the Transport Agency removes the indefinite disqualification. The offender needs to provide the Transport Agency with a satisfactory assessment report from an approved alcohol and drug assessment centre. The offender must serve at least a year and one day of the indefinite disqualification.
69. There are around 1,800 of these orders each year. Many of these offenders are subsequently caught driving while disqualified. Of the 2,175 offenders that received an indefinite disqualification under section 65 in 2010, 850 (39 percent) were convicted of driving while disqualified in the period 2010 to 2014. An interlock is a more effective method of managing these offenders, which reduces the risk for other road users.
70. An alcohol interlock sentence will also provide an opportunity to monitor these offenders while treating their alcohol and drug misuse or dependency issues. In addition to the interlock, a section 65 offender would still be required to be assessed satisfactorily. This is as well as completing a 3-month violation-free period on the interlock. Because the reduction in reoffending rates can dissipate once an interlock is removed, many alcohol interlock best practice reviews<sup>3</sup> suggest that interlocks should be integrated with rehabilitation measures.
71. Extending the mandatory alcohol interlock sentence to section 65 offenders would allow the benefits of integrating compulsory alcohol assessment with interlock use to be considered. This could include whether these assessments should be expanded to cover the wider interlock group.
72. A section 65 offender, who may also have drug-driving convictions, would need at least one drink-drive conviction as part of their qualifying offences to be eligible for the mandatory alcohol interlock sentence.

*The 3-month mandatory disqualification should be replaced*

73. I recommend replacing the 3-month disqualification that offenders must serve before they can apply for an alcohol interlock licence with a 28-day stand down period.
74. International best practice reviews of interlock programmes suggest that compliance with the alcohol interlock sentence is best if an offender starts using the interlock as soon as possible after sentencing. This has to be balanced with the need to deter drink-drivers. In most Australian states, all or part of a mandatory disqualification period must be served before offenders can participate in alcohol interlock programmes.
75. During the stand down period, an offender would be disqualified from driving. At the end of the stand down, they could not drive until they had been issued with an alcohol interlock licence and had an interlock fitted to their vehicle.

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<sup>3</sup> For example, Marques and Voas 2010.

### *Implemented from mid-2017*

76. The proposed new mandatory interlock regime would begin from mid-2017. The Land Transport Act needs to be amended before the new regime can be implemented. Amending legislation must first be passed, and this is likely to be towards the end of 2016.
77. The start of the mandatory interlock regime needs to coincide with the establishment of the proposed subsidy scheme, which will depend on decisions in Budget 2017. This may require delaying the enactment date of the new legislation to accommodate the Budget timeframe. If the subsidy were not agreed to, this would create a risk that some offenders would be unable to complete the sentence. As well, the full road safety potential may not be realised as some offenders will not be able to afford to have interlocks fitted.

### **Exceptions from the mandatory sentence**

#### *Limited exceptions proposed*

78. There will be a limited number of situations where an exception to the mandatory alcohol interlock sentence is needed. International experience suggests there should be few exceptions to a mandatory sentence to avoid undermining the sentence. I propose the following exceptions where the onus would rest with the offender to demonstrate that they qualify:
  - a. No access to a vehicle for the purposes of the interlock regime - In some cases, an offender will not have access to a vehicle that could have an interlock fitted. This exception would not apply where a vehicle is seized and impounded by the Police for 28 days under section 96 of the Land Transport Act.
  - b. Section 65 offenders with drug-driving convictions only - The qualifying offences for a section 65 assessment order include both alcohol and drug-related driving offences. If an offender qualifies for a section 65 assessment order because of drug-driving offences only, it would be inappropriate for them to receive a mandatory alcohol interlock sentence.
  - c. Lack of proximity of interlock service centres - An exception could be provided for more remote areas of the country where an interlock service centre is outside a 30 km radius of the offender's usual place of residence and the location of their vehicle. The Ministry of Transport estimates that around 85 percent of the population over 15 years of age lives within a 30 km radius of current interlock service centres. As alcohol interlock sentences increase, the number of interlock service centre sites is likely to increase. Exceptions are also needed for offenders whose usual place of residence is an off-shore island that does not have an interlock service centre available.

- d. Medical condition - There are likely to be qualifying offenders who are incapable of providing a valid breath sample to activate the interlock because of a medical condition. For the court to consider a medical exception, the offender would need a valid medical certificate from an appropriately qualified health practitioner.
  - e.  Holders of suspended or revoked licences - A driver licence can be suspended or revoked by the Transport Agency on medical fitness grounds, or on fit and proper person grounds. An alcohol interlock sentence should not entitle a driver to resume driving vehicles of the same licence classes, or in the same transport-service related activities as those to which the licence suspension or revocation applied. This exception would also apply to Driver Licence Stop Orders imposed by the Ministry of Justice for non-payment of traffic fines and reparations.
  - f. Never licensed drivers – If an offender has never held a New Zealand driver licence, it would be impractical to impose an alcohol interlock sentence. The Transport Agency would be unable to issue an alcohol interlock licence to an applicant who has not met the other requirements for a licence, including passing the relevant test or tests.
79. To account for these exceptions, the cost benefit analysis only assumes up to 60 percent of offenders would receive the alcohol interlock sentence.
80. No exception is recommended where an offender does not own a vehicle. Such an exception could be easily exploited. Offenders could transfer a vehicle's 'registered person' status on the Motor Vehicle Register to the name of a family member or friend to claim the exception. In these circumstances, the offender is likely to retain access to and use of the vehicle.
81. If an offender fitted an interlock to a vehicle they did not own, they would remain liable for the interlock and its costs. The vehicle's owner is not liable either contractually or statutorily for the interlock costs if the alcohol interlock licence holder defaults on the interlock payments. An interlock provider is currently permitted to remove an interlock from a vehicle not owned by the alcohol interlock licence holder if the owner no longer agrees to the device being installed in the vehicle.
82. There would be no exception on the grounds of hardship. Hardship issues will be addressed by funding assistance, which is discussed earlier in this paper.

*Usual penalties where an exception applies*

83. Offenders, who qualify for an exception to the alcohol interlock sentence, would be eligible for the usual non-interlock penalties that apply for the offence, for example, imprisonment or fines, mandatory disqualifications. The court must impose a zero alcohol licence to follow the mandatory disqualification apart from section 65 drug offenders and never-licensed offenders who qualify for an exception.

## **Cancelling the alcohol interlock sentence due to changes in personal circumstances**

84. There is no current remedy for an offender on an alcohol interlock sentence who cannot complete the sentence due to a change in their personal circumstances. In these cases, the offender could remain on the alcohol interlock sentence indefinitely.
85. I propose an amendment to the Land Transport Act that would allow the court to cancel an alcohol interlock sentence. This is where the person's personal circumstances have changed significantly. For example, an offender may have lost their employment, or they may no longer have access to a motor vehicle to which an interlock can be fitted.
86. This would be similar to existing provisions. A court can cancel a previous court-imposed sentence of reparation (under section 38A of the Sentencing Act 2002) if the offender's personal circumstances change. If an alcohol sentence were to be cancelled, the court would be able to substitute any other sentence, including a community-based sentence under section 94 of the Land Transport Act. This covers sentences that could have been imposed if, at the time, the offender had been eligible for an exception from the alcohol interlock sentence. In relation to substituted disqualification periods, the court should have regard to whether there has been any further offending in relation to breaches of the alcohol interlock sentence and the length of time that has elapsed since the alcohol interlock sentence was imposed.
87. Regardless of whether or not the court chooses to substitute an alternative sentence, the court would be required to impose a 3-year zero alcohol licence that would take effect immediately or at the end of any substituted disqualification. A 3-year zero alcohol licence normally takes effect at the completion of the alcohol interlock sentence.

## **Interrelationship between alcohol interlock sentence and other mandatory disqualification sentences**

### *Offender is currently disqualified or suspended*

88. An offender should have to complete any existing disqualifications or licence suspensions for previous offending before they can apply for an alcohol interlock licence.

### *Offender is being sentenced concurrently for other offences*

89. An offender being sentenced to a mandatory alcohol interlock sentence could also be sentenced concurrently for other serious offences for which other mandatory disqualifications apply. An example could be drink-driving combined with dangerous driving. The offences could arise from the same or different incidents.

90. The court should have the discretion to decide whether:
- a. to impose a mandatory disqualification for the other offence(s) that must be served before the offender can apply for an alcohol interlock licence or
  - b. to allow the mandatory disqualification for the other offence to be subsumed within the alcohol interlock sentence.
91. The court's use of its discretion would depend on the severity of the other offence(s). However, there would be no discretion for offences causing injury or death. This includes manslaughter involving the driving of a motor vehicle. In these cases, the court would need to impose a mandatory disqualification that the offender must serve before they could apply for an alcohol interlock licence. The length of the disqualification would be determined by the court. This would be at least the mandatory minimum period specified for the offence in the Land Transport Act. This recognises the expectations of victims and their families. Due to the severity of the offending and its consequences for other road users, such offenders should not be permitted to resume driving immediately following sentencing even with an interlock.

*Offender with an alcohol interlock sentence commits further drink-drive offence*

92. If an offender on an alcohol interlock sentence were convicted of a further drink-drive offence, the court would terminate the existing alcohol interlock sentence. A new alcohol interlock sentence would be imposed, with the offender forfeiting any period they had already served on their existing alcohol interlock sentence.

*Offender with an alcohol interlock sentence commits further non drink-drive offences with mandatory disqualifications*

93. If an offender who is subject to an alcohol interlock sentence is later convicted of other non drink-drive offences for which a mandatory disqualification is a sanction, the court would terminate the existing alcohol interlock sentence and impose a new alcohol interlock sentence. The offender would forfeit any period they had already served on the interlock.
94. However, the court would again have discretion to impose a mandatory disqualification that would need to be served before the new alcohol interlock sentence could begin. There should be no discretion for offences causing injury or death. In such cases, the mandatory disqualification would have to be served before the alcohol interlock sentence began.

*Offender with an alcohol interlock sentence commits a further non-traffic offence, which results in a custodial sentence*

95. In these cases, the offender would resume serving their interlock sentence when they are released, and could have the interlock removed from their vehicle while they are serving their prison sentence.

## **Adjustments to other sections may be required to align with the mandatory alcohol interlock sentence**

96. Under section 33 of the Land Transport Act, it is an offence to apply for a driver licence while disqualified or suspended. An exception to this section is needed. A driver who is disqualified because of an alcohol interlock sentence should be able to apply for an alcohol interlock licence without committing an offence under section 33.

## **Limited licences**

97. Section 103(2)(e) of the Land Transport Act prevents a person from applying for a limited licence if they are either subject to the requirements of an alcohol interlock licence or they are subject to an order under section 65A but have yet to obtain an alcohol interlock licence. This prevents those who receive the alcohol interlock sentence from being able to avoid the sentence by applying instead for a limited licence.
98. An adjustment to section 103(2)(e) is required to prevent those who are granted an exception to the alcohol interlock sentence from being able to apply for a limited licence. This generally replicates the current situation where most offenders eligible for the alcohol interlock sentence are already statute-barred from applying for a limited licence.

## **Clarification concerning interlock removal**

99. The Land Transport Act specifies that an interlock can only be removed if the offender has held an alcohol interlock licence for at least 12 months and has met the exit criteria. The Transport Agency has reported that several offenders have obtained an alcohol interlock licence and then waited out the 12-month period without ever fitting or using an interlock in their vehicles. They have tried to argue that they have met the terms of their alcohol interlock sentence and should be allowed to move to a zero alcohol licence.
100. I propose that the current requirement be changed. It should specify that an interlock must be fitted in the offender's vehicle for at least 12 months and used over that period. This would discourage offenders who receive the alcohol interlock sentence from attempting to subvert the intent of the legislation.

## **Section 94 of the Land Transport Act 1998**

101. Section 94 of the Land Transport Act allows a court, having regard to a range of criteria, to substitute a community-based sentence in place of an otherwise mandatory disqualification. This provision should not be available to offenders on an alcohol interlock sentence since they are permitted to drive with an interlock.

## **Other alignment issues**

102. There may be other sections of the Land Transport Act that will require amendments to reflect the new mandatory alcohol interlock sentence. Interlock regulations made under the Land Transport Act may also need to be amended to reflect the changes in the Land Transport Act.

## **Mandatory vehicle confiscation under section 129 Sentencing Act 2002**

103. There is mandatory vehicle confiscation for serious and repeat offences under section 129 of the Sentencing Act 2002. The only exclusion is extreme or undue hardship. A consequential amendment is needed to section 129 to allow the courts to decline a mandatory confiscation where the court is intending to impose an alcohol interlock sentence. This should apply where the vehicle that would otherwise be confiscated is the one to which an interlock would be fitted.

## **Minor unrelated issue - anomaly between licensed and unlicensed drivers in the mandatory 28-day licence suspension regime**

104. A mandatory 28-day suspension of driver licences is an administrative sanction that is applied by the Police on detection of certain serious drink-drive offences and serious speed offences<sup>4</sup>. This sanction is applied immediately on detection of a qualifying offence, usually at the roadside.
105. The Police has identified an inconsistency between licensed and unlicensed drivers who meet the qualifying offence criteria for mandatory licence suspension based on either their alcohol or speed-related offending. Under the current law:
  - a. a licensed driver will have their driver licence suspended by the Police for 28 days
  - b. an unlicensed driver will have their sanction determined by their licence status rather than the alcohol or speed-offence criteria, as they do not hold a licence that the Police can suspend - in these cases, unlicensed drivers are forbidden to drive until they have obtained an appropriate current driver licence.
106. Unlicensed drivers have an unfair advantage over licensed drivers. A licensed driver has to serve the 28-day licence suspension period before they can resume driving. An unlicensed driver is permitted to obtain or renew their licence during that 28-day period and start driving once they have completed that driver licensing transaction. While a never licensed driver may have difficulty sitting a test within the 28-day period, the holder of an expired licence, would easily be able to renew their licence within that timeframe.

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<sup>4</sup> Mandatory licence suspension applies to drivers who exceed an applicable permanent posted speed limit by more than 40 kph or any other speed limit by more than 50 kph. This does not apply to speed camera offences. For drink-drive offences, the suspensions apply to drivers who exceed 650 micrograms of alcohol litre of breath for a first offence or 400 micrograms of alcohol per litre of breath for a second or subsequent offence within 4 years.

107. To address this anomaly, I propose an amendment to the Land Transport Act to prevent unlicensed drivers who qualify for mandatory licence suspension from being able to apply for or renew a driver licence for the full 28-day period that applies to licensed drivers. The forbidden to drive order still needs to be applied to unlicensed drivers so that if they are caught driving while forbidden during the 28-day period, the Police can seize and impound their vehicle for 28 days<sup>5</sup>.

### **Stakeholder risks**

108. The main risk is that the public and some interest groups may not consider that the recommendations in this paper go far enough, especially around harsher punitive sanctions, the use of alcohol interlock sentences and rehabilitation.
109. Some interest groups (including the NZ Automobile Association), while strongly supportive of increased use of alcohol interlock sentences, are likely to express concern that the mandatory scheme is not being extended far enough to include most drink-drivers. They may also argue for more assessment and treatment options.
110. Some interest groups may express concern that a mandatory alcohol interlock sentence would restrict judicial discretion. This may lead to disproportionate sentence outcomes in some individual cases.
111. To mitigate these risks, a communications plan is being prepared. This will focus on explaining the basis and reasons for the decisions.

### **Consultation**

112. The Police, the Ministry of Justice, the Department of Corrections, the Ministry of Health, the Transport Agency and the Accident Compensation Corporation participated in the reference group for the Sanctions Review. They provided feedback on the Ministry of Transport's Sanctions Review paper as well as this Cabinet paper. Other departments consulted on this paper were the Treasury, and the Ministry of Social Development. The Department of the Prime Minister and Cabinet was informed of this paper.
113. The Ministry of Justice supports measures to reduce drink-driving, including increased use of alcohol interlocks. However, the Ministry of Justice has concerns about the lack of certainty over the level of assistance provided by the interlock subsidy scheme, and considers that it is necessary that there should be an exception for where payment would cause undue hardship to an offender. Including an exception will reduce the risk of a sentence being mandatorily imposed on people who will be highly unlikely to comply with that sentence, particularly because of the low incomes of many repeat offenders. The Ministry of Justice notes that this paper does not consider the impact of the interlock proposal on the prison population.

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<sup>5</sup> Vehicle impoundment is a sanction that applies to unlicensed drivers who are detected driving while forbidden.

114. The Ministry of Justice is also concerned that the funding cap of \$4 million per annum may not be sufficient to provide a full subsidy for the 50 percent of offenders who earn less than \$20,000 per annum. It suggests that the report back in June provides a range of funding options, demonstrating the amount of subsidy that can be provided with different total subsidy scheme amounts. As previously noted, the cost of an alcohol interlock will be a significant barrier to offenders (who are predominately low-income) being able to successfully complete the alcohol interlock sentence.
115. The Ministry of Justice has questioned whether the assumed level of uptake is accurate given a 35 percent subsidy, and the 25 percent of people who do not install an interlock under the current regime (this percentage will greatly increase under a mandatory regime).
116. The Department of Corrections is supportive of the increased use of alcohol interlocks to increase road safety and reduce reoffending. The road safety benefits of interlocks are best realised when they are made available and installed fairly. A user pays system is unlikely to be fair or effective. The Department of Corrections has concerns that without careful consideration of funding and access issues, some people subject to the proposed mandatory alcohol interlock licence may remain caught in a cycle of disqualification with no ability to regain their licence. The Department of Corrections is supportive of retaining Judicial discretion when sentencing offenders who are already subject to alcohol interlock sentences or driving disqualifications or suspensions.
117. The Ministry of Health supports the general direction of the proposals. Drink-driving imposes significant cost on the health sector relating to injuries arising from crashes both to the perpetrator and to others. There is a loss of productivity and contributions to family. A relative, for example, may have to stop work to look after an injured family member. Therefore, reducing the impact of repeat drink-driving contributes to a number of Better Public Service Outcomes.
118. The Police support replacing the mandatory 3-month disqualification period with a 28-day stand down before the offender can obtain an alcohol interlock licence. Licence disqualification is important for sanctioning and deterring dangerous driving behaviour, while providing an opportunity for drivers to reflect on the seriousness of their offending before resuming driving duties.
119. The Transport Agency supports the overall approach relating to the proposed changes.
120. Treasury supports the intention to retain punitive measures against drink-drivers in a more flexible and less costly manner but is of the view that decisions on the introduction of mandatory alcohol interlock sentencing should not be made ahead of clarity on the cost and nature of the subsidy scheme. This is because the subsidy scheme is the key tool in addressing the issue of equity associated with mandatory alcohol interlock sentencing and without information on the likely nature of the scheme an assessment cannot be made on whether this issue is adequately addressed.

121. Treasury is concerned that a commitment ahead of understanding the scheme may lead to the implementation of a poorly designed policy with two-tier judicial outcomes for drink-drivers based solely on their income. In addition, Treasury considers there are risks in agreeing to this proposal when there is not certainty in relation to the costs to the Crown of the subsidy scheme or how it will be funded.
122. Treasury acknowledges the implications of delaying decisions on this proposal – including the potential withdrawal of interlock providers from New Zealand (though queries the significance of this risk) - but considers the risks associated with agreeing now to this proposal outweigh the potential benefits of early introduction of mandatory alcohol interlock sentencing.
123. The matters covered in this paper are within my delegated portfolio of responsibilities. I have consulted the Minister of Transport on the proposal and he agrees with the submission of the paper.

### **Financial implications**

124. The Ministry of Transport's cost benefit analysis estimates the preferred option would result in cost savings for the Ministry of Justice, the Department of Corrections, and the New Zealand Police because offending rates would reduce. The cost benefit analysis estimates net cost savings for the Crown even though there would be an additional cost for the Crown to subsidise the cost of interlocks.
125. A bid for subsidy funding may need to be made in Budget 2017. I have been asked about whether the subsidy funding could come from the National Land Transport Fund (the Fund). This initiative is a road safety one that will benefit all road users. However, this would mean altering the Fund's priorities although the sum involved is not a large amount in the context of the overall Fund. This measure will also benefit the Crown by reducing Justice sector costs associated with reoffending. Net savings are estimated even with the cost of a subsidy scheme.
126. If interlock uptake rates increase under the preferred option, there would be operational and cost implications for the Transport Agency as the administrator of the alcohol interlock sentence. Extra administration staff would be required, and the contracts with the interlock providers may need to change. These costs are estimated at \$5.4 million in the first year due to system set up costs, reducing to around \$1,000,000 in subsequent years.
127. The costs to the Transport Agency for interlock administration are intended to be fully cost-recovered by alcohol interlock licence fees, payable by offenders. As this activity is volume driven, an increase in activity should be matched by an increase in revenue. However, changes in the environment affecting operating costs may necessitate increasing or decreasing fees. The Transport Agency advises that it does not currently know whether the alcohol interlock licence fee should change. It was last set in September 2012 and is due for review.

128. Officials should report back on the financial implications of these proposals when they report back on the detail of the subsidy design. The following factors will result in updated fiscal implications. The detail of the subsidy scheme will have an impact on uptake rates, reoffending and, therefore, estimated savings. The effect of the 28-day stand down period may also have an impact. This would also enable updated information on drink-driving behaviour, including offending and sentencing patterns for the year 2015.
129. Table 5 summarises the estimated financial implications assuming a subsidy scheme of around \$4 million per annum. These estimates are indicative. The Regulatory Impact Statement provides further information on possible costs, where available.

**Table 5 - Estimated financial implications of mandatory interlocks for government agencies (GST exclusive)**

(Source: Ministry of Transport)

	<b>\$m – increase/(decrease)</b>			
	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>Outyears</b>
<b>Savings to Crown</b>				
New Zealand Police	(1.600)	(3.800)	(3.900)	(3.800)
Justice	(0.100)	(0.300)	(0.300)	(0.300)
Corrections	(3.100)	(8.200)	(8.600)	(8.600)
<b>Subtotal</b>	<b>(4.800)</b>	<b>(12.300)</b>	<b>(12.800)</b>	<b>(12.700)</b>
<b>Costs to Crown</b>				
Crown subsidy scheme	1.500	3.700	4.100	4.100
<b>Subtotal<sup>6</sup></b>	<b>1.500</b>	<b>3.700</b>	<b>4.100</b>	<b>4.100</b>
<b>Cost to NZ Transport Agency (met by licensing fees)</b>				
NZ Transport Agency	5.400	0.900	1.000	1.000
<b>Subtotal</b>	<b>5.400</b>	<b>0.900</b>	<b>1.000</b>	<b>1.000</b>
<b>TOTAL NET FINANCIAL IMPLICATIONS</b>	<b>2.100</b>	<b>(7.700)</b>	<b>(7.700)</b>	<b>(7.600)</b>

130. The Crown funds alcohol and drug assessments. Bringing section 65 offenders into the mandatory regime is not expected to increase the demand on this appropriation as it does not alter the current need to receive an alcohol and drug assessment.

<sup>6</sup> The cost benefit analysis estimated the subsidy would be around \$4.1 million. Given it is an estimate, \$4 million is recommended.

131. However, it is possible that placing section 65 offenders on an interlock may incentivise more of these offenders to seek the required assessment. Many currently do not. As a result, it will be necessary to monitor this appropriation as the mandatory interlock scheme is rolled out. The cost benefit analysis estimated that the additional cost to the Crown to fund extra assessments would be around \$200,000 per year.

### **Human rights implications**

132. The only potential human rights implication relates to possible discrimination against offenders with medical conditions, for example, people with compromised lung function who may be unable to operate an interlock. These offenders would qualify for an exception to the alcohol interlock sentence and receive the alternative penalties, including a mandatory disqualification. This would mean that those drivers with a medical condition do not have the same options as people who do not have such conditions. This issue would need to be worked through.
133. Any legislation arising from these proposals will be subject to a New Zealand Bill of Rights Act 1990 assessment by the Attorney-General.

### **Legislative implications**

134. The provisions of section 65A of the Land Transport Act contain the provisions relating to interlocks. Section 65A would need to be redrafted and amendments are also likely to section 65B and section 100A. Consequential amendments to other legislation that cross reference section 65A are likely.
135. The paper proposes a consequential amendment to the Sentencing Act 2002 in relation to the mandatory vehicle confiscation provisions.
136. A Land Transport Amendment Bill has been included in the Government's 2016 legislative programme with a category 3 priority (to be passed if possible in 2016). This Bill would implement any changes agreed to by the Committee.

### **Regulatory Impact Analysis**

137. The Regulatory Impact Analysis requirements apply to the proposals in this paper and a Regulatory Impact Statement has been prepared. The Ministry of Transport's internal review panel has assessed the paper as meeting the quality assurance criteria.

### **Gender implications and disability perspective**

138. There are no gender or disability implications arising from this paper.

## Publicity

139. I propose announcing Cabinet's decisions after officials have reported back on the principles of the subsidy scheme. A question and answer fact sheet will also be prepared for public release.
140. I also propose to publish relevant documents on the Ministry of Transport's website after the announcement. These documents include this paper and its accompanying Regulatory Impact Statement and the Ministry of Transport's cost benefit analysis.

## Recommendations

141. I recommend that the Committee:

### Land Transport Amendment Bill

1. **note** that it is proposed to implement a mandatory alcohol interlock sentence and, to allow this proposal to be included in the imminent Land Transport Amendment Bill, approval to issue drafting instructions is required

### Mandatory alcohol interlocks for eligible offenders

2. **agree** to make the alcohol interlock sentence mandatory for offenders who meet the eligibility criteria and do not meet the exception criteria
3. **agree** to specify that an offender who is subject to an alcohol interlock sentence remains disqualified until they apply for and are issued with an alcohol interlock licence
4. **agree** to retain the current eligibility criteria for applying the alcohol interlock sentence of:
  - a. a second or subsequent alcohol offence within a 5 year period or
  - b. a breath alcohol level of 800 micrograms of alcohol per litre of breath or higher or
  - c. a blood alcohol level of 160 milligrams of alcohol per 100 millilitres of blood or higher
5. **agree** to subject those offenders who are required to undergo a mandatory alcohol and drug assessment under section 65 of the Land Transport Act 1998, to the alcohol interlock sentence if they have at least one alcohol qualifying offence
6. **agree** to specify that section 65 offenders who receive the alcohol interlock sentence will have to provide a satisfactory assessment report from an approved alcohol and drug assessment centre to the New Zealand Transport Agency, as well as meeting the criteria for removing the interlock of at least a 3-month violation free period
7. **agree** to replace the mandatory 3-month disqualification period with a 28-day stand down period that must be served before the offender is entitled to apply for an alcohol interlock licence

8. **agree** to amend section 33 of the Land Transport Act 1998 to allow a driver who is disqualified as a result of an alcohol interlock sentence to apply for an alcohol interlock licence without committing an offence under section 33
9. **note** that amendments to other sections of the Land Transport Act 1998 will be needed to align with the mandatory alcohol interlock sentence

### **Exceptions**

10. **agree** to specify that the following exceptions should apply to the alcohol interlock sentence:
  - a. the offender does not have access to a vehicle to which an interlock is able to be fitted
  - b. offenders who qualify for an assessment order under section 65 of the Land Transport Act 1998 on the basis of drug-driving offences only
  - c. the offender's usual place of residence exceeds a 30 km radius from the nearest interlock service centre; or whose usual place of residence and the location of their vehicle is on an island where there is no interlock service centre available
  - d. offenders who have medical conditions that mean they are incapable of providing a valid breath sample to activate the interlock and they provide to the court a current valid medical certificate from an appropriately qualified health practitioner
  - e. an offender's driver licence is suspended or revoked on medical grounds or on the grounds that the holder is not a fit and proper person to drive in a transport service if the alcohol interlock sentence would allow the driver to resume driving the same vehicle classes, or in the same transport-service related activities as those to which the licence suspension or revocation applies or there is a Driver Licence Stop Order imposed
  - f. offenders who have never held a New Zealand driver licence
11. **agree** to exclude offenders who qualify for an exception from a mandatory alcohol interlock sentence from being able to apply for a limited licence
12. **agree** offenders who qualify for an exception to the alcohol interlock sentence should be eligible for the penalties that would have applied for that offence and, apart from the section 65 drug offenders and never-licensed offenders who have an exception, a 3-year zero alcohol licence should follow any mandatory disqualification

## **Interrelationship with other offending**

### *Offenders already disqualified or suspended*

13. **agree** offenders should have to complete any existing disqualifications or licence suspensions for previous offending before they can apply for an alcohol interlock licence (except for an order made under section 65 of the Land Transport Act 1998)

### *Offenders being sentenced concurrently for other offences*

14. **agree**, subject to recommendation 15 below, where offenders receiving a mandatory alcohol interlock sentence are being concurrently sentenced for other offences to which mandatory disqualifications apply, the court should have the discretion to decide whether to:
  - a. impose a disqualification for the other offence(s) that must be served before the alcohol interlock sentence begins or
  - b. allow the disqualification for the other offence(s) to be subsumed within the alcohol interlock sentence
15. **agree** there would be no discretion for offences involving causing injury or death, including manslaughter involving a driving of a motor vehicle, in which case the court must impose the mandatory disqualification that must be served before the alcohol interlock sentence begins

### *Offenders with an alcohol interlock sentence commit subsequent drink-drive offence*

16. **agree**, where offenders subject to an alcohol interlock sentence are convicted of a further drink-drive offence, the court must terminate the existing alcohol interlock sentence and impose a new alcohol interlock sentence, with the offender forfeiting any period they had already served on their existing alcohol interlock sentence

### *Offenders with an alcohol interlock sentence commit subsequent offences with mandatory disqualifications*

17. **agree**, where offenders who are subject to an alcohol interlock sentence, are later convicted of other offences to which mandatory disqualifications apply, the court must terminate the existing alcohol interlock sentence and impose a new alcohol interlock sentence, with the offender forfeiting any period they had already served on the interlock
18. **agree**, subject to recommendation 19 below, where offenders who are subject to an alcohol interlock sentence, are later convicted of other offences to which mandatory disqualifications apply, the court should have the discretion to decide whether to:
  - a. impose a disqualification for the other offence(s) that must be served before the alcohol interlock sentence begins or
  - b. allow the disqualification for the other offence(s) to be subsumed within the alcohol interlock sentence

19. **agree** there would be no court discretion for offences causing injury or death in which case the mandatory disqualification would have to be served before the new alcohol interlock sentence begins

*Offender with an alcohol interlock sentence commits a further non-traffic offence, which results in a custodial sentence*

20. **agree** that an interlock can be removed while an offender is serving a prison sentence or their sentence precludes driving

### **Cancelling the alcohol interlock sentence**

21. **agree** to amend the Land Transport Act 1998 to enable an offender who has received an alcohol interlock sentence to apply to the court to have the alcohol interlock sentence cancelled where the offender's personal circumstances have changed significantly
22. **agree**, where it cancels an alcohol interlock sentence, the court:
  - a. can substitute the penalties, including a community-based sentence under section 94 of the Land Transport Act 1998, that would have been imposed if the offender had been eligible for an exception from the alcohol interlock sentence
  - b. have regard, for any substituted disqualification periods, to whether there has been any further offending in relation to breaches of the alcohol interlock sentence and the length of time that has elapsed since the alcohol interlock sentence was imposed and
  - c. be required to impose a 3-year zero alcohol licence that would take effect immediately or at the end of any substituted disqualification

### **Other issues**

23. **agree** that the requirement for an alcohol interlock licence to be held for at least 12 months be changed to specify that an interlock must be fitted and used for at least 12 months
24. **agree** to consequentially amend the Sentencing Act 2002 to allow the court to decline to order a mandatory confiscation of a vehicle owned by the offender, if the court is intending to impose an alcohol interlock sentence and that the vehicle is the one to which an interlock would be fitted
25. **agree** to specify that, in cases where an unlicensed driver qualifies for a mandatory 28-day licence suspension under section 95 of the Land Transport Act 1998, they are prevented from obtaining or renewing a driver licence for the full 28-day period of the licence suspension

### **Legislative implications**

26. **note** that a Land Transport Amendment Bill, which will implement the proposals agreed to by the Committee, has been included in the 2016 legislative programme with a category 3 priority (to be passed if possible in 2016)

27. **invite** the Associate Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the relevant recommendations above, including any necessary consequential, savings and transitional provisions, and any consequential amendments to the Land Transport (Alcohol Interlock) Regulations 2012 made under the Land Transport Act 1998
28. **authorise** the Associate Minister of Transport to make decisions, which are consistent with the overall policy decisions in this paper, including alignments with existing disqualifications, disqualifications for concurrent offences and disqualifications for subsequent offences, and on any issues that may arise during the drafting process

### **Design of the subsidy scheme**

29. **agree** that the Crown-funded subsidy scheme for mandatory alcohol interlocks should not exceed \$4 million per annum
30. **direct** the Ministry of Transport, in conjunction with relevant agencies, to report back to the Committee by the end of June 2016 on the principles that would underpin the scheme, including whether the current provider funded scheme should continue, what interlock cost components the subsidy should cover, such as driver licensing costs and direct interlock costs, and the degree to which access to the funding should be means-tested
31. **direct** the Ministry of Transport, with relevant agencies, to report back to the Committee by the end of September 2016 on the detailed design of the proposed subsidy scheme and the financial implications of the policy having particular regard to the subsidy design

### **Financial implications**

32. **note** that the proposal to introduce mandatory alcohol interlocks will have cost implications for the Crown and the New Zealand Transport Agency
33. **note** that the New Zealand Transport Agency's costs for driver licensing activities are intended to be met from third-party revenue (the fees paid by licence holders)
34. **direct** the New Zealand Transport Agency, in conjunction with the Ministry of Transport, to review the relevant interlock related driver licensing fees
35. **note** a bid may be required in Budget 2017 to fund the proposed subsidy scheme

### **Monitoring of the mandatory interlock scheme**

36. **direct** the Ministry of Transport and the New Zealand Transport Agency to closely monitor uptake rates to identify any barriers to the alcohol interlock sentence and report to the Associate Minister of Transport at 6 monthly intervals once the mandatory interlock scheme has begun

37. **direct** the Ministry of Transport and other relevant agencies to review the mandatory alcohol interlock regime's effectiveness (including whether the mandatory alcohol interlock sentence should be extended to further groups of offenders), once 3 years of data become available after the changes come into force

**Publicity**

38. **note** I propose to:
- a. issue a press release announcing Cabinet's decisions after officials report back on the principles of the subsidy scheme
  - b. publish relevant documents on the Ministry of Transport's website once the announcement has been made, which include this paper and its accompanying Regulatory Impact Statement and the Ministry of Transport's cost benefit analysis.

Hon Craig Foss  
**Associate Minister of Transport**

Dated: \_\_\_\_\_

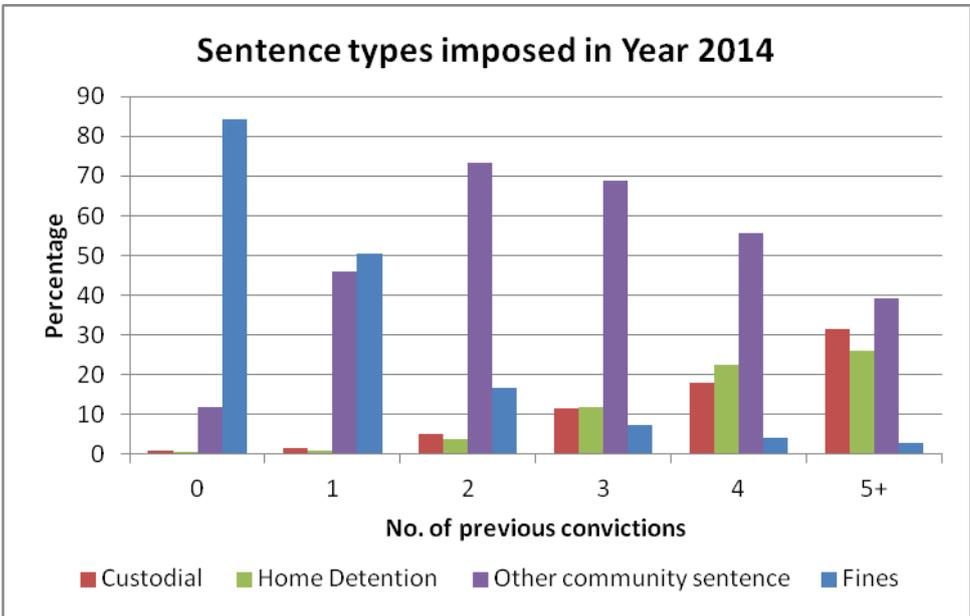
**Appendix**

**Main sentence types**

- 1. Figure 1 below shows the main sentence types imposed by the courts for drink-drive offences in 2014 by the number of previous convictions.

**Figure 1 – Types of sentences imposed in 2014 for drink-drive offences by number of previous convictions**

(Source: Ministry of Justice)



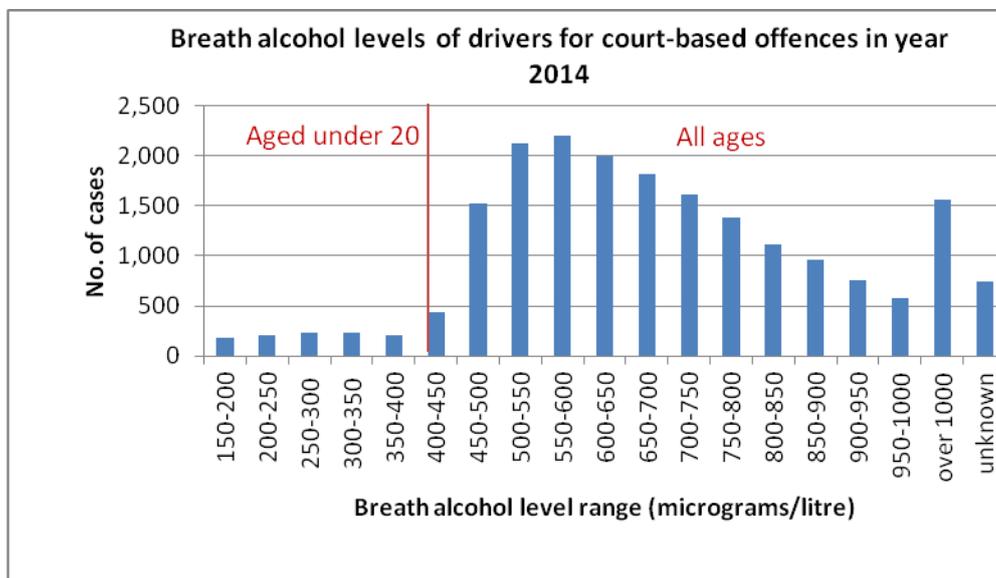
- 2. In 2014, fines were used for around 84 percent of first-time offenders. For offenders with one previous conviction, fines were used in a similar percentage as community sentences. A community sentence was the most frequent sentence type for those with two or more previous convictions. The use of home detention and custodial sentences increased for those with three or more previous convictions.

## High alcohol offences

3. Figure 2 shows the distribution of court cases involving the specified breath alcohol level ranges for excess alcohol offences in 2014. Offences in the ranges below 400 micrograms of alcohol per litre of breath<sup>7</sup> (shown to the left of the red line) relate to drivers under the age of 20 years, who were prosecuted for low-level offences (exceeding 150 micrograms of alcohol per litre of breath<sup>8</sup>). Those offences to the right of the red line apply to those cases where drivers of all ages exceeded the former limit for drivers aged 20 years and over.

**Figure 2 – Breath alcohol levels for court-based offences in 2014**

(Source: Ministry of Justice)



4. The recent reduction in the adult drink-drive limits is likely to suppress excessive alcohol consumption levels by those who intend to drive afterwards. There is evidence of this impact on youth drink-driving with a 70 percent reduction in drink-drive cases since 2009<sup>9</sup>. (Part of this impact may be due to this age group driving less<sup>10</sup>).

<sup>7</sup> Or an equivalent blood alcohol level of 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood. These were the drink-drive limits for adult drivers (aged 20 and over) prior to 1 December 2014.

<sup>8</sup> For drivers under the age of 20 years, infringements apply for alcohol levels at or below 150 micrograms of alcohol per litre of breath, or the equivalent blood alcohol level at or below 30 mg of alcohol per 100 ml of blood.

<sup>9</sup> In 2011, the drink-drive limits were reduced to zero for drivers under the age of 20 years

<sup>10</sup> In 2011, Parliament raised the minimum driving age from 15 to 16 years and in 2012, the Transport Agency introduced a more challenging restricted driver licence test.