

Chair
Cabinet Economic Growth and Infrastructure Committee

RELEASE OF THE DRAFT DISCUSSION PAPER *CLEAR HEADS: OPTIONS TO REDUCE THE RISKS OF ALCOHOL AND DRUG RELATED IMPAIRMENT IN AVIATION, MARITIME AND RAIL*

Proposal

1. I propose the Ministry of Transport releases the attached draft discussion paper *Clear heads: Options to reduce the risks of alcohol and drug related impairment in aviation, maritime and rail*.
2. Responses to the discussion paper will inform whether legislative change is required to address alcohol and drug impairment in these sectors.

Executive summary

3. The Transport Accident Investigation Commission (the Commission) and Coroners have recommended legislation be developed to more effectively manage the risks of alcohol and drug impairment in aviation, maritime and rail. The recommendations are the result of a number of high profile fatal and serious accidents in these sectors. In particular, the Commission released a report in October 2013¹ which made specific recommendations on drug and alcohol testing and setting maximum alcohol limits in the aviation, maritime and rail sectors.
4. I am proposing to respond to the Commission's report by instructing the Ministry of Transport to release a discussion paper outlining a high level set of options that could address the report's recommendations. The options cover both the commercial and recreational sectors across aviation, maritime and rail. The options include the status quo, drug and alcohol management policies for commercial organisations, and a range of alcohol testing options, including post-occurrence testing and 'good cause to suspect' testing for both commercial and recreational operators.
5. I propose the Ministry of Transport releases the discussion paper in early 2015 for a six week consultation period.
6. The responses to the discussion paper will feed into a formal policy proposal for this Committee to consider in 2015. Officials may then need to conduct a second consultation process including a preferred option(s), as the policy proposals may require legislative change.

¹ *Aviation Inquiry 12-001: Hot-air balloon collision with power lines and in-flight fire, near Carterton, 7 January 2012.*

Background

7. The aviation, maritime and rail safety record in New Zealand is generally well regarded, including in the adventure tourism sector. However, several high profile accidents have highlighted weaknesses in the management of drugs and alcohol in these sectors. These weaknesses may reduce consumer confidence and pose a potential safety risk.
8. Over the 10-year period to June 2014, the Commission has investigated eight occurrences where persons operating aircraft, vessels, or rail vehicles, or persons performing functions directly relevant to the safe operation of these, have tested positive for performance-impairing substances.
9. Following the 2012 Carterton hot-air balloon accident, the Commission released a report² recommending that the Secretary of Transport work to introduce appropriate legislation or rules that will:
 - 9.1. prescribe allowable maximum levels for alcohol
 - 9.2. prohibit persons from operating an aircraft, vessel or rail vehicle if they are impaired by drugs
 - 9.3. require operators to implement drug and alcohol detection and deterrence regimes, including random testing
 - 9.4. prescribe post-occurrence testing requirements for drugs and alcohol.
10. The Commission has recommended that this legislation rules should apply:
 - 10.1. across the aviation, maritime and rail transport modes
 - 10.2. to persons operating an aircraft or a marine craft for recreational purposes.
11. The Commission and Coroners have recommended legislation be developed to manage the risks of substance impairment in these sectors more effectively. The Commission's Carterton report is the latest in a number of reports recommending change.³
12. There may be benefits to a consistent approach across modes and the commercial and recreational sectors. Consistent requirements and expectations for operators, employees, and the public will help provide clarity

² *Aviation Inquiry 12-001 Hot-air balloon collision with power lines and in-flight fire, near Carterton, 7 January 2012.*

³ For example: *Marine Inquiry 12-201: Fishing vessel Easy Rider, capsize and foundering, Foveaux Strait, 15 March 2012; Aviation Inquiry 10-009: Walter Fletcher FU24, ZK-EUF, loss of control on take-off and impact with terrain, Fox Glacier aerodrome, South Westland, 4 September 2010; Marine Inquiry 09-201: collision: private jet-boat/private watercraft, Kawarau River, Queenstown, 5 January 2009.*

and will simplify enforcement. However, if the safety risk posed by alcohol and drugs varies between transport modes and other non transport sectors, it may be justifiable to apply different levels of regulation.

13. Currently there is regulation on alcohol and drug impairment for adventure tourism (including non-transport based activities); in some parts of the maritime sector; through medical certification in the aviation sector; and for road users.
14. In addition, there is a broad imperative for workplace safety through the duties of the Health and Safety in Employment Act 1992 (HSE Act) that requires all businesses to manage any hazards (including substance impairment) that could result in harm to workers or other people.

International standards and best practice for maximum blood alcohol levels

15. The existing drug and alcohol impairment regime for commercial operators in New Zealand is not in breach of international standards set by the International Union of Railways, the International Civil Aviation Organization and the International Maritime Organization. However, our international counterparts generally prescribe a more formally regulated approach.
16. The United Kingdom, Australia, and the United States of America legislate against safety-sensitive transport staff from performing their roles in an unfit state due to alcohol or drug use. These countries also prescribe maximum alcohol limits and permit an enforcement authority to carry out post-occurrence biomedical tests for safety-sensitive staff in workplaces.
17. Jurisdictions in Australia and the United Kingdom prescribe legislated maximum blood alcohol content levels for commercial and recreational transport users in driver-equivalent roles across the aviation, maritime and rail modes. In Australia these are:
 - 17.1. 20 milligrams of alcohol per 100 millilitres of blood for aviation and rail
 - 17.2. 50 milligrams of alcohol per 100 millilitres of blood for maritime.
18. In New Zealand, there are no legislated limits for these modes. The one exception is limits for seafarers on vessels falling under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995.⁴

Current commercial regime and changes since the 2012 Carterton hot-air balloon crash

19. Currently the risk arising from drug and alcohol impairment in the commercial aviation, maritime and rail sectors is managed through a combination of health

⁴ Vessels falling under this convention are mainly large commercial vessels.

and safety in employment legislation and transport legislation (transport Acts and rules).

20. As previously noted, all operators must comply with the HSE Act. The HSE Act requires employers to take “all practicable steps” to ensure their own safety, and the safety of employees and other people in the vicinity of the place of work. Employers must also ensure that no action or inaction of the employee while at work causes harm to any other person.⁵
21. The options presented in this paper respond to the Commission’s recommendations and will not duplicate requirements in the HSE Act. While it is implicit that managing alcohol and drug impairment is part of ‘all practicable steps’ in the HSE Act, the proposed response in Option 2 will make it an explicit requirement for all commercial operators.
22. The Government has introduced several changes to the legislative regime managing alcohol and drug impairment since the Carterton hot-air balloon accident in 2012, and the Commission’s report was released in October 2013. These changes, outlined below, aimed to reduce risks from impairment.

Safety management for adventure tourism

23. In 2012, a package of regulations for the adventure tourism sector was introduced and later amended. The following regulations are included in the package.
 - 23.1. The 2012 Amendments to the Health and Safety in Employment (Adventure Activities) Regulations 2011.
 - 23.2. Civil Aviation Rule Part 115 (Adventure Aviation – Certification and Operations).
 - 23.3. Maritime Rule Part 82 (Commercial Jet Boat Operations – River).
 - 23.4. Maritime Rule Part 81 (Commercial Rafting Operations) was introduced in 2011, but is considered part of the same package of adventure tourism regulations.
24. The amendments require operators to include a description of how they will manage the safety risks associated with drug or alcohol impairment in their safety plans.⁶ These changes sought to improve the performance and consistency of safety management across the adventure tourism sector.

⁵ Cabinet has agreed that the HSE Act will be replaced with a new Act [CAB Min (13)21/11 refers]. The Health and Safety Reform Bill is currently in the Select Committee stage and, if passed (expected by mid-2015), will create the new Health and Safety at Work Act.

⁶ Aviation – Organisational Management Systems; Maritime – Safe Operational Plans; Rail – Rail Safety Cases.

Changes to the maritime regulatory environment

25. In addition to Maritime Rule Parts 81 and 82, in October 2013 the Maritime Transport Amendment Act 2013 came into force. The Act implements requirements established by the 2010 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995. These amendments include an internationally applicable alcohol limit (of 50 milligrams of alcohol per 100 millilitres of blood and breath alcohol level equivalent) for merchant seafarers, and apply to most large commercial vessels.⁷
26. Under section 65 of the Maritime Transport Act 1994, there is a general requirement for all maritime transport users not to operate “any ship or maritime product in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs”. Although not widely used, this provision can be used to prosecute in cases of impairment within both the commercial and recreational sectors.
27. The Government has also moved to clarify and strengthen the requirements on commercial operators to have safety management systems. In maritime, commercial operators are required to comply with the new Maritime Operator Safety System (MOSS) that is being phased in over four years from 1 July 2014.

Changes to the aviation regulatory environment

28. In the aviation sector, the Adventure Aviation Rule Part 115 is accompanied by a detailed advisory circular for adventure aviation operators (AC115-1) outlining the expectations for drug and alcohol monitoring and management. The Civil Aviation Authority guidance is that “there is no measurable level of blood alcohol that is safe for aviation”.
29. In June 2014 Cabinet agreed to the development of a new civil aviation rule requiring aviation operators to have safety management systems in place [CAB Min (14) 22/6 refers]. These systems aim to improve detection and resolution of operators’ safety risks, which could include impairment. The Civil Aviation Authority expects to consult on the draft rule in early 2015, with the Rule expected to be in place later in 2015.

Changes to council bylaws

30. Auckland Council introduced the Navigation Safety Bylaw, which came into effect from October 2014. Key changes in the Bylaw include making it an offence for anyone to be in charge of a vessel who is intoxicated by alcohol or drugs. However, the Bylaw does not define intoxication or prescribe limits.

⁷ This is the same as the new blood alcohol limits that apply to road users in New Zealand, introduced on 1 December 2014.

Some gaps in regulation still exist

31. Despite these changes, there are gaps in alcohol and drug impairment regulation across aviation, maritime and rail. These gaps include specific alcohol and drug impairment management for commercial operations (in the non-adventure tourism sector) and for recreational activity in these modes.
32. The aim of this consultation is to determine the significance of these gaps, and the extent to which the lack of regulation may pose safety risks and create an image of New Zealand as an unsafe place to travel and engage in aviation and maritime activities.

The policy options

33. The Ministry of Transport has developed ten policy options for public discussion. Annex One sets out the options as a chart. The options are arranged roughly in order of their increasing scale of intervention and resulting legal complexity, and are separated by commercial and recreational sectors.
34. There are two regulatory approaches to addressing the Commission’s recommendations. The approaches, setting requirements under the HSE Act and setting requirements in primary legislation for enforcement, are outlined in the table below.

	Sector	Testing agency	Substance	Change required
Setting requirements under the HSE Act	Commercial only	Employer responsibility	Includes both alcohol and drugs	Similar to status quo but more explicit
Setting requirements in primary legislation for enforcement	Could include commercial and/or recreational	Police mandated	Alcohol only	Additional resources and legislative change including maximum limits and penalties

35. It is important to consider the effect on businesses, particularly small and medium-sized enterprises. The response to the Commission’s recommendations should minimise additional requirements on businesses and associated compliance costs by aligning with their current systems where possible.
36. Currently there is no system in place to collect data to find out how widespread alcohol and drug impairment is in the aviation, maritime and rail sectors. There are no powers for the Commission to test for impairment after an occurrence, and Coroners have the power to test only the deceased in the case of a fatality. Therefore there is a limited evidence base for definitive policy proposals. The information available suggests there is not a large scale

problem.⁸ At this stage, I propose that the Government does not set out a preferred option, but rather presents a range of options to assess the response of stakeholders.

37. More detail is required to implement any of the proposed options. The options proposed are high level, and designed to facilitate consultation with key stakeholders in the sector.
38. Once consultation is completed, officials will develop a preferred proposal for the Government to consider. Officials are likely to undertake a second round of consultation with a preferred option(s) later in 2015. These options may require changes to legislation.
39. The options discussed for the commercial sector are:
 1. Retaining the status quo. This option may also include non-legislative responses such as increased public education.
 2. Requiring commercial operators to develop and implement specific drug and alcohol impairment management policies, including appropriate testing requirements, as part of their safety management systems.
 3. Requiring post-occurrence testing for impairment to enable the Commission to determine the causes and circumstances of the accident, but not for enforcement:
 - 3.1 with testing carried out by the commercial operator as part of its drug and alcohol management policy
 - 3.2 with testing carried out by an approved third party.
 4. Prescribing maximum legal limits for alcohol; setting specific alcohol-related offences and penalties; and enforcing maximum legal limits for commercial operators⁹ by:
 - 4.1 enabling the Police to test for alcohol impairment following an incident or accident (post-occurrence testing)
 - 4.2 enabling the Police to test for alcohol impairment where they have 'good cause to suspect' impairment.

⁸ The NZIER 2014 report *A Cross-modal risk analysis of substance impairment* estimates over the last 10 years there were approximately 62 fatalities in the non road sector due to substance impairment. This is compared to approximately 1,336 road fatalities due to substance impairment.

⁹ Option 4 and Option B will only cover testing for alcohol. The difficulties of testing for drugs are discussed in paragraphs 52-53.

40. The options discussed for the recreational sector are:
- A. Retaining the status quo. This option may also include non-legislative responses such as increased public education.
 - B. Prescribing maximum legal limits for alcohol; setting specific alcohol-related offences and penalties; and enforcing the maximum legal limits for recreational operators by:
 - B.1. enabling the Police to test for alcohol impairment following an incident or accident (post-occurrence testing)
 - B.2. enabling the Police to test for alcohol impairment where they have 'good cause to suspect' impairment.
41. The final option covers any person who is involved in an occurrence:
- 5. The Commission to have the power to test those involved in an occurrence.
42. A table outlining these options can be found in Annex One.
43. I do not support random testing by the Police, and have not included this type of testing as an option. The lack of data supporting a response to this extent, level of intrusion of this type of testing, and resources required to implement such a response mean it is not appropriate to include random testing by an enforcement agency as an option.
44. Mandatory random testing by a commercial operator is also not included as an option, despite this being one of the recommendations put forward by the Commission. Mandatory random testing will put undue costs on businesses, particularly small and medium-sized enterprises. The available data does not justify imposing this expense on businesses. However, where risks are perceived as high, any business may introduce random testing as part of its drug and alcohol policy.
45. Option 5 allows the Commission to test all parties involved in an accident for drugs and alcohol. It is differentiated from the commercial and recreational options as it refers to any party that is involved in an accident, rather than defined groups. For example, in a vessel collision, the Commission could select who would be appropriate to test for the purposes of investigating the cause of the collision. Under the status quo, the Commission has no powers to test people, which could include drivers or operators.
46. Option 5 would include drug testing, which is excluded in the above enforcement options (Options 4 and B). This testing would be solely to assist the Commission to determine the causes and circumstances of an accident or occurrence, and would not be used for an offence and penalties regime. This option addresses a specific request by the Commission for these testing powers.

Impact of options on the current system

47. My preference is to minimise compliance costs for businesses, particularly small and medium-sized enterprises. Additional compliance costs for businesses will only be appropriate if the current regulation is inadequate.
48. Option 2 aligns with the current requirement for all commercial operators in the adventure tourism sector to have an alcohol and drug management policy. It also aligns with the recent and proposed introduction of safety management system rules¹⁰ in aviation and maritime. The introduction of these rules means Option 2 is increasingly becoming the status quo.
49. Options 3.1 and 3.2 move beyond current requirements in the HSE Act, by making it mandatory to test after an occurrence for information purposes.
50. The Ministry of Transport is engaging with the Ministry of Business, Innovation and Employment to ensure developments on policy options are consistent with other sectors where needed. This work needs to align with drug and alcohol initiatives across all the adventure tourism sector (which includes non-transport related activity), land transport, and the wider employment sectors. However the recent high-profile accidents would suggest that there is a need to strengthen the management of alcohol and drug impairment across the aviation, maritime and rail modes as soon as it is feasible.
51. Option 4 sets maximum limits and offences and penalties, which is consistent with the Commission's recommendations. However, officials are concerned that this option will introduce inconsistencies with other sectors, including the land transport and the adventure tourism sectors where Police do not have the ability to enter a workplace to test. Options 2 and 3 are consistent with these other sectors.
52. Officials prefer a consistent standard of drug and alcohol regulation across all sectors where possible and sensible. However, consistency may not be appropriate in cases where the risk levels are different in different modes. For example, it may be sensible to prescribe different blood alcohol limits for aviation and maritime users.
53. Options 4 and B will require changes to legislation, including the Transport Accident Investigation Commission Act 1990, the Civil Aviation Act 1990, the Maritime Transport Act 1994, and the Railways Act 2005. This could require a lengthy lead in time before the option could be implemented. Significant new resourcing for agencies responsible for testing and enforcement could be required to sufficiently enforce the policy depending of the scale of testing required.

¹⁰ Safety Management Systems (SMS) in aviation, and Maritime Operator Safety System (MOSS) in maritime.

Deferring consideration of drug impairment

54. For the commercial sector Option 4 does not include drug impairment. For the recreational sector Option B does not include drug impairment. I propose we consider prescribed testing for drug impairment in parallel to the review of the drug-driving enforcement regime. This review is being undertaken by the Ministry of Transport as part of the Safer Journeys Action Plan 2013-15. I will include a discussion of addressing the issue of drug impairment when I report back to Cabinet on this work.
55. I have deferred considering drug impairment so it can be considered at the same time as land because:
- 55.1. Developing a legal framework for drugs is more complex than for alcohol. The complexity is caused by the large number of drugs that can potentially cause impairment, including prescription drugs.
 - 55.2. It is difficult to establish clear thresholds for impairment for each substance. Also, impairment cannot be inferred from the mere presence of a drug (or alcohol) in bodily tissues or fluids.
 - 55.3. As yet, there is no low-cost and accurate test for impairment from drugs that is comparable to the roadside breath test for alcohol. Currently available tests have a high rate of false positives, and it is important to be consistent across sectors.
 - 55.4. Drug screening tests are generally more invasive than alcohol breath tests, and are more likely to have Bill of Rights Act 1990 implications.
 - 55.5. Setting limits becomes more complex when considering a 'cocktail' of alcohol and drugs. The additive effect of combining alcohol and different drugs means someone could be impaired without exceeding the limit for any one substance.

Risks and their mitigation

56. There has been significant media coverage in New Zealand and internationally of adventure tourism accidents involving drugs and alcohol.¹¹ The Government addressed concerns through adventure tourism drug and alcohol management plan requirements. However, the Government has not yet addressed concerns on alcohol and drug impairment in the recreational and non-adventure tourism sectors across the three modes.
57. Drug and alcohol impairment in the transport sector can be a highly emotive issue and any incident where impairment is a factor tends to have a high profile. Given this profile and the lack of comprehensive New Zealand data, there is a risk of producing a disproportionate response to the problem.

¹¹ Including the Carterton hot-air balloon accident (eleven fatalities); and the Fox Glacier plane accident (nine fatalities).

Implementing any of the options will require a robust regulatory impact analysis.

58. A significant risk is that the compliance cost of more demanding regulation becomes prohibitive for smaller commercial operators, or operators in remote locations. This risk can be mitigated by ensuring the regime is appropriate for particular operators, and requirements are neither insufficient nor excessive for each operator.
59. Family members of the victims of accidents that potentially involved drug and alcohol impairment are likely to have strong views on the proposed options. Some family members of the deceased have expressed a firm belief that random testing should be mandated.
 - 59.1. These family members have not specified to what type of random testing they are referring. The Commission recommended mandatory random testing by employers in the workplace.
 - 59.2. The Ministry of Business, Innovation and Employment considered mandatory random workplace testing for the adventure tourism sector as part of the package of regulation in 2011. However, it did not recommend an option involving mandatory random testing because the regime would impose significant costs on all operators.
 - 59.3. Mandatory random workplace testing would also impose significant enforcement costs on the regulators as they would need to ensure that all operators are complying with the testing requirements. Operators may choose to include random testing in their operator drug and alcohol policies, but are not required to do so.
60. It will be costly to implement any policy option beyond Option 2 (drug and alcohol policies) in the commercial sector, and beyond Option A (status quo) in the recreational sector. There could be significant resourcing costs for third-party and enforcement testing, and there is a risk of mandating a policy response that is not practical to deliver. Practical difficulties of testing in the recreational maritime sector include:
 - 60.1. performing an impairment test on a swaying vessel
 - 60.2. requiring an enforcement agency to cover a large area containing dispersed vessels
 - 60.3. determining who the skipper is
 - 60.4. determining whether Police are entering private property to test, for example in the case of private yachts.
61. The Ministry of Transport has not estimated the likely costs of enforcement in the discussion paper, and further work will be required to estimate costs of enforcement if these are the preferred options. However, it should be noted that the current Police budget for alcohol testing for the road transport sector is over \$40 million per year.

62. There may be a public perception of delay in responding to the Commission's recommendations. This is partly mitigated by communicating that the Government has implemented regulation across the adventure tourism sector since the Commission released its Carterton report. Operators are now regulated under the following legislation where relevant.
- 62.1. Health and Safety in Employment Act 1992
 - 62.2. Civil Aviation Rule Part 115 (Adventure Aviation – Certification and Operations)
 - 62.3. Maritime Rule Part 19 (Maritime Transport Operator – Certification and Responsibilities)
 - 62.4. Maritime Rule Part 81 (Commercial Rafting Operations)
 - 62.5. Maritime Rule Part 82 (Commercial Jet Boat Operations – River).
63. The perception of delay may also be heightened when the National Pleasure Boat Safety Forum's review of the New Zealand Pleasure Boat Safety Strategy 2007 is released. Expected to be released in 2015, the review continues to support a maximum blood-alcohol level for skippers in the recreational maritime sector.
64. There is a lack of primary data on the size and extent of alcohol and drug impairment in these sectors. A two-round consultation, outlined in paragraphs 65-71, should help identify the size of the problem and effectiveness of any proposed solutions. A report the Ministry of Transport commissioned from the New Zealand Institute of Economic Research also mitigates this by extrapolating from the international figures what the possible rates of impairment in New Zealand could be.
65. It may be difficult to communicate with the recreational maritime sector due to the large numbers and diverse nature of the sector. Officials are proposing to consult through representative organisations to mitigate this.
66. These risks are best mitigated by ensuring consultation on the options is wide, informative, accessible, and inclusive of all interested parties.

I propose a consultation that has two rounds

67. The Ministry of Transport will release the draft discussion paper for public consultation for a six week period. The paper will be available on the Ministry of Transport's website, with opportunity for written and electronic submissions.
68. The consultation will be targeted at representatives from the commercial and recreational sectors.
69. The consultation will help collect data about the size of the problem, and the expected effectiveness of the proposed options. It will also gauge stakeholder appetite for different responses, and create support for and inform a preferred option(s).

70. After analysis following consultation, I will come back to this Committee with a proposal for a second round of consultation with the wider public on a preferred option(s). I expect this will be in June 2015.
71. I will then recommend a final policy response to this Committee.
72. The Ministry of Transport will work with the Commission and others to contact families of those who died as a result of the eight accidents the Commission has noted – in particular, the Fox Glacier skydiving accident and the Carterton balloon accident. The Ministry of Transport will offer to brief them on the discussion paper.
73. In July 2014, Hamilton Coroner Ryan completed the Inquiry into the deaths of victims of the Carterton balloon crash, but has yet to publish his report. Coroner Ryan is interested in progress on implementing the Commission's recommendations. The Ministry of Transport will inform the Chief Coroner and Coroner Ryan of the discussion paper and will forward copies to their offices on its release.

Financial implications

74. There are no immediate financial implications or decisions arising from the proposed consultation.
75. Police have advised the Ministry of Transport that they are not resourced within current baseline to undertake enforcement across all the transport modes. In the event that Police are granted the power to enforce alcohol testing across the modes, there will likely be financial implications for the Crown related to funding this aspect of alcohol and drug management. These implications will be reported to Cabinet with the final recommended option(s).

Human rights, gender and disability implications

76. The proposed consultation process is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender or disability implications.
77. The options included in the proposed consultation process may raise consistency issues with the Bill of Rights Act 1990. For example, Section 21 of the Bill of Rights Act affirms the right not to be subjected to unreasonable search and seizure, which includes providing a bodily specimen for testing. If a random testing regime were progressed, it could be found to be apparently inconsistent with Section 21. The consultation process will canvass human rights and Bill of Rights Act implications.

Legislative implications

78. There are no immediate legislative implications or decisions arising from the proposed consultation.
79. Depending on the final policy proposals, changes to primary legislation may be required, including to the Civil Aviation Act 1990, the Maritime Transport

Act 1994, the Railways Act 2005, the Transport Accident Investigation Commission Act 1990 and the Policing Act 2008. Changes may also be required to transport rules.

80. There may also be implications for related legislation, such as the Health and Safety in Employment (Adventure Activities) Regulations 2011, if it is decided that consistency across the adventure tourism sector, including non transport related activities, is important.

Regulatory Impact Analysis

81. Officials will develop a Regulatory Impact Statement after the consultation process has been completed, and before final recommendations on management of alcohol and drug impairment are prepared for this Committee's consideration.

Publicity

82. I will announce the release of the discussion paper. The discussion paper, and questions and answers, will be published on the Ministry of Transport's website. Information on the consultation will be emailed to a range of stakeholders and interested parties.
83. Ministry of Transport officials will organise industry-specific discussions and opportunities for engagement (such as focus groups). Officials will offer to meet with families of victims in crashes where substance impairment was identified.
84. The Ministry of Transport will implement its communications plan in consultation with my office.

Departmental consultation

85. The Treasury, the Ministry of Business, Innovation and Employment, the Civil Aviation Authority, Maritime New Zealand, the New Zealand Transport Agency, the New Zealand Police, the Ministry of Justice, and the Department of Internal Affairs were consulted on this Cabinet paper and agree with its recommendations. The Department of the Prime Minister and Cabinet has been informed.
86. The Minister of Transport agrees with the submission of the paper.

Recommendations

87. I recommend that the Committee:
 1. **note** that the Ministry of Transport will release the draft discussion paper *Clear heads: Options to reduce the risks of alcohol and drug related impairment in aviation, maritime and rail*

2. **note** that the Ministry of Transport will make any minor adjustments to the discussion paper, prior to consultation commencing at a time to be confirmed
3. **note** that work on drug impairment in aviation, maritime and rail will be completed in parallel with the Safer Journeys Action Plan 2013-15
4. **note** that the Ministry of Transport will advise the Chief Coroner and the Hamilton Coroner of the discussion paper and will forward copies to their offices on its release
5. **note** that the release of the proposed discussion paper signals the start of a discussion on alcohol and drug impairment in aviation, maritime and rail, which may lead to significant legislative change in the future
6. **note** that I will report back with further recommendations on the management of alcohol and drug impairment in the aviation, maritime and rail sectors in June 2015



Hon Craig Foss

Associate Minister of Transport

Dated: _____

Annex One – Summary of options

		Option 1	Option 2	Option 3.1	Option 3.2	Option 4.1	Option 4.2	
Commercial operators	Level of scope and regulation required							
		Status Quo	Drug and alcohol management policy (DAP)	DAP with mandatory post-occurrence testing	DAP with mandatory 3rd party post-occurrence testing	Post-occurrence testing for enforcement	Good cause to suspect testing for enforcement	
							Alcohol only	
		Option A				Option B.1	Option B.2	
Recreational	Level of scope and regulation required							
		Status Quo				Post-occurrence testing	Good cause to suspect testing	
							Alcohol only	
						Option 5		
All	Level of scope and regulation required					Post-occurrence testing for all involved in incident		

 No primary legislative change. Changes would be changes to Rules, regulation or education campaigns
 Primary legislative (Acts) change