

# The New Zealand Alcohol Interlock Program

A review of the first year as a sentencing option for high risk drink drivers



**RIDNZ**  
**KTDMA**

Researching impaired Driving in New Zealand

Report compiled for the New Zealand Automobile Association

Gerald Waters 2014

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## Preface

This report has been written by Researching Impaired Driving in New Zealand (RIDNZ) for the New Zealand Automobile Association (NZAA). It was written by Gerald Waters with review and contributions from government and non-government organisations and stakeholders. This document contains two sections: the first covering the New Zealand Alcohol Interlock Programme (NZAIIP) and details the use of the interlock sentence in its first year as a sentencing option from September 2012 to September 2013.

Section two provides more information on the Alcohol Interlock Programme (AIP) and also informs on stakeholder views and data relating to the New Zealand Alcohol Interlock Program. This report follows on from a preliminary interlock report compiled by RIDNZ in 2013<sup>1</sup>. This report was cited by the Ministry of Transport in their Regulatory Impact Statement (RIS) on lowering the legal alcohol limits for adult drivers. The same RIS also announced a review of the NZAIIP in 2014.

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<sup>1</sup> Waters, 2013.

## Glossary

|             |   |
|-------------|---|
| AIL.....    | Alcohol Interlock Licence                   |
| AIP .....   | Alcohol interlock Programme                 |
| AIS .....   | Alcohol Interlock Scheme                    |
| AOD .....   | Alcohol and Other Drug                      |
| BAC .....   | Blood/Breath Alcohol Content                |
| CAS .....   | Crash Analysis System                       |
| CMS .....   | Case Management System                      |
| DWI .....   | Driving While Impaired                      |
| HLFTD ..... | High Level First Time Detected              |
| MoT .....   | Ministry of Transport                       |
| NZAIP.....  | New Zealand Alcohol Interlock Programme     |
| NZTA.....   | New Zealand Transport Agency                |
| RIDNZ ..... | Researching Impaired Driving in New Zealand |
| RIS.....    | Regulatory Impact Statement                 |
| ZAL.....    | Zero Alcohol Licence                        |

## Executive Summary

- From September 2012- September 2013, 23362 drivers were convicted of drink/drug driving. Of these convictions 11692 offenders met the criteria for the use of the New Zealand Alcohol Interlock Programme as a sentencing option.
- 6639 of the individuals convicted were repeat offenders and 5053 were High Level First time Detected offenders.
- 228 offenders received the Alcohol Interlock Sentence in addition to other penalties. That is 2% of those offenders eligible for the interlock programme. The rest received only penalties used previously for drink driving offences.
- Since September 2012 to March 2014, 198 offenders have been issued with an Alcohol Interlock Licence. As at March 2014 1 offender was convicted of an alcohol/drug driving offence since their Alcohol Interlock Licence was issued.
- The New Zealand Interlock Programme has incorporated some features that have been recognised as best practice. The New Zealand Transport Agency report no problems with the administration of the programme.
- Participants of the interlock program report that the device stops them from drink driving and impacts on their drinking habits.
- The costs involved with the interlock sentence appear to limit their use to those that can afford it.
- Interlock providers SmartStart report that they had installed 126 interlocks as of March 2014, With 5 participants successfully exiting the programme. SmartStart report that as of March 2014 their devices had stopped 599 attempts to drink and drive, Draeger Safety Pacific report stopping 390 attempts of drink driving and had 55 interlocks fitted by the same date, and had 3 participants successfully exit the programme.
- The interlock sentence has been involved in High Court Appeals. Stakeholders report multiple problems with the interlock sentencing option including:
  - Unclear or conflicting legislation
  - The ongoing use of existing penalties
  - The use of the limited licence
  - The costs to participants
  - The perception that it is a soft option
- Between 10 September 2012-26 May 2014, 24.5% of the drink drivers, being granted a limited licence, were twice the legal limit.
- The introduction of a mandatory sentence of AIP for this cohort of drivers must be seriously considered to bring New Zealand into line with other international and Australian jurisdictions.

## Introduction

Despite sanction based initiatives including licence disqualification, community sentences, fines and imprisonment, rates of repeat and high level drink driving convictions have been increasing every year in New Zealand.<sup>2</sup> Due to the evidence of the harm these drivers cause, the New Zealand Government, in its Safer Journeys initiative, identified them as high risk and a high priority area of concern. In 2011, to tackle this problem and based on the evidence of alcohol ignition interlocks effectiveness to do so, Parliament passed legislation allowing for the introduction of an Alcohol Interlock Program (AIP) in New Zealand for repeat drink drivers and some first time drink drivers.

An alcohol interlock is a device similar to a breathalyser that is hard wired into the ignition of a vehicle. The vehicle will not start until a satisfactory breath sample, free of alcohol, has been given. The driver must also perform random breath tests during their journey.

Introducing alcohol interlocks and zero alcohol licences to New Zealand is an initiative of the *Safer Journeys* road safety strategy and aims to reduce the impact of drink driving on our roads. In New Zealand, alcohol interlocks are a sentencing option for judges for repeat drink-drivers<sup>3</sup> or high level first-time drink-drivers.<sup>4</sup>

The Regulatory Impact Statement (RIS) 'Completing the actions to address alcohol-impaired driving' identified that the potential road safety benefits from the use of alcohol interlocks to repeat offenders and high level first-time drink-drivers would be a reduction of one to two lives and 25 injuries every year from 2013/14. In terms of the social cost of road injuries, the reduction would be \$10 million each year. Furthermore, the potential reduction in the social cost of harmful alcohol use will be \$2.9 million each year from 2013/14.<sup>5</sup>

International experience has found the alcohol ignition interlock to be highly effective in preventing instances of drink driving and prevention of harm from such behaviour.<sup>6</sup> Due to the success of these devices international practice is moving towards their use for all detected drink drivers (See page 23).

In New Zealand the interlock is used as a sentencing option for judges and the AIP is administered by the New Zealand Transport Agency.

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<sup>2</sup> Ibid 1.

<sup>3</sup> Defined as 2 or more convictions for drink-driving in a five year period.

<sup>4</sup> Defined as over 800 micrograms of alcohol per litre of breath, or over 160 milligrams of alcohol per 100 millilitres of blood or twice the current legal limit. For drivers 20 years old and over, the drink-driving limits are 400 micrograms of alcohol per litre of breath or 80 milligrams of alcohol per 100 millilitres of blood. There is a zero alcohol limit for drivers under 20.

<sup>5</sup> This cost and benefits table is for repeat offenders only (based on a 10-year definition). The RIS reported that there was not enough detail in the datasets available to identify high BAC level first time offenders.

<sup>6</sup> Waters, 2012.

## Drink Driver Convictions 2009-2012

As can be seen from Table 1, since 2009 the number of total convictions of drink drivers has fallen steadily. The New Zealand Police are performing the same amount of breath tests yearly<sup>7</sup> and conviction rates remain the same, usually a 95% conviction rate.<sup>8</sup> There are multiple factors that could be involved in the decrease in detections including economic factors such as ability to afford to drive or drink and also the introduction of other road safety initiatives.<sup>9</sup>

**Table 1: Total convicted drink/drug drivers 2009-2012<sup>10</sup>**

|  | 2009  | 2010  | 2011  | 2012  |
|--|-------|-------|-------|-------|
| <b>Total Number of Drink Drivers Convictions</b> | 31058 | 28857 | 27046 | 23362 |

While the total number of convictions is falling the number of convictions of repeat offenders is on the increase and every year this cohort of offenders makes up for a larger percentage of all detections. In 2012, 51% of all detected drink drivers had a previous drink driving conviction.<sup>11</sup>

First time detected drivers who were twice the legal limit on average make up over half those drivers who were detected twice the legal limit.<sup>12</sup> This paper will refer to this cohort of offenders as High Level First Time Detected (HLFTD).

As reported in 2013<sup>13</sup> the average number of those repeat offenders who would be eligible for interlock sentence for the years 2006 - 2010 is 6632. The average number of those high level offenders eligible for interlock sentence for the years 2009 – 2012 is 5388. These figures combined give us a suggested average yearly figure of 12020 offenders eligible for an interlock sentence.

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<sup>7</sup> Office of the Auditor General, 2013. page26.

<sup>8</sup> Ibid 1.

<sup>9</sup> Ibid 7, page 28.

<sup>10</sup> Data extracted from the Ministry of Justice's Case Management System (CMS) and supplied by the Ministry of Justice.

<sup>11</sup> Ibid 1.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

## Section 1

### First Year of AIP as a Sentencing Option

## Repeat and High level drink drivers Sept 2012-Sept 2013

The following data was extracted from the Ministry of Justice's Case Management System (CMS).

The data is derived from an analysis of various court statistics relating to people charged with a drink driving offence, number (and percentage) of cases, convictions, custodial, new 2007 sentences, and community sentences, and number of convictions twice the legal limit, by number of previous drink driving convictions (over the last 5 years), and court cluster: Done for the period 10 September 2012 to 9 September 2013. Used to determine how many offenders in the period would be eligible for an alcohol interlock, and how many actually had an interlock sentence.

The data includes information on all cases which had an imprisonable or non-imprisonable drink driving charge, irrespective of whether it was the lead offence or not, and includes those with a drink or drug driving charge (see appendix II for a list of the offence codes).

The data in this section refers to individuals convicted and not cases.

From September 2012 – September 2013 there were 22,637 convictions for drink driving. Over half of these convictions were repeat and high level offenders and these provide the number of offenders eligible for the New Zealand Alcohol Interlock Program.

**Table 2: Total convicted drink/drug drivers Sept 2012-Sept 2013**

| <b>Total Number of Driver Convictions</b> | <b>Total Number of Eligible Repeat Convictions</b> | <b>Total Number of Eligible HLFTD Convictions</b> | <b>Total Number Eligible for interlock</b> |
|---|--|---|--|
| 22637                                     | 6639   | 5053  | 11692                                      |

As reported in 2013<sup>14</sup> the number of offenders eligible for the AIP as a sentencing option nears 12000.

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<sup>14</sup> Ibid 1.

Of the 11692 offenders eligible for the AIP in its first year as a sentencing option, 228 offenders received the AIP sentence.<sup>15</sup> This figure equates to 1.95% of all eligible offenders. The majority of those repeat and HLFTD offenders received custodial, home detention, other community sentences<sup>16</sup> or fines along with licence sanctions.<sup>17</sup> Licence sanctions and fines also make up the missing percentages in table 3.

The sentences can be broken down by number of previous convictions and by percentage of sentences and those twice the legal limit and are as follows:

**Table 3: Sentences of those eligible for interlock by percentage**

|                | Twice the legal limit | Custodial Sentences | Home detention | Other community sentences | AIP Sentences |
|----------------|-----------------------|---------------------|----------------|---------------------------|---------------|
| <b>0 HLFTD</b> | 32.1                  | 1.7                 | 1.1            | 24.0                      | 0.7           |
| <b>1 prev</b>  | 33.9                  | 7.3                 | 5.4            | 60.1                      | 2.6           |
| <b>2 prev</b>  | 33.8                  | 15.7                | 12.2           | 65.0                      | 3.6           |
| <b>3+</b>      | 34.7                  | 28.6                | 16.5           | 48.4                      | 4.1           |
| <b>Total</b>   | 32.6                  | 4.1                 | 2.9            | 35.0                      | 2.0           |

The percentages in column 2 of table 3 also include those offenders under the age of 20 whose alcohol allowances are lower than adult drivers.<sup>18</sup> When this cohort of drivers are removed the twice the legal limit or more percentages are as follows:

**Table 4: Percentages of adult<sup>19</sup> offenders twice the legal limit and over by previous offences**

|           |      |
|-----------|------|
| <b>0</b>  | 25.3 |
| <b>1</b>  | 31.2 |
| <b>2</b>  | 31.7 |
| <b>3+</b> | 30.9 |

<sup>15</sup> 7 of the 228 people who received an interlock sentence (3%) were not regarded as being eligible for an interlock based on their recorded blood/breath alcohol reading - i.e. they all had no previous drink driving convictions but had a recorded blood/breath alcohol reading < 2 times the legal limit. One of those 7 people had a reading which was not stated. If indeed all 7 were at least twice the legal limit, and qualified correctly for an alcohol interlock, this suggests that the recording of blood/breath alcohol values is questionable, therefore, the numbers of offenders provided here which are regarded as being eligible for an alcohol interlock are estimates only.

<sup>16</sup> Convictions resulting in either community detention, intensive supervision, community work, or supervision.

<sup>17</sup> Many offenders receive 2 or more sentences – e.g. community work and a driving disqualification.

<sup>18</sup> Young drivers with a BAC between zero and 0.03 receive an infringement notice. This will be an infringement fee of \$200 and 50 driver demerit points. A driver licence will be suspended for three months when 100 or more driver demerit points are incurred within a two-year period.

<sup>19</sup> 20 yrs. of age and over.

The following table shows how the AIP was used by amount of previous offending for drink drivers between September 2012 – September 2013.

**Table 5: Number of offenders receiving AIP sentence by previous offending.**

| Number of Previous offences          | 0/HLFTD | 1   | 2  | 3+ |
|--------------------------------------|---------|-----|----|----|
| Number of Offenders sentenced to AIP | 36      | 133 | 49 | 10 |

The following graph charts the use of the AIP sentence by month in its first year as a sentencing option:

**Fig 1: Drink drivers AIP sentence by month Sept 2012-Sept 2013**



Source: NZTA

## AIP Sentences by Court District

The following are the number of offenders eligible for the AIP and the actual number sentenced to The AIP by court district.

**Table 6: AIP eligible and AIP sentences by court district Sept 2012-Sept 2013**

| District       | Offenders eligible for AIP | Number sentenced to AIP | Percentage  |
|----------------|----------------------------|-------------------------|-------------|
| Whangarei      | 579                        | 2                       | 0.3         |
| Auckland       | 3977                       | 156                     | 3.9         |
| Hamilton       | 842                        | 3                       | 0.4         |
| Tauranga       | 687                        | 8                       | 1.2         |
| Rotorua        | 480                        | 0                       | 0           |
| Gisborne       | 316                        | 0                       | 0           |
| Napier         | 550                        | 4                       | 0.7         |
| New Plymouth   | 310                        | 3                       | 1.0         |
| Wanganui       | 245                        | 0                       | 0           |
| Palmerston Nth | 267                        | 1                       | 0.4         |
| Wellington     | 1071                       | 14                      | 1.3         |
| Nelson         | 318                        | 0                       | 0           |
| Chch/Westland  | 1272                       | 32                      | 2.5         |
| Timaru         | 168                        | 1                       | 0.6         |
| Dunedin        | 279                        | 2                       | 0.7         |
| Southland      | 331                        | 2                       | 0.6         |
| <b>Total</b>   | <b>11692</b>               | <b>228</b>              | <b>2.0%</b> |

In 2010 the Ministry of Transport suggested that:

*'There will be an increasing participation rate for interlocks, with 20 percent participation in the first year, 40 percent in the second year, and 60 percent in subsequent years.'*<sup>20</sup>

If the participation percentages were based on those eligible for interlock then the reality of the 2 percent participation rate falls far short of the suggested percentages.

<sup>20</sup> Ministry of Transport, Regulatory Impact Statement, 2010.

## Section 2

### The New Zealand Alcohol Interlock Program

## **The Alcohol Interlock Programme**

In New Zealand, the alcohol interlock programme is judicial. Participants in a judicial programme are given a sentence by a Court. The programme itself is administered by the New Zealand Transport Agency. After successful completion of the AIP the participant will apply to the New Zealand Transport Agency to have their alcohol interlock disqualification lifted, in accordance with the Land Transport Act 1998.

Licence holders who have been given an alcohol interlock sentence will be required to take part in the alcohol interlock programme if they wish to drive. This means they will be required to have an alcohol interlock device, similar to a breathalyser, fitted into their vehicle's starting system.

The programme aims to:

- change the behaviour of participants by breaking the pattern of drinking and then driving
- protect other road users from the dangers of drink-driving.

The alcohol interlock programme is a combination of two consecutive licensing requirements. The programme is made up of six stages designed to rehabilitate a drink-driver by breaking drink-driving behaviour and restoring eligibility to hold a standard driver licence.

### **Stage 1: Three month disqualification**

The first stage is a mandatory three month disqualification period which participants are required to complete before applying for an alcohol interlock licence (AIL).

### **Stage 2: Alcohol interlock licence**

Once participants have completed the three month disqualification, they can apply for their alcohol interlock licence at a licensing agent. Participants will need to:

- complete a form
- provide acceptable evidence of identity and evidence of address
- prove their eyesight meets the required standard
- have their image and signature captured
- pay the regulated Alcohol interlock licence application fee of \$200 incl GST.

If they are required to re-sit tests to reinstate their licence due to the length of prior disqualification/s, they will also need to pass the relevant tests and pay the associated test fees before their alcohol interlock licence can be issued.

As a requirement of the programme, participants must hold their alcohol interlock licence for a minimum period of 12 months. Any period where their licence is not current (eg suspended or disqualified) does not count toward the 12 month minimum period.

While holding an alcohol interlock licence, participants are restricted to undertake a reduced range of driver licence transactions (eg replace, renew, or reinstate their licence should a further suspension or disqualification be imposed). However they will not be eligible to apply for a limited licence or get a new class or endorsement.

The alcohol interlock licence will be pink and will identify participants as a driver who is only allowed to drive a vehicle fitted with an alcohol interlock device.

### **Stage 3: The alcohol interlock device**

Once participants have been issued with their alcohol interlock licence, they can select one of two New Zealand Transport Agency (NZTA) approved device providers. Each provider has a network of installers around the country that participants can choose from, based on their location and needs.

Once participants have selected their provider, they will put them in touch with an installer so they can visit them to have a device fitted to the vehicle(s) they wish to drive. Participants are responsible for the cost of fitting the device and ongoing lease and maintenance costs. Arrangements for payment of these costs are to be made directly with the installer.

During the alcohol interlock licence stage of the programme, participants will need to make regular visits to their installer to download the data from their interlock device. Their interlock installer will inform participants about this step of the programme.

### **Stage 4: Exiting the alcohol interlock licence and device stage**

Participants can apply to the NZTA to exit the mandatory alcohol interlock licence stage of the programme when they:

- have held their alcohol interlock licence for at least 12 months, and either:
- have no recorded alcohol interlock violations during the previous six months; or
- have no recorded alcohol interlock violations during the previous three months and have completed a successful assessment at a Ministry of Health approved drug and alcohol assessment centre.

#### **Violations are:**

##### **Tampering with the alcohol interlock.**

- It is a violation if the alcohol interlock device is tampered with in any way.

##### **Failing a breath test due to excess breath alcohol.**

- It is a violation if participants fail any initial test or rolling retest administered by the device due to an excess breath alcohol level.

##### **Failing to undertake two or more retests.**

- It is a violation if participants fail to do two or more rolling retests.

**Starting the vehicle by circumventing or bypassing the alcohol interlock.**

- It is a violation if the vehicle is started without an initial breath test (ie by pushing or hot wiring the vehicle).

**Two or more failures to present the vehicle for scheduled inspection/servicing.**

- It is a violation if participants do not present the vehicle for two or more scheduled inspections/services.<sup>21</sup>

**Uptake**

Since the AIP sentence has been available up until the 23<sup>rd</sup> of March, 362 AIP sentences have been imposed. As of the 23 March 2014, 198 offenders have been issued with an Alcohol Interlock Device licence.<sup>22</sup>

Of the 198 offenders, 1 offender was convicted of an alcohol/drug related offence (an offence where the precedent code begins with 'A')<sup>23</sup> since their Alcohol Interlock Device licence was issued.<sup>24</sup>

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<sup>21</sup> Reproduced with permission of the New Zealand Transport Agency.

<sup>22</sup> Data supplied New Zealand Transport Agency.

<sup>23</sup> For a list of these offences see Appendix II.

<sup>24</sup> Ibid 22.

# Best Recognised International Practice of Interlock Programmes

Throughout Europe, the United States of America, Canada and Australia alcohol interlock programmes (AIP) or alcohol interlock schemes (AIS) for drink drivers are approached in a multitude of formats. Some are judicial, others administered by licensing agencies. Some programmes are mandatory others voluntary. Some programmes are solely for repeat, high risk offenders and others for all detected offenders, there are also a myriad of ways in which all these components can play a lesser or greater part of each programme.

## **Best practice components of an effective AIS/AIP**

In 2002<sup>25</sup> internationally recognized experts and stakeholders held workshops to try to compile the key elements involved in best practice. The best practice components identified in the workshops included:

- a perspective that considers interlock programs as more than the device itself but rather as a coordinated set of activities designed to ensure that program participants do not drive after drinking;
- strong, clear legislation;
- an interlock device that has been certified to meet or exceed established performance specifications;
- a reliable service provider that understands, and is committed to dealing with, the DWI offender population;
- mandatory participation of all convicted DWI offenders with the option of voluntary early entry into the program by low risk offenders;
- authority for the program to reside within the driver licensing administration;
- regular monitoring of offenders, including a review of interlock data records;
- duration of program participation linked to the success of the individual in the program; and,
- integration of the interlock program with other DWI sanctions and programs, particularly rehabilitation.

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<sup>25</sup> Beirness & Robertson, 2002

A more recent paper on best practice for AIS/AIP <sup>26</sup> reported further key elements these included:

- The AIS (including the technical qualities of the interlock devices employed) should be compliant with an agreed set of operating standards.
- Increased AIS participation rates should be the aim so that overall drink drive recidivism rates are improved and costs of alcohol related crashes reduced; increased participation can come from including ongoing alcohol-dependent drivers who show they can comply with an AIS.
- Offender admittance to an AIS should occur as soon as possible after conviction
- First offenders should be admissible to an AIS even for low to moderate BACs.
- AIS participation should not be adversely affected by user costs; although any waiving or reductions in fines should not be allowed until the offender's AIS term is complete.
- AIS administration should not be too complex for participants and voluntary participants should have an opportunity to trial the device.
- Interlock terms should be tailored to an offender's record of compliance with AIS conditions and related performance-based criteria.
- All AIS participants should be notified of every violation recorded by the interlock device throughout the term of the program.
- The full licence suspension term should not be more attractive than the full term assigned on the AIS.
- Treatment, holistic monitoring, counselling and other forms of support should, as far as possible, be integrated with the AIS.
- Participant transferability between interstate AIS should be facilitated, along with greater communication between AIS jurisdictions, licensing authorities and judicial systems.
- Remote area access to interlock servicing and advice should be facilitated through the use of mobile units to allay rural area concerns.
- It should be ensured that interlock devices are almost impossible to circumvent (aside from driving a non-interlock vehicle).
- Exchange of monitored data and information about interlock research and AIS evaluations should occur between all agencies involved in administering the AIS.
- Sufficient staff should be allocated to administering the AIS, especially for usage monitoring of data in terms of both monitoring effectiveness for individual offenders as well as in terms of the AIS as a whole.

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<sup>26</sup> Bailey et al 2013

- There should be adequate police enforcement of drink driving laws, not only to boost AIS participation but to also deter driving while suspended or disqualified.

The New Zealand AIP has incorporated some of the features recognized in international best practice and reflects a lot of these similarities with contemporary Australian and international AIPs.<sup>27</sup>

**Table 7: New Zealand Interlock Programme**

| <b>New Zealand interlock Programme</b> |  |
|--|--|
| <b>Legal BAC limit (open licence)</b>  | < 0.08 BAC<br>0.00 BAC aged <20y   |
| <b>Existing interlock policy</b>       | Yes (commenced Sept 2012)  |
| <b>Interlock relevant offence</b>      | Court discretion for recidivist and $\geq 0.16$ BAC (high BAC offence).  |
| <b>Interlock installation</b>          | Mandatory  |
| <b>Interlock program duration</b>      | Minimum 12 months.   |
| <b>Interlock removal</b>               | End of program, subject to no positive interlock readings during the last six months or three months with a successful drugs and alcohol assessment. |
| <b>Interlock availability</b>          | Country wide   |
| <b>Interlock cost</b>                  | Paid by participant \$1,980 to \$2,280   |
| <b>Interlock management</b>            | Administration, NZTA   |

While the NZAIP refers to the interlock programme duration as being a minimum of 12 months this in fact refers to the minimum amount of time that is required for a participant to hold an ALL. There is no enforcement or checking to confirm that participants who have received an interlock licence have had the interlock device fitted. There are definite links between drink driving and driving while disqualified<sup>28</sup> and this may be a concern to those imposing the interlock sentence.<sup>29</sup>

<sup>27</sup> Tables 7, 8&9 reproduced with kind permission of the Centre for Accident Research and Road Safety Queensland.

<sup>28</sup> Sentence Advisory Council, 2009.

<sup>29</sup> See page 42 - 'No Requirement to fit an interlock device'.

**Table 8: Australian interlock programmes<sup>30</sup>**

| Matrix outlining Australian jurisdiction interlock Programmes |   |  |   |   |  |   |  |  |
|---|---|--|---|---|--|---|--|--|
|   | QLD   | NSW  | VIC   | WA  | NT   | TAS   | SA   | ACT  |
| <b>Legal BAC limit (open licence)</b>                         | < 0.05 BAC  | < 0.05 BAC   | < 0.05 BAC  | < 0.05 BAC  | < 0.05 BAC   | < 0.05 BAC  | < 0.05 BAC   | < 0.05 BAC   |
| <b>Existing interlock program</b>                             | Yes (commenced August 2010)   | Yes (commenced September 2003)   | Yes (commenced May 2002)  | No (program being developed)  | Yes (commenced April 2009)   | Yes (commenced July 2013)   | Yes (commenced May 2009)   | Yes (Legislation introduced in June 2013 for commencement on 17 June 2014)   |
| <b>Interlock relevant offence/s</b>                           | First offence ≥ 0.15 BAC. Fail to provide sample. 2+ BAC offences in 5y. Dangerous driving while under the influence of liquor. | Any offence ≥ 0.15 BAC. ≥ 0.08 to < 0.15 BAC with and without prior conviction. ≥ 0.05 to < 0.08 BAC with a previous conviction within 5y. Fail to provide sample. | Any offence ≥ 0.15 BAC. 2+ BAC offences in 5y. Fail to provide sample. ≥ 0.07 BAC if < 26y old. | Any offence ≥ 0.15 BAC. Recidivist.   | First offence ≥ 0.15 BAC. Fail to provide sample. 2+ BAC offences in 5y. Any drink driving offence at court discretion. Positive BAC when subject to zero BAC licence. | Any offence ≥ 0.15 BAC. 2+ BAC offences in 5y. Fail to provide sample. Any drink driving offence at court discretion. | Any offence ≥ 0.15 BAC. 2 + BAC offences in 5y. Fail to provide sample. Any drink driving offence at court discretion. | Any offence ≥ 0.15 BAC. 3 + BAC offences in 5y. Voluntary interlock can be sought by any other person serving a drink driver licence disqualification. |
| <b>Interlock installation</b>                                 | Voluntary, but cannot drive for 2 years unless interlock is fitted  | Voluntary, but cannot drive for court determined period unless interlock is fitted   | Mandatory   | Mandatory   | Voluntary, but cannot drive for duration of interlock period unless interlock is fitted  | Mandatory   | Mandatory  | Voluntary, but cannot drive for duration of interlock period unless interlock is fitted  |
| <b>Interlock program duration</b>                             | 12 months   | Court determined minimum stipulated by offence (range 12 – 48 months).   | Court determined.   | Minimum 6 months  | Court determined   | 15 months minimum with a 9 month learning period and 6 month demonstration period.                                    | Up to 3y   | Minimum 6 months. At least 3 months 'clean driving'.   |
| <b>Interlock removal</b>                                      | End of program (interlock offence may result in 3 month extension)  | End of program.  | End of program, subject to court hearing, including interlock report and DEA assessment.        | End of program, subject to no positive interlock readings during the last six months. | At any time. If interlock is removed before the end of the program the remainder of the program must be served as a disqualification.                                  | End of program, subject to no positive interlock readings during the last six months.                                 | End of program, subject to compliance and no more than 2 positive interlock readings during last three months.         | End of program, subject to compliance and no more than 2 positive interlock readings during the last three months.                                     |
| <b>Interlock availability</b>                                 | State wide within 150km of provider   | State wide   | State wide  | Within 150km of interlock provider  | Territory wide   | State wide  | State wide   | Territory wide   |
| <b>Interlock cost</b>   | \$2,000 paid by participant   | \$1,800 per year paid by participant   | \$1,360+ per year paid by participant   | Paid by participant   | Paid by participant  | \$2,980 to complete the program paid by participant   | \$2,200 per year paid by participant   | Paid by participant  |
| <b>Interlock management</b>                                   | Administrative (relicensing)  | Court  | Hybrid  | Administrative (court issues sentence)  | Administrative (court issues sentence)   | Administrative  | Administrative   | Administrative   |

<sup>30</sup> This Matrix with the inclusion of the NZAIP can be found in Appendix III

**Table 9: International interlock programmes**

| Matrix outlining International interlock Programmes |  |               |   |  |   |  |
|---|--|---------------|---|--|---|--|
|   | Sweden   | Great Britain | USA   | Florida  | Canada  | Ontario  |
| <b>Legal BAC limit (open licence)</b>               | < 0.02 BAC   | < 0.08 BAC    | < 0.08 BAC  | < 0.08 BAC<br>< 0.02 BAC <21y  | < 0.08 BAC<br>≥ 0.04/0.05 –<br><0.08 warning in<br>some<br>jurisdictions                                  | < 0.08 BAC<br>≥ 0.05 – < 0.08 BAC warning range  |
| <b>Existing interlock policy</b>                    | Yes<br>(commenced<br>Jan 2012)   | No            | Yes in 50<br>States   | Yes (commenced<br>2002)  | Yes in most<br>jurisdictions  | Yes (commenced Aug. 2010)  |
| <b>Interlock relevant offence</b>                   | Any Driving<br>while<br>Intoxicated<br>(DWI) offence.  | NA            | Varies<br>between<br>states.<br>Often ≥ 0.15<br>BAC and<br>recidivists.                             | Any Driving<br>Under the<br>Influence (DUI)<br>conviction.   | ≥ 0.08 BAC<br>offence with a<br>disqualification.<br>Repeat warning<br>offences in some<br>jurisdictions. | ≥ 0.08 BAC offence.<br>Failure to provide sample.<br>Warning BAC 3 times in 5y.  |
| <b>Interlock installation</b>                       | Voluntarily (no<br>participation =<br>no licence)  | NA            | Varies<br>between states  | Mandatory  | Varies – often<br>mandatory   | Voluntary but cannot drive for duration<br>of interlock period unless interlock is<br>fitted   |
| <b>Interlock program duration</b>                   | Standard: 1y<br>High risk (0.10<br>BAC) and<br>recidivist): 2y   | NA            | Varies<br>between states<br>from 3 months<br>to life  | 1 <sup>st</sup> offence: Court<br>discretion,<br>>0.15% BAC<br>minimum<br>6months.<br>2 <sup>nd</sup> offence:<br>minimum 1y,<br>>0.15% BAC<br>minimum 2y.<br>3 <sup>rd</sup> offence:<br>minimum 2y.<br>4 <sup>th</sup> offence:<br>minimum 5y.<br>Term extended<br>for violations. | Varies between<br>jurisdictions   | 1 <sup>st</sup> offence minimum 1y.<br>2 <sup>nd</sup> offence minimum 3y.<br>3 <sup>rd</sup> offence if court allows a return to<br>driving, interlock for life.<br>3 warnings in 5y minimum 60 days. |
| <b>Interlock removal</b>                            | End of program<br>subject to<br>medical check<br>to prove<br>abstinence<br>(includes blood<br>and urine<br>tests). |               |   | End of program.<br>Interlock program<br>extended by 30<br>days for every<br>positive interlock<br>reading beyond<br>the first three.   |   | End of program subject to successful<br>application to the Ministry of<br>Transportation. Program can be<br>extended due to violations. For 3 <sup>rd</sup><br>offence there is no end of program.     |
| <b>Interlock availability</b>                       | Country wide   | NA            | Country wide –<br>see appendix<br>C   | State wide   | Country wide<br>except Nunavut<br>and Northwest<br>Territories  | Province wide  |
| <b>Interlock cost (converted to<br/>AUS)</b>        | 1y: approx.<br>\$3,161 - \$4,072<br>2y: approx.<br>\$4,222 - \$6,333<br>(cost includes<br>medical<br>supervision)  | NA            | Varies<br>between<br>programs.<br>Approx. \$100 -<br>\$200 for<br>installation and<br>\$70 a month. | Paid by<br>participant<br>Installation<br>approx. \$70<br>Monthly fee<br>approx. \$76  | Paid by<br>participant<br>average \$1450  | Approx. \$1450   |
| <b>Interlock management</b>                         | Administration   | NA            | Varies<br>between<br>states, some<br>hybrids  | both court and<br>administration   | Administration  | Administration   |

Regarding the use of best practice It was reported in 2010 that:

*'International practice is now moving away from restricting use of interlocks to repeat offenders. The benefits of interlock use have been well researched and documented, and there is a proven reduction in reoffending after using an interlock. To get the maximum benefit from an interlock programme, first time offenders should be included as they make up a significant percentage of the overall drink driving population. The use of an interlock after the first conviction maximizes the chance of changing the offender's attitude towards drink driving, and reduces the risk of the offender re-entering the criminal justice system.'*<sup>31</sup>

In line with this recognised best practice it was recently reported in Australia that:

*'Minister for Roads Terry Mulder said the current alcohol interlock program is being extended from October 2014 to include all first offenders with a BAC of 0.07 or more, first offenders with a BAC under 0.07 whose licences are cancelled, and all probationary, learner and repeat offenders.*

*"As an added security measure, the Coalition Government is requiring camera-activated ignition interlock devices to be used by offenders, to help identify who has provided the breath sample," Mr Mulder said.*

*"Interlocks stop vehicles from being started if the driver has been drinking. Essentially, this technology helps people separate their drinking from their driving.*

*"Alcohol interlocks are proven to reduce repeat drink driving by up to 64 per cent while they are fitted. This program has already prevented people affected by alcohol from driving their vehicles more than 250,000 times.*

*"Technological advances mean that in the long-term alcohol interlocks are likely to be a standard feature of all new vehicles in Australia but, in the meantime, Victoria is leading the way in taking action to reduce the menace caused by drink driving offenders."*

*Mr Mulder said drink-drivers are responsible for 25 to 30 per cent of deaths and 11 per cent of serious injuries on our roads, while repeat drink-drivers make up 20 per cent. Thirty per cent of drink-drivers involved in fatal crashes are repeat offenders.*

*"Now is the time to take strong prevention measures to further combat drink driving which remains an unacceptably high cause of road trauma. By expanding the alcohol interlock program, we aim to reduce repeat offending," Mr Mulder said.*

*"Repeat offending levels are similar for drink drivers at both low and high BAC readings. This is why the Coalition Government's Road Safety Action Plan is taking a tougher stance on these high risk road users.*

*"Under the changes, it is expected that at least 10,000 drink drivers a year, up from 5,400 per year, will be fitting their vehicles with interlocks before they can drive on our roads again.*

*"Victoria is an international leader in road safety. We have taken great strides in reducing deaths from 1000 per year in the 1970s to less than 250 now but more can, and is, being done."<sup>32</sup>*

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<sup>31</sup> Ibid 20.

<sup>32</sup> The Hon Terry Mulder MP, Minister for public Transport, Minister for roads. Australia ,Media release 27<sup>th</sup> May 2014.

# Alcohol Interlock Programme Participants

To gauge the views of the participants of the NZAIP a questionnaire was created to gather information on their experiences and expectations of the AIP. The questionnaire consisted of 21 questions relating to the AIP and also the opportunity to add comment to each question.

## Methodology

The questionnaire was adapted from an earlier work and permission given to RIDNZ to use for the NZAIP participants. The providers of interlock, SmartStart, sent out the questionnaire as an editable form to all the participants on their database. Each questionnaire was numbered and sent to RIDNZ with no identifying personal information therefore ensuring anonymity. The returned emails and forms were securely stored and can verify the authenticity of the respondents' information.

12 Questionnaires were completed and at the time of questionnaire posting there were around 180 participants on the NZAIP. This equates to around a 6% response rate of all interlock participants.

## **INTERLOCK EXPERIENCES**

11 participants were confident that they had successfully operated the interlock and 1 participant strongly disagreed that they were able to do so. 1 participant reported that:

*'Cigarettes screwed me up, smoke automatically and don't think and just blow into the interlock, hard to get used to.'*

4 participants reported that using an interlock while they drove their car had become a hassle for them and commented that:

*'A little bit of a hassle but keeps me on the road so can't complain.'*

*'The rolling checks can sometimes be quite frequent and a bit distracting. I continue however to appreciate being able to drive.'*

*'The random testing while driving is dangerous and not necessary.'*

11 of the participants strongly agreed that the interlock ensures drivers do not drink before they operate a vehicle:

*'Great device has helped me make good decisions when it comes to having a couple of drinks.'*

*'Much more thoughtful about what I am doing before I drive, more forward planning occurs.'*

Regarding how having an interlock had affected the way they drove their car. The participants reported that they had done the usual sort of driving:

- Work
- Shopping
- School
- General use

5 participants reported that nobody but them had used the car while 2 reported that other drivers had used the interlock fitted vehicle.

4 participants had blown into the device just to see what reading they would blow without intending to drive and reported that:

*'I was curious.'*

*'In early days when I was trying to figure out readings from night before.'*

*'In the beginning, curiosity mainly.'*

*'I had to take a taxi home and recover the car the next day from office even after one glass of wine.'*

7 participants reported that they had registered breath violations. They reported that:

*'Very minor ones in the first couple of months which haven't shown up on the report. The day after having a couple of drinks.'*

*'warnings - but the car still started for me and then it proceed to tell me 5mins later I had violated - this was very frustrating and frankly I think it's a way to procure more \$\$ - warn should mean you CANNOT start your car.'*

*'No early services but minor lockouts for a short time.'*

*'From eating food, vinaigrettes in summer, and Sushi, kids sport drinks, L&P Sour also blew a reading.'*

3 participants agreed and 8 participants strongly agreed that having an interlock had affected their general drinking behaviours:

*'Absolutely. Driving to me is a pleasure, and recreation, so I drive quite a lot. If I drive anywhere now I just don't drink, not even one.'*

*'Made me more aware of morning after.'*

8 participants strongly agreed and 3 agreed that having an interlock had affected their drink driving behaviour.

7 participants agreed strongly and 4 agreed that they believed they had benefited from having an interlock installed in their car:

*'I think the issue is knowing when you may be over, often there is only a glass or two in it. Not drinking at all when driving removes the doubt and risk.'*

*'3 month ban is overload when you have to have and pay for this device for one year.'*

*'I think that a lot of people would be surprised how much alcohol would be in their system in the morning, even 10-12 hours after drinking.'*

*'I think they are great safety feature, perhaps they should also be put into young drivers cars too.'*

6 strongly and 6 agreed that they thought there was a need to install interlocks to vehicles:

*'Would be a great idea would definitely stop a lot of accidents and make people think about how many drinks they are having as it's not just that night they can't drive the car it's the next day too.'*

*'Lowering the legal alcohol level to zero generally would be a better approach due to the varying levels of effect even a few glasses can have on some people. Not sure all cars need them, they are expensive to have, and as an option to driver disqualification for SOME drivers is where the benefit lies I think.'*

*'I think they should be on every car as it would stop drink driving all together.'*

6 strongly and 6 agreed that they expected the community to benefit from having cars fitted with interlocks

All the participants agreed that they expected to keep the interlock installed to their vehicle for the complete time period designated by the courts.

When asked what they thought the advantages of having an interlock installed in their car was the comments were as follows:

*'Can't drink and drive therefore makes you change your approach to drinking because you are fully aware you literally cannot drive your car so puts you in 2 minds do or don't I drink if I drink I have to taxi therefore money so potentially would stop a lot of people from drinking.'*

*'I can drive, which is better for me, my family and employer/career, and habits change around planning social activities involving alcohol and driving.'*

*'It keeps drink drivers off the roads.'*

*'Ensures driver doesn't drink & drive but freedom to drive.'*

*'Makes you think and make safer decisions.'*

*'Is good for people for people who drink, makes you more aware of the alcohol in your system when you think it has gone, can still drive and work, good when no public transport.'*

*'Responsible, positive thinking and planning - perhaps before a "she will be right" attitude.'*

*'Safety. Avoid expensive court fines. Need not be scared of Police random blitz conducted on the roads.'*

*'It is a huge benefit, it makes others feel safe around me.'*

When asked 'What do you think are the disadvantages of having an interlock installed in your car? The participants responded:

*'Once you get used to it it's not that bad.'*

*'Cost, some embarrassment, rolling checks can be distracting and difficult with passengers who do not understand and may judge.'*

*'You are unable to have one drink at dinner or after a sports game and then drive home as it has to be zero.'*

*'Requests a reading too often per trip.'*

*'Embarrassment/3 year 'no alcohol license is too harsh/it is much too expensive.'*

*'My choice to get it, misinformed by the lawyer didn't realise I have to have a zero alcohol licence for 3 years, didn't realise that if a cigarette caused a reading I could call in and tell Smart Start and they would make a note of it. Mouthpiece often falls off. Had to take vehicle to Mercedes for service and explained everything about the interlock and hung around to check they were going okay, but this is a big hassle, could some more people be informed about interlocks? Mechanics. Embarrassing & stressful.'*

*'AA knew nothing about the zero alcohol license, had to deal with 3 different people, felt as if I was being judged by people.'*

*'Can't think of anything, perhaps friends like to try my machine, to see what they read.'*

*'It is a huge benefit, it makes others feel safe around me.'*

8 participants strongly disagreed and 1 disagreed that it was likely they would have drove unlicensed when they lost their licence for drink driving previously.

9 participants strongly agreed and 2 agreed that they thought interlocks would be more effective in stopping them from drink driving again, than the penalties they had received in the past:

*'Changes habits and thinking, makes me more aware.'*

*'Over 18 years since last conviction, always been when someone has died, will handle it better in the future.'*

*'Fitting punishment.'*

1 participant agreed, 6 disagreed strongly and 3 disagreed that the interlock has been much more of a hassle than the previous penalties they had received for drink driving in the past with one participant reporting that:

*'Been very good learning tool.'*

When asked 'Do you think you will drink and drive again in the future?' All agreed they would not:

*'Nope and I would like to keep the device if it wasn't for the monthly cost.'*

*'I made one mistake in many, many years of driving. Will not do it again.'*

*'Never. I have learnt a lot through using it but a lot has been very demoralising, picking up son from school and interlock going off.'*

*'No, my thinking pattern has changed, and I haven't touched alcohol, for almost a year now.'*

Other comments from the participants included:

*'I still think a general zero alcohol level is a better approach, rather than the ambulance at the bottom of the cliff, stop it before it starts.'*

*'I think the interlock system is very good and trains you not to have anything before driving. They should be installed into every car.'*

*'I think it's a useful deterrent.'*

*'Would be more helpful for society if the cost could be brought down. If others get the opportunity to have one it may change their habits.'*

*'It's a great tool, and could be used more in the wider community.'*

*'It is a huge benefit, it makes others feel safe around me.'*

## Interlock Providers

There are two NZTA approved providers of interlocks in New Zealand SmartStart and Draeger Safety Pacific. Each provider has a network of interlock installers around the country.

The providers install the interlock devices and provide training to the participants on correct use of the interlock and procedures involved in the use of the device.

The interlock device records all data involved in the use of the vehicle as well as attempts to drink and drive. Data such as odometer readings are also taken to ensure that the vehicle is being used in its usual manner and that the participant is not using another vehicle.

The interlock device requires monthly recalibration and needs to be brought to a service centre for this process. At the same time the data stored by the device is downloaded and securely stored. This information is accessed by the NZTA. The entire process of downloading the previous month's data and the recalibration takes about 20mins.

Due to the nature of the device they can disable the vehicle if multiple attempts at drink driving are attempted. Locked vehicles can be unlocked by using a onetime code that will enable the participant to reach a service centre for correct re-setting of the device. This procedure also requires the participant to pay for this re-setting.<sup>33</sup>

Draeger Safety Pacific reports that since September 2012 to the 31 March 2014:

Interlocks installed – 55

Interlocks removed by successful programme completion – 3

Attempted drink drive events stopped – 390

SmartStart reports that since September 2012 to the 31 March 2014:

Interlocks installed – 126

Interlocks removed by successful programme completion – 5

Attempted drink drive events stopped – 599

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<sup>33</sup> Around \$45.

The providers were asked if any of the participants had exited the programme before completing the AIP and the reasons for this. The following are examples of reasons given by participants who exited the programme before completion

- *'One participant removed because he was sick of it/abusive to us & service centre/short of money etc., we removed for free just to get the interlock back (here is what he 'owes' to us – 2 services @ \$183 each, 1 removal @ \$135, 1 early service @ \$45, 1 early termination fee @ \$250 = \$796 – client signed that he would pay all fees.'*
- *'One participant with an AID licence that he has held for nearly a year, is going to Australia so says he doesn't need an interlock.'*
- *'One participant that has gone back to India, I don't think he had his AID licence?'*
- *'some participants had their device removed due to e.g. financial problems, accidents.'*

SmartStart reported that:

*'We also have quite a few that have their licence but are saving up for an interlock, I suppose they are not driving???''*

SmartStart also provided feedback that they have received from the participants using their interlock device:

- *'I've felt really helped by your whole team and would definitely recommend you to others whom might need the same support that I have. Thanks to you all for everything so far.'*
- *'Excellent device because I know the kids are safe on the road with their mum.'*
- *'Would like to continue with the interlock after the sentence but it is too expensive.'*
- *'Appreciate all the help over the past year and apologies for the abuse!'*
- *'The interlock has forced me to make changes in my life.'*
- *'I would like to thank the team at Smart Start in New Zealand for the fantastic service and kindness for helping me with my challenges to date. It is a blessing and great second chance for many workers to have this system installed and keep their jobs in New Zealand as it is, but to have the right people backing the product and service, is always a winner. Thanks Kindly for helping me through this next 12 months, I look forward to dealing with you.'*

SmartStart also provided information from the staff at their service centres to get an idea of the challenges faced by those who do the actual installation and monthly downloading of the data from the interlock device:

*'A lot of the service centres with low numbers of clients moan that the time they spend on it is not being covered by the payment, mainly because they take longer to do servicing etc as each month they need to re-learn the process. (fair call in our opinion)*

*We had a situation yesterday where we spent about 2 hours trying to resolve an issue with a service centre (programme wouldn't load properly for one reason or another) we got Smart Start in USA to remote in and try to fix it etc. but the upshot of it was the boss of the business went mad and said he wasn't going to carry on with interlocks because they have so few clients and it is taking up too much of their time. This is our SECOND service centre in Queenstown that has done this, we have no more options left. We calmed him down and the boss wanted us to pay for his time wasted, we said yes....so we pay them for 5 hours of their time just to hopefully keep them on, all for the grand total of 2 clients!! If they had 10 clients they would have way less problems because the programme is always in use, they are more comfortable with servicing etc. The interlock client had travelled 2 hours to get his service which didn't happen, so he will need to come back once we have it sorted, obviously he wasn't happy...we will need to give him his next service free to keep him happy.*

*So for us to supply interlocks in Queenstown, it has cost us 2 trips there, equipment, many hours of phone calls and re-imburement for their hours.*

*This is just one example of the more rural/lower number areas.'*

SmartStart also commented that:

*'Providing alcohol interlocks when the numbers are low is not a sustainable business venture. We have set up 17 service centres so far (with more to go) at an equipment cost of over \$3000 per service centre. On top of this cost is travel, usually 2-3 visits to get set up and training of at least 1 day per service centre (estimated cost of \$1000 per service centre) and on-going technical support.*

*We have 3 service centres that have no clients left. We also have another 7 service centres that have 3 or less clients. (a sustainable/viable number per service centre is a minimum of 25 clients) We have 3 service centre in Auckland and 1 in Christchurch that have a satisfactory level of clients, surely recidivist drink drivers don't only live in 2 regions of NZ? If we didn't have the belief that the interlock is an effective tool in increasing public safety and reforming behaviour we would have stopped providing interlocks before now. As a business venture the current numbers simply do not make it viable and unless changes are made fast, it won't be sustainable to carry it on.*

*The way the legislation is now with the very small amount of participants, we feel we are providing a sentencing option for the Government, at our cost.*

*The 3 month disqualification is a major barrier to the uptake. We have enquiries about the programme from lawyers & their clients and when they hear there is a 3 month disqualification they simply opt for the easier & cheaper sentencing options.*

*In spite of the problems with low uptake etc, having interaction with our clients over the 12 month period is very rewarding as we see positive changes to their behaviour & attitude to drinking and driving.'*

## Barriers to the Effectiveness of the NZAIP

The New Zealand Transport Agency, who administer the AIP, report no problems with the running of the programme.<sup>34</sup> The providers similarly report no major problems excepting those reported earlier. It would appear that the major barrier to the use of the AIP in its intended role lies in the participation rates. As the NZAIP is a sentencing option at court we suggest that this is where the main barriers to interlock uptake arise.

To discuss the possible barriers to the effectiveness of the NZAIP, RIDNZ contacted stakeholders including: NZ Police Prosecution Service, drink drive specialist defence lawyers, NZ Judiciary, and interlock Providers.

From interviews, consultations, email and telephone conversations with these stakeholders we advance the following key areas of the legislation involved in the alcohol interlock sentencing option, and other relevant legislation, that RIDNZ has identified as being barriers to the use of the interlock sentence and consequently to the effectiveness of the NZAIP.

### **The sentence is not mandatory/previous sentencing options still available**

The fact is that the AIP sentence is only an option<sup>35</sup> at court means that a judge has the ability to impose the traditional penalties that have been used historically for repeat and HLFTD drink drivers. The data in section 1 clearly shows that this is exactly what is happening.

Previous to the introduction of the AIP as a sentencing option for repeat and HLFTD offenders the Land Transport Act had a mandatory sentence<sup>36</sup> for certain repeat offenders that meant that the judge must impose an 'indefinite disqualification'.

This mandatory sentence still stands alongside the new interlock sentencing option. A critique of the indefinite disqualification<sup>37</sup> reported that in 2006, 780 applicants' re-qualified back for their driver licence due to an indefinite disqualification, by 2010 32% of those offenders were detected re-offending and of those re-offenders detected, 31% had had a previous indefinite disqualification.

Often, as has been reported previously, lengthy periods of disqualification fail to deter habitual offenders from continuing to drink and drive.<sup>38</sup>

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<sup>34</sup> Correspondence with Tony Marlow, Manager, Technical Support, NZTA.

<sup>35</sup> Section 65A Alcohol interlock requirements for repeat offences or certain first time offences involving use of alcohol.

<sup>36</sup> Section 65 Mandatory penalties for repeat offences involving use of alcohol or drugs.

<sup>37</sup> Waters, 2012a.

<sup>38</sup> Alcohol Advisory Council of New Zealand, 2010.

## Challenges to the Legislation

The legislation relating to the use of the AIP as a sentencing option can be found in the Land Transport Act 1998 under section 65A.<sup>39</sup>

Stakeholders reported of the legislation that it was '*Cumbersome*' and '*Complicated*'

The interlock sentence has already been involved in several High Court Appeals. The first due to whether or not section 65A applied retrospectively to charges laid prior to the 10<sup>th</sup> of September 2012, when section 65A first came into effect. Another arose when it was not clear whether an order under section 65A would act as a substitute or in addition to mandatory finite orders of disqualification in sections 56 and other sections in that part of the Land Transport Act.<sup>40</sup> If an alcohol interlock order could not displace these mandatory finite orders, then an otherwise eligible offender would receive no beneficial reduction in disqualification time from an alcohol interlock order.

Both of these drafting ambiguities have subsequently been addressed by the High Court.<sup>41</sup> The added certainty may cause the frequency of alcohol interlock orders to increase.<sup>42</sup>

In another High Court decision<sup>43</sup> regarding the use of the alcohol interlock sentence the Judge concluded that because of apparent difficulties that arise from the drafting of the legislation relevant to the alcohol interlock sentence, including other matters that had arisen in previous appeals, legislative consideration may be warranted.

One stakeholder commented that:

*'There are many inherent flaws in the way section 65, 65A and 65B have been drafted.'*

## The Sentencing Act and the 'Lesser sentence'

It was reported by some stakeholders that judges may perceive the interlock sentence as a soft option. The philosophy that lies behind the interlock is one of getting smart<sup>44</sup> on reducing instances of drink driving as opposed to the getting tough approach which has been observed not to work with this cohort of offenders.<sup>45</sup>

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<sup>39</sup> <http://www.legislation.govt.nz/act/public/1998/0110/latest/DLM4738730.html> (accessed May 20th 2014).

<sup>40</sup> Driving offences involving drink or drugs, and penalties and procedures.

<sup>41</sup> Nanai v Police (2013) NZHC 155 and Singh v Police (2013) NZHC 3065.

<sup>42</sup> Correspondence with Chief District Court Judge, May 2014.

<sup>43</sup> Collier v Police (2013) NZHC 2273.

<sup>44</sup> Hora, 2010.

<sup>45</sup> Ministry of Transport, Regulatory Impact Statement. 2013.

In the New Zealand Sentencing Act 2002, the Purposes of Sentencing are explained to be:

1. to hold the offender accountable for harm done to the victim and the community by the offending, or
2. to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm, or
3. to provide for the interests of the victim of the offence, or
4. to provide reparation for harm done by the offending, or
5. to denounce the conduct in which the offender was involved, or
6. to deter the offender or other persons from committing the same or a similar offence, or
7. to protect the community from the offender, or
8. to assist in the offender's rehabilitation and reintegration, or
9. a combination of 2 or more of the purposes listed.

Drink or drug driving is by definition alcohol or drug related. Rates of repeat offending are very high. It was reported of the Sentencing Act in 2011:<sup>46</sup>

*'In what ways are we currently complying with, or failing, the purposes of the Sentencing Act? Are we holding offenders accountable when we do not require them to address their AOD dependency issues, knowing that those issues are the drivers of the offending?'*

*And how do we promote a sense of responsibility in these recidivist offenders when we do so little to encourage responsibility with regards to their substance abuse/dependency issues? How are the victims' interests best served by releasing alcohol and drug addicted offenders back into the community with inadequate provisions for meaningful treatment and oversight – and absolutely no drug/alcohol testing? In terms of the ways in which the community is protected – it is true that while an offender is serving time, the community is protected, however, this is short-lived given the inevitability of their release back into the community, with their sense of having "done their time".*

*There is so much that we can do to change all this.'*

While the use of interlocks and their proven ability to reduce the harm from drink driving may be perceived as a less punitive approach, it has been reported that:

*'Mandatory schemes bring a punitive element through the likely financial impost on the driver, social stigma and inconvenience for both vehicle operation and alcohol purchase'*<sup>47</sup>

The Sentencing Act may also provide another possible barrier to interlock uptake. Under section 129 of the Sentencing Act 2002, if a person commits a second offence (traffic offences including drink driving) within a 4 year period the court must confiscate the vehicle involved unless it can be proven that such an order would result in extreme hardship to the offender or undue hardship to any other person.

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<sup>46</sup> Waters, 2011.

<sup>47</sup> Elder, et al, 2013.

Stakeholder comments included:

*'Since the High Court decision, the District Court views an alcohol interlock licence as an indulgence from the Court (i.e., a lesser sentence than simply indefinitely disqualifying someone, as identified in Nanai). Ergo, it is difficult to ask a Court to grant the application to apply for such a licence as only those motorists with multiple offences and/or high levels meet the prerequisites to apply. Quite the dichotomy.'*

*'As discussed, as s.65A is discretionary, Judges either are unwilling to consider it because they consider a motorist shouldn't be rewarded with a 'lesser sentence' for having a higher EBA level or multi offences. Moreover, even if a person meets the criteria to be able to apply, the Judges then seek to apply a 'test' akin to that for a limited licence (although there is no statutory test). This has caused many difficulties as to what factors need to be considered before section 65A can be granted. The only occasions I have seen a person denied the ability to apply for s65A are on the grounds of public safety.'*

### **The Limited Licence**

The regulatory impact statement 'Completing the actions to address alcohol-impaired driving' also noted that:

*'If a mandatory period of disqualification is added to the interlock programme, this would further increase the penalty for drink driving and may see people being over penalised for the offence. This is likely to see more offenders argue for a disqualification and a fine, and apply for a limited licence, as this will be cheaper and more convenient (as a limited licence does not require the monthly monitoring like an interlock). It is also more likely that the period of disqualification alone will be less than the period of disqualification and an interlock. If this happens, the potential effectiveness of an interlock programme will be severely undermined.'*

In New Zealand a first time detected, even if they were twice the legal limit, drink driver can apply for a special 'Limited Licence' that will allow them to drive whilst their full licence is suspended. A disqualified driver can apply to the courts for a limited licence under the Land Transport Act 1998 if the disqualification or suspension will cause the driver extreme hardship, or another person undue hardship, they might be able to get a limited licence.

Applications are considered by the courts on a case-by-case basis, using the criteria in sections 103 to 105 of the Land Transport Act 1998. If the court order is granted, then a driver must obtain a limited licence from NZTA) before they can drive.

Recent research on the limited licence<sup>48</sup> and drink drivers shows that from 2008-2012 a total of 11061 first time detected (within a 5 year timeframe) drink drivers were granted a limited licence. That is, on average, 61.5 percent of all granted limited licence applications.

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<sup>48</sup> Waters 2014

**Table 10. Number of limited licence applications granted 2008-2012**

|   | 2008 | 2009 | 2010 | 2011 | 2012 | Total | %    |
|---|------|------|------|------|------|-------|------|
| Limited Licences Granted                  | 3593 | 3976 | 3656 | 3312 | 3453 | 17990 | 100  |
| Limited Licences Granted to Drink Drivers | 2232 | 2407 | 2177 | 2135 | 2125 | 11076 | 61.5 |

As at 13 July 2013, 8 percent of those 11061 drivers were detected reoffending<sup>49</sup>.

Over 23 percent of the 11061 drivers were twice the legal limit and as at 6 August 2013, 12 percent of those twice the legal limit were detected re-offending<sup>50</sup>.

From 2008-2012, some 18000 limited licence applications were granted by the NZTA after a court order had been issued by the courts. There are some situations when the NZTA can decline the issuance of a limited licence. This can be where the NZTA is aware that the criteria in Section 103 and Section 104 of the Land Transport Act 1998 have not been satisfied. Over the same five year period, the NZTA has declined eight applications for a limited licence after a court order has been issued by the courts.<sup>51</sup>

Repeat (within a five year timeframe) offenders cannot apply for a limited licence.<sup>52</sup> HLFTD participants of the AIP are not allowed to apply for a limited licence during their disqualification period under section 103 (2) (e) of the Land Transport Act 1998 which could be perceived as a disincentive for participation in the AIP for anyone for whom the disqualification or suspension would cause extreme hardship, or another person undue hardship.

Between 10 September 2012 - 26 May 2014, 5,883 applications for a limited licence were granted by the NZTA. Of the 5,883 applications, 3,680 limited licence applications were granted whilst the applicant was serving a disqualification for an offence where the precedent code begins with 'A'.<sup>53</sup> This equates to 62.5 percent of all limited licences in this timeframe. Of these applications, 904 applications relate to an offence where the blood or breath alcohol reading supplied to the NZTA is at least twice the legal limit.<sup>54</sup> That is 24.5 percent of the drink drivers,

<sup>49</sup> The data supplied, is limited to offences where the precedent code begins with 'A'.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid 48.

<sup>52</sup> Section 103 (2) (a), the Land Transport Act 1998.

<sup>53</sup>Data supplied by NZTA.

<sup>54</sup> The licence holder's age has not been taken into consideration when completing this analysis. Drivers aged under twenty years are subject to a zero alcohol limit, while drivers aged twenty years and older are subject to a breath alcohol limit of 400 micrograms per litre of breath or a blood alcohol limit of 80 milligrams per 100 millilitres of blood. All licence holders included in this analysis have been assessed according to the alcohol limits for drivers aged twenty years and over

being granted a limited licence, being twice the legal limit. This percentage has been previously observed and reported on.<sup>55</sup>

One stakeholder commented of the interlock sentence that:

*'It can address the issue of public safety more effectively than a limited licence can do'*

### **The Zero Alcohol Licence**

Alongside the introduction of the AIP and interlock licence, a mandatory Zero Alcohol Licence (ZAL) for repeat offenders was also introduced in September 2012.<sup>56</sup> If a person has been convicted of more than one drink drive offence committed within five years, then it is mandatory for a judge to impose a zero alcohol licence. After any period of disqualification or after successful completion of the AIP a driver holding such a licence would not be allowed to drink any alcohol at all before driving. The zero alcohol licence would be in effect for three years from the issue of the licence.

It has been reported that as a standalone solution it falls far short of tackling the problems of repeat and high level drink drivers.<sup>57</sup> The Ministry of Transport also reported that:

*'The zero limit requires repeat offenders to always drive sober. It relies on the deterrent effect of further fines, disqualification and prison terms as a means to motivate offenders not to drink and drive. This contrasts with the interlock proposal, where offenders would be given a tool to prevent them from drinking and driving.'*

*Research suggests that a significant number of repeat drink drivers are alcohol dependent. By itself a zero limit may not be effective for people with alcohol addiction issues. As a consequence we would expect there to be a relatively high level of non-compliance with the zero limit.'*<sup>58</sup>

As at 23 March 2014, 848 offenders were issued with a Zero Alcohol Level licence. Of the 848 offenders, 13 offenders were convicted of an alcohol/drug related offence (an offence where the precedent code begins with 'A') since their Zero Alcohol Level licence was issued.<sup>59</sup>

Use of the alcohol interlock sentence may be further obfuscated by the mandatory nature of zero alcohol licence orders under section 65B. Judges may consider that this mandatory order, combined with the normal periods of disqualification, is an appropriate sentence.<sup>60</sup>

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<sup>55</sup> Ibid 48.

<sup>56</sup> Land Transport Act 1998 section 65B - Mandatory zero alcohol requirements for repeat offences involving use of alcohol.

<sup>57</sup> Waters, 2010.

<sup>58</sup> Ibid 20.

<sup>59</sup> Data supplied by NZTA.

<sup>60</sup> Ibid 42.

### **Mandatory 3 month disqualification**

The interlock sentence in New Zealand would mean that a judge would impose an alcohol interlock disqualification on a driver. This means that the driver's licence will be disqualified, and after a three month period, the driver will be able to apply for an alcohol interlock licence. The 3 month disqualification period was reported in a submission to the Transport and Industrial Relations Select Committee in 2010<sup>61</sup> regarding the Land Transport (Road Safety and Other Matters) Amendment Bill. The evidence provided was also echoed by the regulatory impact statement 'Completing the actions to address alcohol-impaired driving'<sup>62</sup>:

*'International experience shows that the benefits from interlocks are highest when fitted as soon after the offences as practicable. Jurisdictions with a mandatory period of disqualification also report lower rates of participation in programmes, as there is a likelihood that offenders will simply continue to drive unlicensed. In New Mexico, changes in legislation removing the period of disqualification before an interlock is installed saw an increase from approximately 300 interlock participants in 2002 to nearly 6,000 in 2006.'*

There is also the possibility that offenders eligible for the AIP have other factors that may see the length of time before they are able to fit an interlock device extended. With one stakeholder commenting that:

*'If they are disqualified any demerits they have are wiped - but not with the interlock disqualification! So, they may need a 6 month disqualification even before they have the interlock installed.'*

Another stakeholder commented that:

*'I see no reason for the three month stand-down period. At the very most it should be 28-days - the same as a limited licence. I can see no reason why there has to be a stand-down period at all (you can apply for a ltd licence immediately if suspended for demerit points, why not the same for an alcohol interlock licence?). If there were no stand-down period, this would be more attractive than a limited licence, yet provide the public with more reassurance as to their safety.'*

An interlock questions and answers factsheet produced by the New Zealand Transport Agency reports that:

*'A person sentenced to an alcohol interlock disqualification cannot obtain a limited licence. If you must drive for work purposes and you are unable to serve the mandatory three month disqualification, it is likely that you will not be eligible for an alcohol interlock disqualification and the courts will hand down an alternative sentence.'*<sup>63</sup>

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<sup>61</sup> Ibid 57.

<sup>62</sup> Ibid 20.

<sup>63</sup> <http://www.nzta.govt.nz/licence/photo/docs/alcohol-interlock-programme-ganda.pdf> (accessed 11 June 2014).

## Cost

Another barrier mentioned by some stakeholders was the costs involved regarding the AIP. The total costs involved for participants of the alcohol interlock programme are as follows:

**Table 11: Alcohol Interlock Programme costs<sup>64</sup>**

|  |                              |
|--|------------------------------|
| Alcohol interlock Licence application fee                | \$200                        |
| Device initial installation fee                          | \$150 <sup>65</sup> to \$175 |
| Device monthly rental fee(@\$150-175/month for 12 months | \$1800 to \$2100             |
| Device removal fee                                       | \$100 to \$135               |
| Zero alcohol licence application fee                     | \$66.40                      |
| Reinstatement fee for standard licence                   | \$66.40                      |
| Total cost of the programme                              | \$2382 to \$2742.80          |

Currently HLFTD offenders would receive an average fine of around \$800. There would also be court costs of around \$150 (this would also apply to those on the AIP). A lawyer charges around \$800 for the application of a limited licence.

For repeat offenders the cost of fines can vary from between \$700-\$1200 as well as the court costs of around \$150. However the effects of a disqualification must be taken into account when we look at costs. The disqualification may lead to extreme financial disposition such as the loss of income through loss of employment due to the disqualification.

It has also been reported that the average daily costs to a participant of an AIP is, comparable to the cost of a standard drink of alcohol or two.<sup>66</sup>

It was observed by one stakeholder that offenders who would be eligible for the interlock programme but who received other sentences such as, custodial, home detention or community sentences, did not have to pay the costs relating to their sentence:

*'Why can't the Govt pay for some (or all) of the interlock? When someone is sentenced to home detention the Govt is happy to pay the full amount. This would also mean that those with a low income and beneficiaries would be eligible for the interlock sentence.'*

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<sup>64</sup>Table reproduced with permission of NZTA.

<sup>65</sup> Participants of the AIP who hold Community Services Cards are eligible for the lesser charges shown in this table.

<sup>66</sup> Ibid 26.

The costs of those other sentences referred to, are reported to be as follows:

**Table 12: cost of sentences none or 1 previous conviction from 2009 to 2012<sup>67</sup>**

| Number of previous convictions | Cost impact of custodial sentences | Cost impact of home detention sentences | Cost impact of community sentences |
|--------------------------------|------------------------------------|---|------------------------------------|
| <b>0</b>                       | \$ 1,684,371                       | \$ 232,654                              | \$ 252,050                         |
| <b>1</b>                       | \$ 4,539,970                       | \$ 505,191                              | \$ 640,499                         |
| <b>Total</b>                   | <b>\$ 6,224,341</b>                | <b>\$ 737,845</b>                       | <b>\$ 892,549</b>                  |

**Sum total = \$7,854,735**

**Table13: Cost of sentences, 2 or more convictions from 2009 to 2012<sup>68</sup>**

| Number of previous convictions   | Cost impact of custodial sentences | Cost impact of home detention sentences | Cost impact of community sentences |
|----------------------------------|------------------------------------|---|------------------------------------|
| <b>2</b>                         | \$ 23,116,544                      | \$ 2,242,254                            | \$ 2,735,661                       |
| <b>3</b>                         | \$ 35,452,793                      | \$ 6,530,925                            | \$ 5,480,743                       |
| <b>4</b>                         | \$ 37,840,007                      | \$ 5,304,507                            | \$ 5,451,433                       |
| <b>5 plus</b>                    | \$ 100,196,382                     | \$ 11,089,704                           | \$ 7,969,879                       |
| <b>Total</b>                     | <b>\$ 196,605,725</b>              | <b>\$ 25,167,391</b>                    | <b>\$ 21,637,715</b>               |
| <b>Sum total = \$243,410,831</b> |                                    |   |                                    |

It was reported that specialist drink drive lawyers spend many hours preparing notices of motion, submissions and affidavits to try to secure an interlock sentence for their clients. One stakeholder reported that:

*‘We have to argue in court for the interlock sentence’*

It was also reported that whilst those able to afford the services of specialised drink drive lawyers may be able to secure the interlock sentence, the majority of drink drive offenders

<sup>67</sup> Ibid 45.

<sup>68</sup> Ibid.

eligible for the AIP were seen by duty solicitors who may not be so well informed on the intricacies of the law relating to the interlock sentence or who may just tell those drivers they represent that they will not be able to afford the costs involved.

Re-offending also incurs costs. These costs will include police and court costs once again. There is also the possibility of costs relating to any harm caused by such re-offending which may amount to many millions of dollars.

A list of fatal and injury crashes in New Zealand related to alcohol and/or drugs shows that 931 drivers were identified as being involved in alcohol/drug related fatal and injury crashes between 10 September 2012-23 May 2014 and of those, 41 had a previous alcohol/drug related conviction during the same timeframe (see table 14).<sup>69</sup>

The data relating to these crashes involved the use of the Crash Analysis System (CAS) and information on this can be found in Appendix 1.

**Table 14: NZ Fatal and injury crashes alcohol drugs by offenders in same timeframe**

| <b>Crash severity</b> | <b>Number of drivers</b> |
|-----------------------|--------------------------|
| Fatal crash           | 1                        |
| Minor crash           | 28                       |
| Serious crash         | 12                       |
| <b>Total</b>          | <b>41</b>                |

In per-crash terms, the Ministry of Transport reports that the average social cost is estimated at \$4,445,600 per fatal crash, \$467,300 per serious crash and \$26,600 per minor crash. This is adjusted to \$772,000 per reported serious crash and \$85,000 per reported minor crash, after allowing for the level of non-reporting. Because each crash can result in multiple injuries of various injury severity, the average social cost per crash is higher than the average social cost per injury in all cases.<sup>70</sup>

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<sup>69</sup> Data, NZTA. 2014.

<sup>70</sup> Ministry of Transport, 2012.

The licence status<sup>71</sup> of the 41 drivers from table 14 is as follows:

**Table 15: Licence status of crash drivers<sup>72</sup>**

| Licence status at time of crash                              | Number of drivers |
|--|-------------------|
| CURRENT  | 17                |
| DISQUALIFIED   | 19                |
| Other (includes expired, reinstate, requalify and suspended) | 5                 |
| <b>Total</b>   | <b>41</b>         |

3 or less of the 17 current drivers in table 14 held either an Alcohol Interlock Device licence or a Zero Alcohol licence at the time of the crash.<sup>73</sup>

The questions and answers factsheet<sup>74</sup> provided by the New Zealand Transport Agency reports of costs:

*‘Certain circumstances, such as financial instability or the offender being unlicensed could mean that the interlock programme may not be suitable.’*

#### **No Requirement to fit an interlock device**

After the courts have sentenced an offender to the interlock programme there is no follow up to ensure that this has taken place any offender not applying for an interlock licence is deemed to hold a licence status ‘of no effect’. Those applying to NZTA for an interlock licence are not monitored to ensure the device has been fitted. Indeed the courts and the NZTA have no information on the amount of drivers who have fitted an interlock and only Draeger Safety Pacific and SmartStart, the interlock providers, know the amount of interlocks that have been fitted.

One stakeholder commented that:

*‘When you are sentenced to home detention, you are given no option as to whether or not you want to do it, or when. With the interlock there is no-one following up to ensure the interlock is fitted by a certain date.’*

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<sup>71</sup> Please note that a limited licence is recorded as a licence status. None of the 41 drivers held a limited licence at the time of the crash. Alcohol interlock and zero-bac licences are recorded as a licence condition on a current driver licence rather than as a licence status. To prevent the characteristics of any particular person being identified, values of 3 or less are now either aggregated into a higher number, or where this is not possible they are suppressed.

<sup>72</sup> Source NZTA, 2014.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid 63.

### **Lack of Awareness**

Some stakeholders reported that there was a general lack of awareness at court about the AIP and even the interlock device itself. One stakeholder commented of the interlock sentence at court that:

*'I perceive that it is regarded as a mystery'.*

### **Other Comments**

As well as the aforementioned barriers to the use of the interlock sentence, other areas mentioned by some stakeholders was the use of a voluntary scheme for first time detected offenders and the combination of rehabilitation and interlock. It has been reported in New Zealand that:

*'To get the maximum benefit from an interlock programme, first time offenders should be included as they make up a significant percentage of the overall drink driving population'* <sup>75</sup>

As well as being recognised as best international practice, the use of the interlock data combined with rehabilitation has also been reported on in New Zealand:

*'A key element involved in extending the effect of interlock programs is to combine their use with participation in an alcohol rehabilitation program. This would allow treatment providers to take advantage of the recorded interlock data which contains valuable information about alcohol use to inform on treatment planning. One test of this approach found that the interlock provides useful information for treatment providers in promoting the recovery of drink drive offenders.'*<sup>76</sup>

One stakeholder commented that:

*'Disqualification often causes extreme hardship to the individual convicted and often to their families. For recidivist offenders it is in the public interest that the continuing rehabilitation of the motorist be encouraged. The option of an alcohol interlock licence is valuable to this end and could be far more effective than disqualification in inducing further on-going rehabilitation by allowing for the retention of employment. Unemployment and the debilitating financial stress that can go with it, can provoke abuse of the substances that lead to re-offending. It is my opinion that an alcohol interlock licence could do considerably more to encourage further compliance with the law than disqualification it is submitted'.*

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<sup>75</sup> Ibid 20.

<sup>76</sup> Waters, 2012.

The Ministry of Transport's Regulatory Impact Statement on lowering the limit<sup>77</sup> also reported that it was to:

*'Extend the scope of the Safer Journeys Action Plan 2013-15 review of alcohol interlocks in 2014 to include rehabilitation and monitoring measures, along with a review of the offences and penalties regime.'*

Stakeholders also reported of the interlock sentence that:

*'It allows people the opportunity to retain employment. There are two primary reasons motorists seek to defend transport matters (1) to avoid conviction; and/or (2) because they need to retain their licence for employment reasons.'*

*'As a general proposition it would appear plain that offenders should be encouraged to plead guilty and to co-operate with the Court in the reasonable hope and expectation that when their means of support in the unusual circumstances require them to drive day in day out for their living, and the particular offending greater consideration would be given to granted the ability to apply for an alcohol interlock licence. In my opinion this would have a significant impact on the numbers of motorists seeking to defend transport matters.'*

*'Unfortunately some Judges are still not familiar with the interlock and sometimes they decide to use their discretion and not grant the interlock. From our point of view this should not be discretionary because this a very good rehabilitative sentence. In the past 12 months we have come across Judges who took a very negative view towards this application and every time we had to put in a very comprehensive submission explaining why the application should be granted.'*

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<sup>77</sup> Ibid 45.

## Discussion

The Alcohol Interlock Programme was introduced to tackle the cohort of drink drivers for whom the application of previous penalties available had resulted in further reoffending. The evidence of the interlock to stop instances of drink driving is overwhelming and the reason we introduced them to New Zealand.

More than half the drivers convicted at court in 2013 were repeat or HLFTD drink drivers. Whilst the total number of detected offenders is dropping we are seeing increasing rates of detection of high risk/high priority drink drive offenders.

The barriers to participation of the interlock programme are numerous and if left in its current state it will fail to impact on the harm caused by high risk drink drivers.

It may be that the continued use of the availability of the limited licence for some drink drivers needs to be reviewed to ensure greater public safety. The use of the Zero Alcohol License may also be perceived as further punishment but with no greater public safety value.

It has been reported that the interlock programme is seen as a 'soft approach' and that it is preferred to apply the previous sanctions that are still failing. This reasoning is illogical and absolutely fails to take into account the safety of the public and our communities.

Participants of the interlock programme, who contributed to this paper, report on the punitive nature of the device as well as its obvious ability to change their drinking behaviours. A more thorough report on their views may provide a more revealing picture of the interlocks ability not only to allow safe driving practice but its wider ramifications.

That there is no assurance of the interlock device being fitted once an interlock licence has been received is also concerning, given the correlation between drink drivers and unlicensed driving. The interlock sentence also appears to be limited to those who can afford it.

If New Zealand is to reduce the amount of repeat and HLFTD detected drink drivers and reduce the harm they cause, it appears we will not be able to do this by continuing to use our current sanctions for this cohort of offenders. The introduction of a mandatory sentence of AIP for this cohort of drivers must be seriously considered to bring New Zealand into line with other international and Australian jurisdictions.

The review of alcohol interlocks in 2014 to include rehabilitation and monitoring measures, along with a review of the offences and penalties regime, announced by the Ministry of Transport may be a timely intervention to bring together the piecemeal attempts at tackling high risk drink drivers in New Zealand. It is suggested that any review of the New Zealand Alcohol Interlock Programme take advantage of the information contained in this report.

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# Appendix I

## The Crash Analysis System

## The NZTA Crash Analysis System (CAS)

The CAS is an integrated computer system that provides tools to collect, map, query, and report on road crash and related data. It contains data from all traffic crashes reported by police. It provides a platform for the development and implementation of new road safety initiatives, making a huge contribution towards crash prevention.

The information provided by CAS is used to determine and analyse trends, which help direct recommendations around road safety funding allocations, target road safety programmes and monitor their performance.<sup>78</sup>

Although many alcohol offences are generated as a result of Police's roadside testing some may also be linked to crashes in CAS.

CAS notes crashes not only where the alcohol level was over the limit but also crashes where in the officers view it was still a contributory cause for both injury and non-injury crashes. Unfortunately the drivers licence is not recorded for non-injury crashes in CAS so these reports could not be used and thus limited the sampling for this research. However the sampling rate of driver licences' in injury crashes is high with few blank fields except where expected, for example "never licenced".<sup>79</sup>

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<sup>78</sup> Information reproduced by permission of the NZTA.

<sup>79</sup> NZTA, 2014.

## Appendix II

List of offence codes to identify drink/drug driving offences

| <b>Code</b> | <b>Description</b>                         |
|-------------|--|
| 8111        | Drive Causing Injury Through Drink         |
| 8112        | Drive Causing Injury Through Drink         |
| 8113        | Drive Causing Injury Through Drnk And Dru  |
| 8114        | Drive Causing Death Through Drink          |
| 8116        | Drve Causing Death Through Drink And Drug  |
| 8117        | Cause Injry Through Excess Breath Alcohol  |
| 8118        | Cause Death Through Excess Breath Alcohol  |
| 8119        | Other Transport Act Section 55 Offences    |
| 8121        | Cause Injury Through Excess Blood Alcohol  |
| 8122        | Cause Death Through Excess Blood Alcohol   |
| 8123        | Careless Use Causing Injury Through Drink  |
| 8125        | Careless Use Causing Death Through Drink   |
| 8127        | Drove With Excess Breath/Alcohol           |
| 8128        | Drove With Excess Blood Alcohol            |
| 8129        | Other Transport Act Sec 55/56/58 Offences  |
| 8131        | Driving Under The Influence Of Drink       |
| 8133        | Driving Under Influence Of Drink And Drug  |
| 8134        | In Chrg Motr Veh Undr Influence Of Drink   |
| 8136        | In Chrg Mot Veh Undr Influence Drnk/Drug   |
| 8139        | Other Transport Act Sect. 58/59 Offences   |
| 8141        | Refuse To Remain For Breath Screen Result  |
| 8142        | Refusng To Accompany Enforcement Officer   |
| 8143        | Refuse Enforcmnt Officer Requist For Blood |
| 8144        | Refusing To Remain For Breath/Blood Test   |
| 8145        | Refuse Doctor/Auth Person Blood Specimen   |
| 8146        | Rfse Acmpny Enfrcmnt Officer Per S.58(A)   |
| 8147        | Refuse Rmain Evdntial Breath Test Result   |
| 8148        | Refusing To Remain For Medical Doctor      |
| 8149        | Other Transport Act Sect. 58a/B/C Offenc   |
| 8191        | Licensed Driver-Excess Blood Alcohol       |
| 8192        | Unlicensed Driver-Excess Blood Alcohol     |
| 8193        | Licensed Driver-Excess Breath Alcohol      |
| 8194        | Unlicensed Driver-Excess Breath Alc        |
| 8199        | Other Driving Condition                    |
| 8911        | Cause Bodily Injury Through Drink          |
| 8912        | Cause Death Through Drink                  |
| 8915        | Drive Under The Influence Of Drink         |
| 8917        | Drive With Excess Blood Alcohol            |
| 8918        | Drive With Excess Breath Alcohol           |
| 8919        | Other Drive Under Influence                |
| 8921        | Attempts To Drive Und Infl-Drink           |
| 8923        | Attempts To Drive With Ex BI Alcoh         |
| 8924        | Attempt Drive Excess Breath Alcohol        |
| 8929        | Other Attempts To Drive Und Infl           |
| 8931        | In Charge Under Influence - Drink          |
| 8939        | Other In Charge Under Influence            |
| 8941        | Fails To Remain For 2nd Breath Test        |

|      |   |
|------|---|
| 8942 | Refuses Accomp Officer Blood Sample                                   |
| 8943 | Refuses Request For Blood   |
| 8944 | Fails To Remain For Blood Sample                                      |
| 8945 | Refuses Blood To Doctor   |
| 8946 | Refuse Accompany Officer Breath Samp                                  |
| 8947 | Fail Remain Result Evidential Breath                                  |
| 8949 | Other Breath And Blood Procedure                                      |
| A100 | Driving Under Influence Of Drink Or Drug                              |
| A101 | Driving Under The Influence Of Drink                                  |
| A103 | Under Influence Of Drink Causing Injury                               |
| A105 | Under Influence Of Drink Causing Death                                |
| A107 | Excess Breath Alcohol Causing Injury                                  |
| A108 | Excess Breath Alcohol Causing Death                                   |
| A109 | Driving Under Influence Drink/Drug/Both                               |
| A110 | Under Influence Of Drink/Drug Causing Injury                          |
| A111 | Under Influence Of Drink/Drug Causing Death                           |
| A112 | Aggravated Careless Driving (Under Influence)<br>Causing Death/Injury |
| A130 | Drove Under Influence Drink/Drugs-3rd/Sub                             |
| A300 | Blood Alcohol Offences  |
| A301 | Driving With Excess Blood Alcohol Level                               |
| A302 | Driving With Excess Blood Alcohol Concentration                       |
| A303 | Excess Blood Alcohol Causing Injury                                   |
| A304 | Excess Blood Alcohol Causing Death                                    |
| A305 | Refuse To Give Blood Specimen To A Doctor Or<br>Medical Officer       |
| A306 | Refusing To Accompany Officer   |
| A307 | Fail To Remain At Place For Blood Sample                              |
| A308 | Failing To Remain Where A Second Breath Test<br>Taken                 |
| A309 | Refuse Officers Request For Blood Specimn                             |
| A310 | Refuse Permit Blood Spec Taken At Hosp                                |
| A311 | Fails Remain For Evidential Breath Test                               |
| A312 | Fails Remain For Blood Sample-Other Place                             |
| A313 | Fails Remain For Blood Sample   |
| A314 | Driving With Excess Blood Alcohol - Level Exceeds<br>200              |
| A315 | Refuses Blood At Hospital   |
| A316 | Refuse Acc Officer To O/Place For B/Test                              |
| A317 | Fails Remain For Result Of Screening Test                             |
| A318 | Aid/Permit Driving Excess Blood Alcohol                               |
| A319 | Fails Remain Result Of Evid Breath Test                               |
| A320 | Licensed Person Excess Blood Alcl Level                               |
| A321 | Aid/Permit Person Drive Excess Blood Alcl                             |
| A322 | Unlicensed Person Drive Excess Blood Alcl                             |
| A323 | Driving With Excess Blood Alcohol Content                             |
| A324 | Person < 20 Exceeded Blood Alcohol Limit                              |
| A325 | Aided Person Under 20 To Exceed Blood Alcohol Limit                   |
| A330 | Drove With Excs Blood Alcohol-3rd Or Subs                             |

|      |  |
|------|--|
| A331 | Refused Officer's Request For Blood Specimen - 3rd Or Subsequent |
| A332 | Refused To Give Blood Specimen To Doctor - 3rd Or Subsequent     |
| A333 | Refused To Give Blood At Hospital - 3rd Or Subsequent            |
| A334 | Excess Blood Alcohol Causing Injury - 3rd Or Subsequent          |
| A335 | Excess Blood Alcohol Causing Death - 3rd Or Subsequent           |
| A500 | Evidential Breath Offences                                       |
| A501 | Driving With Excess Breath Alcohol Level                         |
| A502 | Aid/Permit Dic   |
| A503 | Aid/Permit To Drive With Xcess Breath Lvl                        |
| A504 | Aid/Permit Drive Under Influence Of Drink                        |
| A506 | Aid/Permit Drive Und Influence Drink/Drug                        |
| A507 | Unlicensed Persn Drive Excess Breath Alcl                        |
| A514 | Driving With Excess Breath Alcohol - Level Exceeds 1000          |
| A515 | Licensed Person Drive Excess Breath Alcl                         |
| A518 | Breath Alcl Lvl Exc 400 Mgms-Litre Of Bth                        |
| A519 | Person < 20 Exceeded Breath Alcohol Limit                        |
| A530 | Drove With Exs Breath Alcohol-3rd / Sub                          |
| A531 | Excess Breath Alcohol Causing Injury - 3rd Or Subsequent         |
| A532 | Excess Breath Alcohol Causing Death - 3rd Or Subsequent          |
| D513 | C/Less Driving-Alcohol Involved-Cause Inj                        |
| D515 | C/Less Driving-Drink/Drug Inv-Cause Inj                          |
| D516 | C/Less Driving-Alcohol Inv-Causing Death                         |
| D518 | C/Less Driving-Drink/Drug Inv-Cause Death                        |
| L502 | Learn Drvr Breath Alco Level Exceed 150                          |
| L503 | Learn Drvr Blood Alcohol Level Exceed 30                         |
| L521 | Rest Driver Breath Alco Level Exceed 150                         |
| L522 | Rest Driver Blood Alco Level Exceed 30                           |

# Appendix III

New Zealand and Australian AIP/AIS Matrix

## Matrix outlining NZ & Australian jurisdiction interlock Programs

|                                       | New Zealand  | QLD   | NSW  | VIC  | WA  | NT  | TAS   | SA   | ACT   |
|---------------------------------------|--|---|--|--|---|---|---|--|---|
| <b>Legal BAC limit (open licence)</b> | < 0.08 BAC<br>0.00 BAC aged <20y   | < 0.05 BAC  | < 0.05 BAC   | < 0.05 BAC   | < 0.05 BAC  | < 0.05 BAC  | < 0.05 BAC  | < 0.05 BAC   | < 0.05 BAC  |
| <b>Existing interlock program</b>     | Yes (commenced Sept 2012)  | Yes (commenced August 2010)   | Yes (commenced September 2003)   | Yes (commenced May 2002)   | No (program being developed)  | Yes (commenced April 2009)  | Yes (commenced July 2013)   | Yes (commenced May 2009)   | Yes (Legislation introduced in June 2013 for commencement on 17 June 2014)  |
| <b>Interlock relevant offence/s</b>   | Court discretion for recidivist and $\geq 0.16$ BAC (high BAC offence).  | First offence $\geq 0.15$ BAC.<br>Fail to provide sample.<br>2+ BAC offences in 5y.<br>Dangerous driving while under the influence of liquor. | Any offence $\geq 0.15$ BAC.<br>$\geq 0.08$ to $< 0.15$ BAC with and without prior conviction.<br>$\geq 0.05$ to $< 0.08$ BAC with a previous conviction within 5y.<br>Fail to provide sample. | Any offence $\geq 0.15$ BAC.<br>2+ BAC offences in 5y.<br>Fail to provide sample.<br>$\geq 0.07$ BAC if $< 26y$ old. | Any offence $\geq 0.15$ BAC.<br>Recidivist.   | First offence $\geq 0.15$ BAC.<br>Fail to provide sample.<br>2+ BAC offences in 5y.<br>Any drink driving offence at court discretion.<br>Positive BAC when subject to zero BAC licence. | Any offence $\geq 0.15$ BAC.<br>2+ BAC offences in 5y.<br>Fail to provide sample.<br>Any drink driving offence at court discretion. | Any offence $\geq 0.15$ BAC.<br>2 + BAC offences in 5y.<br>Fail to provide sample.<br>Any drink driving offence at court discretion. | Any offence $\geq 0.15$ BAC.<br>3 + BAC offences in 5y.<br>Voluntary interlock can be sought by any other person serving a drink driver licence disqualification. |
| <b>Interlock installation</b>         | Mandatory  | Voluntary, but cannot drive for 2 years unless interlock is fitted  | Voluntary, but cannot drive for court determined period unless interlock is fitted   | Mandatory  | Mandatory   | Voluntary, but cannot drive for duration of interlock period unless interlock is fitted   | Mandatory   | Mandatory  | Voluntary, but cannot drive for duration of interlock period unless interlock is fitted   |
| <b>Interlock program duration</b>     | Minimum 12 months.   | 12 months   | Court determined minimum stipulated by offence (range 12 – 48 months).   | Court determined.  | Minimum 6 months  | Court determined  | 15 months minimum with a 9 month learning period and 6 month demonstration period.  | Up to 3y   | Minimum 6 months. At least 3 months 'clean driving'.  |
| <b>Interlock removal</b>              | End of program, subject to no positive interlock readings during the last six months or three months with a successful drugs and alcohol assessment. | End of program (interlock offence may result in 3 month extension)  | End of program.  | End of program, subject to court hearing, including interlock report and DEA assessment.                             | End of program, subject to no positive interlock readings during the last six months. | At any time. If interlock is removed before the end of the program the remainder of the program must be served as a disqualification.   | End of program, subject to no positive interlock readings during the last six months.   | End of program, subject compliance and no more than 2 positive interlock readings during last three months.                          | End of program, subject to compliance and no more than 2 positive interlock readings during the last three months.  |
| <b>Interlock availability</b>         | Country wide   | State wide within 150km of provider   | State wide   | State wide   | Within 150km of interlock provider  | Territory wide  | State wide  | State wide   | Territory wide  |
| <b>Interlock cost</b>                 | Paid by participant \$1,980 to \$2,280   | \$2,000 paid by participant   | \$1,800 per year paid by participant   | \$1,360+ per year paid by participant  | Paid by participant   | Paid by participant   | \$2,980 to complete the program paid by participant   | \$2,200 per year paid by participant   | Paid by participant   |
| <b>Interlock management</b>           | Administration   | Administrative (relicensing)  | Court  | Hybrid   | Administrative (court issues sentence)  | Administrative (court issues sentence)  | Administrative  | Administrative   | Administrative  |