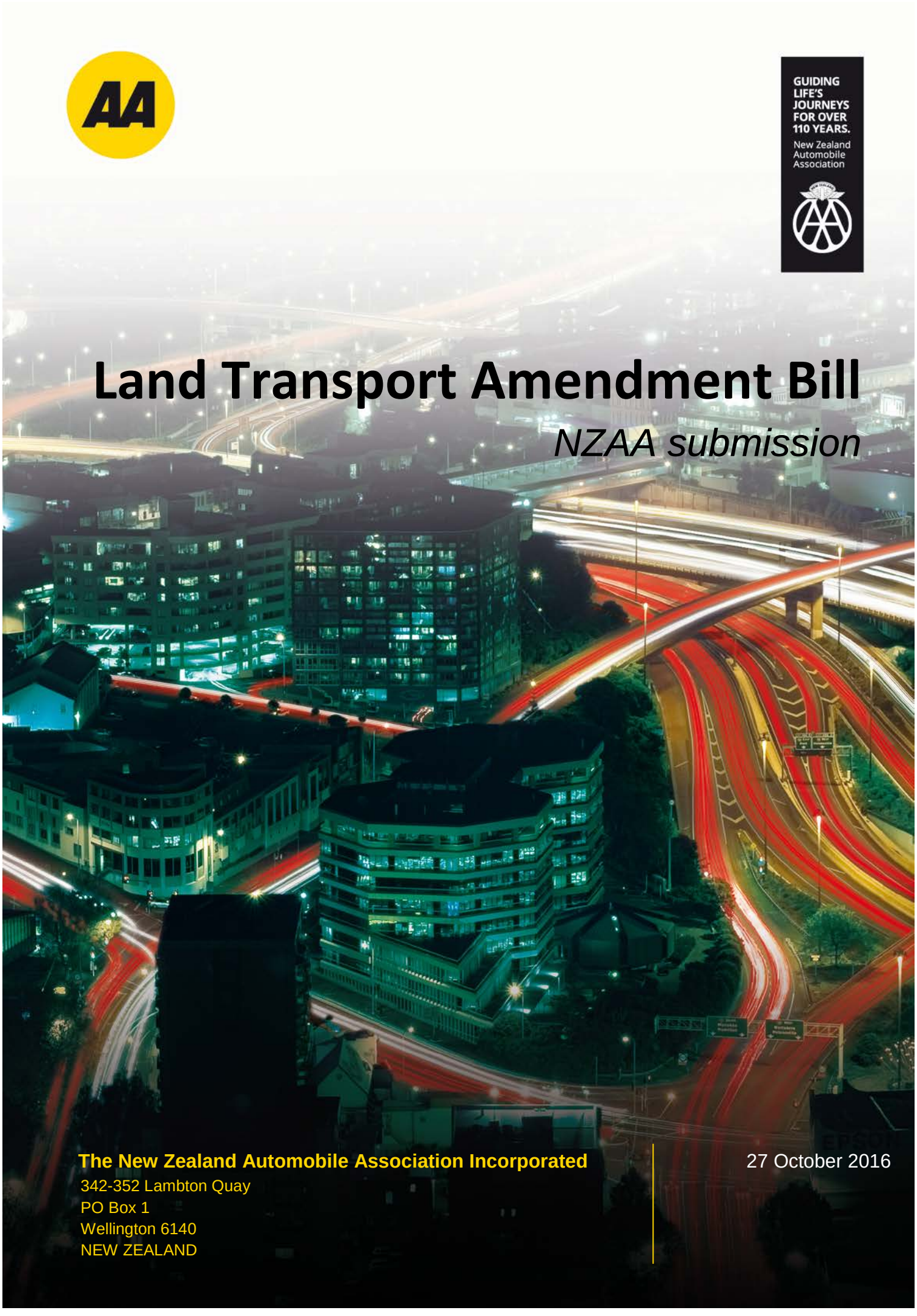

Land Transport Amendment Bill

NZAA submission

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NEW ZEALAND

27 October 2016

SUBMISSION TO:	Transport and Industrial Relations Select Committee
REGARDING:	**Land Transport Amendment Bill 2016**
DATE:	27 October 2016

ATTENTION:	Secretariat
ADDRESS:	Transport and Industrial Relations Select Committee Parliament Buildings WELLINGTON 6160

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NOTE TO REQUESTOR

The NZAA wishes to appear before the Committee.

Contents

Background on the New Zealand Automobile Association

The New Zealand Automobile Association ('NZAA') is an incorporated society with 1.55 million Members. Originally founded in 1903 as an automobile users advocacy group, today it represents the interests of road users who collectively pay over $2 billion in taxes each year through fuel excise, road user charges, registration fees, ACC levies, and GST. The NZAA's advocacy and policy work mainly focuses on protecting the freedom of choice and rights of motorists, keeping the cost of motoring fair and reasonable, and enhancing the safety of all road users.

Content of this Submission

Executive Summary

Mandatory alcohol interlocks

The NZAA strongly supports as a matter of some urgency the proposed Mandatory Alcohol Interlock Regime; about 100 people per year die in crashes on NZ roads involving drink drivers. This is an integral package and small or isolated changes to the proposals in the Bill could jeopardise the integrity of the scheme; it has been negotiated over a long period to balance a complex range of constraints.

For the basic framework the NZAA strongly supports the following particular aspects:

- making interlocks mandatory i.e. removing judicial discretion
- removing the (conflicting) requirement that a licence ban is also mandatory
- mandatory interlocks applying to Hard Core Offenders (i.e. as currently)
- mandatory interlocks applying to the very high risk "Section 65" persistent drink-drivers (offending three times or more within 5 years)
- retaining the stringent exit criteria; and strengthening them by requiring the interlock to be *fitted and used* during the exit period
- the proposed 28 day stand-down period (the NZAA strongly opposes a longer stand-down period)
- interlocks replacing limited licences for first time offenders with double the 0.08 BAC
- a subsidy scheme (details yet to be released); to recognise the wider public benefit of protecting the general public and facilitating offenders continued contribution to society

- closing a loophole in the interlock programme by changing driving offences in breach of the interlock licence stages from ‘driving with a licence of no effect’ to the more serious ‘driving while disqualified’
- clarifying consecutive and/or concurrent penalties that affect the interlock sentence
- balancing the penalties (licence ban and interlock) by adding a 3-year Zero Alcohol Licence (ZAL) (currently only on the interlock sentence) to the licence ban; noting that the NZAA would prefer to rebalance by removing the ZAL from both sentences
- undertaking an outcomes evaluation of the interlock regime after 3 years; in addition NZAA recommends immediate close monitoring of the exemptions and, after the first year, an implementation analysis and formative evaluation, including the effectiveness or otherwise of ZALs.

The NZAA recommends:

- persistent violators (offenders who keep getting locked out by the interlock, and would otherwise stay on an interlock indefinitely) should be identified early and referred to mandatory assessment and appropriate treatment (such as alcohol addiction); if they are on the subsidy scheme, this reduces the fiscal liability.
- Section 65 offenders, in order to exit the interlock programme and gain licence reinstatement, must receive a ‘fit person’ report by a professional assessment centre, as currently.
- Like the exit criteria, interlocks should have to be fitted and *used* to count towards the 12 month interlock sentence; the interlock sentence should halt and restart during the period when an offender is physically restricted from driving while e.g. in custodial treatment.

For the proposed exemptions, the NZAA supports:

- exemption for medical conditions that preclude an interlock provided that, to protect public safety, this criteria should trigger an NZTA ‘fitness to drive’ medical review
- no exemption for not owning a vehicle; the ‘no car’ exemption is the biggest loophole used to avoid interlocks in overseas schemes
- no exemption on the grounds of hardship (noting that we have yet to see details of the proposed subsidy scheme)
- enabling an offender to fit (and pay for) an interlock to a vehicle they do not own (e.g. work vehicle, relative’s vehicle), with the owner’s agreement; the owner can request the interlock be removed

- exemption for someone who doesn't hold a driver licence, *provided that* the offender receives mandatory assessment and referral to an appropriate intervention (e.g. addiction treatment or drink-driver programme)
- exemption for Section 65 drug driving offenders without the involvement of alcohol *provided that* they receive mandatory assessment and referral to an appropriate intervention (for repeat impaired-driving offending).

The NZAA recommends the Committee:

- revisits the exemption for persons living over 30km from an interlock provider, and considers extending this to 150km
- considers providing Courts with resources to assess the distance exemption
- monitors and reviews the effect of the distance exemption
- reviews evidence of effectiveness of the Zero Alcohol Licence.
- revisits the proposal that Courts may exit an offender early from an interlock sentence when circumstances change (e.g. loss of employment); change of circumstances should trigger a review of eligibility for the subsidy scheme, and any early exit should require mandatory assessment and appropriate treatment.
- enables approved drink-drive treatment provider's access to offenders' interlock data to assist with treatment.

Fleeing drivers

The NZAA supports Police pursuing fleeing drivers, but is very mindful of the need to ensure that pursuits pose as little risk as possible to the driver and passengers, police, and other road users. As such we support policies and legislation that discourage a driver to flee in the first place, or improvements in the ability of police to identify fleeing drivers so they can follow up later as an alternative to a long or risky pursuit. Both of these work together to reduce the exposure to risk for all involved, including the general public. This submission contains some cautions and reservations with the proposed amendments, and outlines technology as an approach that could help address the issue of drivers failing to stop for police.

Small passenger services

The NZAA is supportive of the proposals in Subpart 5 to update regulations for small passenger services to respond to emerging technology and new business models. In our view, facilitating the introduction of new technology e.g. smartphone-based solutions that match supply with demand and facilitate ride-sharing, will drive greater competition, reduce transport costs, extend mobility benefits to a greater range of consumers, increase the utilisation of the vehicle fleet,

and play an increasingly important role in addressing congestion challenges. Specifically, the NZAA supports explicitly exempting facilitated car-sharing arrangements whilst including other facilitated 'hire and reward' services, and the removal of various regulatory requirements. However, we oppose the removal of the requirement for 'taxi service operators' to provide small passenger services 24 hours per day, 7 days a week.

Miscellaneous amendments

The NZAA opposes proposals to amend the definition of 'moving vehicle offence' to include variable or traffic lane control signs which are efficiency or demand management-related rather than safety-related. We do not consider sufficient policy analysis of this fundamental change to the core principle of traffic enforcement has been undertaken; that there is sufficient evidence base to support it; or that there is public support. The NZAA strongly opposes such a change and we urge the committee to remove this amendment from the Bill.

1. Subpart 1 – Alcohol interlock sentences

1.0 Overview: The NZAA strongly supports making alcohol interlocks mandatory

1. This legislation is needed urgently. Interlocks save lives. Everywhere they have been introduced around the world, the more interlocks installed, the lower the road toll. About a third of New Zealand road deaths involve alcohol (roughly 100 of the 300 lives lost each year). Road safety 'silver bullets' are rare; interventions are often costly, polarising or have limited impact.

2. Interlocks are highly effective and highly cost-effective as a deterrent. One interlock usually prevents numerous attempts to drink-drive. As at August 2016, there are only 361 active interlocks installed. But since 2012, these few interlocks have stopped 4,137 drink driving attempts. Imagine the difference that 5,000-6,000 interlocks might have in reducing alcohol-impaired crashes on our roads. An interlock is effectively a Police breath testing device operating all day, every day in a drink driver's vehicle.

3. The current interlock framework is not working, Interlocks have been a sentencing option since 2012 for Hard Core drink driving offenders (repeat offenders or high level (0.16+ BAC) first-time offenders). In 2014 the AA Research Foundation found[1] only 2% of eligible offenders were receiving interlock sentences (~200 interlocks for 12,000 Hard Core offenders per year). Since then, the uptake has been getting worse, rather than better. In private discussions with the NZAA, interlock providers have indicated that they are experiencing losses and the current approach is not financially sustainable. There is a real chance that without more uptake, the providers could exit New Zealand, leaving the legislation impotent.

4. Much effort has been invested worrying about how drink drivers might circumvent interlocks and this has meant technology has evolved to now be very sophisticated. We suggest lawmakers reflect on how easy it is to 'circumvent' a licence ban: turn on the ignition and drive off. The naïve idea that offenders willingly comply with licence bans has been disproved; surveys show the vast majority of drink drivers admit to driving during a licence ban. Driving without a valid licence is almost unenforceable; it is like finding a needle in a haystack for Police to detect an unlicensed driver among 4 million legal drivers. Police are not empowered (or resourced) to randomly stop drivers without cause, to inspect driver licences. Even at drink-drive stations, so as not to unduly hold up traffic flow, Police only inspect licences when someone blows a positive breath screening.

[1] The New Zealand Alcohol Interlock Program: A review of the first year as a sentencing option for high risk drink drivers, Gerald Waters, RIDNZ, 2014

5. The only real oversight of licence bans will be via employers, through responsibilities under WorkSafe legislation to check driver licence status of employees. A licence ban may in result in a loss of employment, but is likely to be ineffectual at preventing driving in general.

6. Interlocks are a powerful deterrent and a severe penalty. Offenders find interlocks inconvenient, embarrassing and costly. The NZAA supports interlocks as a genuinely punitive sanction. The majority (70-80%) of hard core drink driving offenders have an alcohol problem. To separate drinking from driving, offenders generally have to reduce their drinking, which they will find very challenging. They will pursue every avenue to get a licence ban instead of an interlock. This reveals the awkward fact that licence bans, whilst appearing to be more severe, are in reality are a much less severe or effective penalty than an interlock. The drink-driving community knows that licence bans are extremely easy to circumvent. Any loopholes in the legislation will be avidly sought out and rapidly exploited. The NZAA wholly supports proposals to review the use of exemptions.

7. The proposals for interlocks have been designed as an integral package. There is a real risk that even small or isolated changes could jeopardise the integrity of the scheme. The urge to edit and improve is strong, but we urge the Committee to pass this interlock legislation in its entirety. In reaching the scheme before you, we have observed Officials negotiate a complex balance of constraints across multiple agencies (Justice, Police, NZTA), as well as budgetary and practical considerations. This has taken considerable time and negotiation. The interlock scheme before you is a sound, workable solution that balances many factors. International evidence convincingly shows this scheme will save lives compared to the scheme in place now. The NZAA believes it is a matter of urgency to enact it quickly in its entirety. In another year, an estimated 100 people will die in crashes involving drink drivers, and many more will be injured. We urge the Select Committee to respect the delicate balance in the proposals and progress the interlock framework urgently, and unchanged.

1.1 The Basic Regime: Evidence-based

8. The NZAA supports the following aspects of the proposed basic framework; we consider proposed exemptions in the following section.

9. The NZAA supports making interlocks mandatory; that is, we support removing judicial discretion, and also support removing the (conflicting) mandatory licence ban sentence. Internationally removing judicial discretion has proven the critical step to increase interlock uptake. Judges retain discretion to add penalties (fines, licence ban, jail) to an interlock sentence.

10. The NZAA supports mandatory interlocks applying to Hard Core Offenders (i.e. as currently) and also strongly supports the proposed inclusion Section 65 offenders. The very high risk Section 65 persistent drink-drivers (offending three times or more within 5 years) under current law receive an 'indefinite disqualification' (a licence ban). 'Indefinite disqualification' sounds serious, but in reality:
    - licence bans are easily subverted; the offender often drives without being detected, and
    - after a year and a day (and after being assessed as 'fit to drive') may reapply for a driver licence.

11. This is currently ineffective; Section 65 offenders have the highest rates of any drink-driver group of re-offending after being re-licensed[2]. Ensuring they get an interlock instead protects the public from these persistent offenders. As an editing note, the proposed 100(1) and 100(4) for Section 65 offenders refers only to a '*disqualification period';* we believe this should include '*an interlock licence or disqualification period*". It is also essential that the drafted legislation specify that licence reinstatement retains the current requirement for a 'fit person' report by a professional assessment centre.

12. The NZAA strongly supports the proposal to retain the stringent exit criteria from the interlock licence. The exit criteria are currently a specified period free of interlock violations (a violation could be a failed breath test, tampering or otherwise subverting the interlock programme). The exit criteria is one of the best features of the New Zealand interlock programme; persistent offenders who can't stop trying to drink-drive stay on an interlock indefinitely. We recommend that this group is identified quickly and receives appropriate treatment (assessed for issues that cause offending such as alcohol addiction, mental health or other social dysfunction). The NZAA also supports the proposal to close a loophole in the exit criteria, by ensuring the interlock is *fitted and used* during the exit period. This way an offender cannot use time spent overseas, in detention or otherwise not being able to drive, to get through the violation-free period.

13. The NZAA supports the proposed 28 day stand-down period. International evidence shows much greater interlock uptake when interlocks are fitted as soon as possible after being caught (i.e. no stand down period at all). The current 3 month stand down is a major barrier to interlock uptake. In those 3 months, offenders learn they can drive unlicensed without detection and hence opt to wait out the "licence ban" period instead of getting an interlock

[2] Internationally Recognised Best Practice for Drink Driver Rehabilitation, and Drink Driver Rehabilitation in New Zealand, Gerald Waters, RIDNZ, 2012

fitted. While the NZAA suggests no stand-down at all is best, we support the 28 day stand-down as a significant improvement over the ineffective 3-month stand-down.

14. The NZAA supports the proposal that interlocks replace limited licences (only available to first time offenders) for high BAC (0.16+ BAC) offenders. That is, hard core offenders will need an interlock to drive to work.

15. The NZAA strongly supports a subsidy scheme. For public safety, it is essential that interlocks are available to hard core drink drivers who may not be able to afford them. This recognises the wider social value of interlocks in protecting the innocent public from drink drivers. Physical detention is the only other way to protect the public and that costs the public purse far more than an interlock subsidy. Fitting an interlock also enables offenders to remain in employment, so:
    - they positively contribute to society, family and community
    - it is a pro-social environment, with structures and peer influence
    - it is key to keeping offenders out of the justice system and to help them become law-abiding citizens.

16. The NZAA supports proposals to closes loopholes during the interlock process**.** An offender can falter at any of the stages of an interlock sentence for example:
    - gets an interlock sentence but fails to apply for an interlock licence
    - gets an interlock licence, but fails to get the interlock fitted
    - completes the interlock requirements but fails to apply for a Zero Alcohol Licence.

17. If caught driving during such a hiatus, they are currently ‘driving with a licence of no effect’. The NZAA considers the proposed ‘driving while disqualified’ is more serious and appropriate.

18. The NZAA also supports the proposed clarifications for how to apply consecutive and/or concurrent penalties that affect the interlock sentence (e.g. another licence ban, drink drive offence, or jail sentence). Specifically the NZAA supports the conditions under which the interlock sentence is proposed to continue (suspended and completed later); and the conditions under which the interlock sentence is completely restarted. The NZAA considers that, like the exit criteria, time when offenders are not able to drive should not count towards completion of the interlock sentence e.g. those referred to custodial or residential treatment should halt and restart their interlock programme.

19. The NZAA strongly supports the proposed outcomes evaluation of the interlock regime after 3 years (2020). In light of drink drivers' dislike of interlocks, the NZAA also strongly recommends from the very start closely monitoring uptake of exemptions and opt-out criteria and, after its first year, undertake an implementation analysis and formative evaluation. This would enable the government to detect any floodgate of exemptions (e.g. sale of vehicles, relocation to remote areas) and move quickly to close them.

1.2 Exemptions Supported

20. The NZAA supports the exemptions below, provided resources are in place to monitor and evaluate the new interlock regime as noted above.

21. The NZAA supports an exemption for medical conditions that preclude the use of an interlock. Interlock providers report this is extremely rare in practice; those who are unable to use an interlock are usually extremely ill and almost invariably not medically fit to drive. The NZAA suggests that, to ensure public safety, use of this criteria should trigger an NZTA 'fitness to drive' medical review.

22. The NZAA supports the proposal that there is no exemption for not *owning* a vehicle, because it is too easy for a person to change ownership (e.g. a 'sham' sale to a friend or relative), while essentially retaining control of the vehicle. Overseas, the 'no car' exemption has been the biggest loophole in interlock programmes and the hardest to close. The offender had to be driving a vehicle to commit the offence(s) in the first place. The sentence is an interlock *licence*, not a *vehicle* with an interlock; the licence means the offender can only drive a vehicle which has been fitted with an interlock.

23. The NZAA supports the proposal that there is no exemption on the grounds of hardship. Hardship exemptions have also been a loophole overseas. Testing for hardship is costly; Courts do not have the resources to investigate hardship in depth and judges essentially have to take the word of the offender's lawyer. We have yet to see details of the proposed subsidy scheme, which is crucial to this approach, but consider there is a strong public safety argument that it is fitting to make a social contribution to protect general road users from drink drivers, and that the alternative sentences do not do this. There is also an equity case that New Zealanders should have equal access to lifesaving technology; and finally a fiscal case, that offenders do not pay for costly alternative sentences like ankle bracelets, treatment or custodial sentences.

24. The NZAA supports the Bill's proposal to enable an offender to fit (and pay for) an interlock to a vehicle they do not own (e.g. work vehicle, relative's vehicle), provided the owner agrees. The NZAA also supports the proposal that the owner can request the interlock be removed.

25. The NZAA supports the logical proposal that someone who doesn't hold a driver licence can't hold an interlock licence. However, consider that this group has flouted both licence laws and drink driving laws in order to offend in the first place. This is a high risk group for crashing. To protect the public from an unlicensed drink-driver the penalty needs to have a more preventive effect than a licence ban e.g. home detention, in-house residential treatment programme, and monitoring. We strongly recommend immediate mandatory assessment and referral to appropriate treatment, rather than simply a temporary 'marking time' until they are released to offend again.

26. The NZAA also supports the logical proposal that Section 65 drug driving offenders without the involvement of alcohol would be exempt from an alcohol interlock. Despite the size of the drug-driving problem, the cumbersome testing processes mean that the number of detected repeat drug-drivers is vanishingly small. Hence we expect this exemption will be rarely used. We do however recommend that section 65 drug-drivers receive immediate mandatory assessment and referral to appropriate treatment for their repeat offending, rather than just 'marking time' for one year and a day through a licence ban.

1.3 Exemptions Conditionally Supported

27. The NZAA supports the proposal to balance the interlock and licence ban by adding a 3-year Zero Alcohol Licence (ZAL) period to both. We believe that this will increase the number of interlock sentences compared to the current state. Currently the licence ban sentence is much more attractive in terms of time and money than the interlock sentence. The interlock regime requires nearly five years:
    - 3 month stand down licence ban; then
    - (at least) one year on an interlock; then
    - three years on a ZAL.

28. The licence ban is 3-12 months (depending on the offence). Hence the unevenness of the penalties incentivises uptake of the licence ban and disincentives uptake of interlocks. The NZAA considers adding the ZAL to the licence ban will increase interlock uptake by making the two sentences more equal than they are currently.

29. However, the NZAA observes that to rebalance the penalties, it would be equally effective, and administratively simpler and less costly, to remove the ZAL from the interlock regime than to add it to the licence ban.

30. The NZAA comments there is no evidence backing the ZAL's benefits (whether as a road safety tool or as a deterrent), The ZAL's appeal seems more apparent than real.
    - It adds a step (compliance costs in applying for a ZAL then applying again for a normal licence).
    - It adds considerably to the complexity and cost of drink-drive sanctions; there is a complex net of penalties depending on the level of alcohol detected and the frequency of detection.
    - The ZAL is also essentially unenforceable, for many of the same reasons that licence bans are unenforceable. Police cannot stop drivers to check ZALs without cause. At alcohol checkpoints, Police ask for driver licences if the driver appears under age 20 (also a zero alcohol tolerance). If a ZAL holder is over 20 they are highly likely to not be asked to present their licence, and hence will be waved through. Offenders will learn they will not be caught breaching the ZAL, which undermines the credibility of the licence and enforcement systems.

31. If any form of ZAL is retained or extended, the NZAA strongly recommends reviewing evidence of effectiveness of the ZAL in the 12 month and 3 year reviews. Currently there are a few thousand offenders on a ZAL; once this legislation is passed there are likely to be some 12,000 offenders per year that graduate from either a licence ban or an interlock onto a ZAL. At that point, issues with the ZAL may well start to appear.

32. Judges have been sentencing large numbers of offenders to a stand-alone ZAL. Once interlocks are mandatory, the number of stand-alone ZALs should reduce. The NZAA recommends removing the option for an ineffective stand-alone ZAL.

33. As a comment on drafting detail in the legislation, we note that there appears to be contradictory penalties for breaching a ZAL in two places in the LTMA (section 32 (3 and 4) depending on the number of offences and section 57 (3 and 6) depending on the level of alcohol. There is no guidance for judges as to how to interpret these two sections together (e.g. independent offences or one combined offence).

Issues

1.4 Exemptions Opposed

34. The NZAA strongly recommends that the Committee review the proposal to exempt persons who live more than 30km from an interlock provider from an interlock sentence, enabling them to instead opt for a licence ban.

35. However, feedback from the NZAA's National Council and network of NZAA Districts has been unanimously opposed to the 30km exemption. The Committee should be aware that this may indicate a wider public response. A sentiment expressed was: "*we have a serious rural drink driving problem; this 30km exemption means nothing will improve outside of urban areas*". It seems to tap into an equity concern, that some parts of New Zealand will be safer than others. We suggest that the 30km exemption should be revisited, and if at all possible, extended to 100-150km.

36. The NZAA also strongly recommends that, if applied, use of the distance exemption be monitored, starting immediately. Interlock providers have warned that in their international experience, a proximity exemption can be a significant loophole. Recidivist drink drivers are often in denial about their problem and can be very deceptive. In Victoria, offenders temporarily move outside the 150km prescribed radius to avoid the interlock.

37. The NZAA recommends that Courts should have resources to verify claims of change of address for those applying to avoid the interlock licence, and that those seeking to avoid the interlock be assessed and receive appropriate treatment alongside their licence ban. Judges have no time or resources to verify claims about a person's residence when applying for this exemption. The NZAA asks, what are the mechanisms to verify this distance in Court, and what support would be provided for judges? What provision is there to revisit the interlock sentence, if the person moves back within the interlock provider's area, or if a provider sets up a new base in an offender's location?

38. The basis for the exemption attempts to balance an offender's convenience, time and cost against the road safety benefits of the interlocks. The NZAA considers that having to travel to have the interlock serviced is a reasonable consequence of the original drink driving offence.

1.5 Judges Discretion to Cancel Interlock Sentence

39. The NZAA recommends the Committee reconsider the proposal that Courts may cancel the interlock sentence when circumstances change (e.g. loss of employment). Instead, the

NZAA considers that change of circumstances such as loss of employment, should trigger a review of eligibility for the subsidy scheme, and that exiting the interlock early should be a last resort, particularly where the person has recorded drink-drive attempts on the interlock indicating they may have an alcohol problem. This appears to have the potential to be a substantive loophole and also appears to conflict with the proposal that not owning a vehicle and financial hardship should not be a barrier to starting the interlock programme. Hence we do not see that either of these should be a barrier to continuing on the programme.

40. There might need to be some way to exit the programme but in the judge's view there has to be a substantive change that goes beyond the exemption criteria (which does not include hardship or no access to a vehicle). Courts do not have the ability to assess an applicant's financial status; at the very least, an application under hardship should require a pre-sentencing report on income etc. When exiting an interlock sentence early, legislation should require a mandatory assessment and appropriate treatment for any condition that affects fitness to drive.

1.6 Assessment, treatment and interlock data

41. The NZAA strongly recommends that the legislation should enable government-approved drink-drive treatment providers to have access to an offender's interlock data. International evidence is that integrating interlock data with assessment, rehabilitation and treatment reduces reoffending rates, even after the interlock is removed. Interlock data is an effective adjunct to treatment, and the earlier that the two are integrated the better. Data from an interlock such as recorded violations (drink drive attempts) provide the opportunity for a treatment provider to confront an offender in denial with evidence, and make a therapeutic intervention to change behaviour. This opportunity should not be missed.

42. The NZAA also recommends that those who are having difficulty exiting the interlock programme be given mandatory assessment and referred to appropriate treatment. The early integration of interlock and treatment is particularly important for those at high risk of reoffending. This would be offenders assessed as having an alcohol addiction or abuse issues, multi-recidivist offenders, and indefinitely disqualified section 65 offenders. Many of these offenders will never graduate from an interlock due to repeatedly attempting to drink-drive. If the offender is on the subsidy scheme, this is an ongoing fiscal liability. There is a fiscal advantage, as well as an efficacy in early assessment and treatment of Section 65 offenders, rather than the current (and proposed) approach of not assessing and treating them until they want to exit the programme (which may never happen).

2. Subpart 2 – Fare evasion

2.0 Powers of enforcement officers in relation to public transport service fares

43. The NZAA is supportive about proposals in the Bill to manage and reduce public transport fare evasion, including both train and bus services.

44. However, we are concerned about the potential risks to personal safety of **Clause 30** (new section 128F, subsection (2)(b)), requiring a person to disembark if they fail to provide evidence of payment. We suggest vulnerable persons should not be required to disembark at night in relatively isolated locations away from populated terminuses. Therefore, the NZAA proposes that the Bill provides some guidance to enforcement officers regarding the circumstances when the order to disembark can safely be enacted.

3. Subpart 3 – Fleeing drivers

3.0 Increases to penalties for drivers who fail to stop for police

45. If an increase in penalties is to be truly effective at deterring offenders, then it needs to be well publicised. We are not convinced that penalties for failing to stop are front of mind when a driver decides to flee, especially for first-time offenders who we wonder if they are even aware of the current penalties, let alone whether harsher ones are to be applied. We ask that greater public communication of penalties is undertaken, especially the risks for subsequent offences of failing to stop – which can be communicated to offenders who are convicted at their first and subsequent offences.

46. The NZAA supports penalties that graduate according to the number of convictions (**Clause 34**), including the mandatory confiscation of the vehicle for offences within the same 4-year period (**Clause 95**), and our understanding is that this brings the penalty into line with other driving offences such as drink driving, driving while disqualified and reckless driving.

47. However, we caution the effectiveness of using driver license disqualification as a penalty. AA Research Foundation research (to be released shortly) indicates that this type of penalty is less effective (particularly for young offenders) than using more intensive penalties for example community justice panels or community service, or tools such as those used in the youth justice sector. In addition, for those offenders who require a license to drive as part of their employment, or to be able to drive to and from their workplace, the license disqualification could lead to them losing their job. Research shows that being in employment reduces offending, so the result of the penalty may work against what the objective is trying to achieve.

48. There is also a fine line between penalties being an adequate deterrent versus adding motivation for the driver to keep the pursuit going once they have decided to flee. We suggest it may be worth considering leniency if a driver subsequently stops for police after an initial pursuit has commenced.

49. The NZAA supports the proposed amendment to extend the Police's discretionary powers to seize and impound a motor vehicle for 28 days in cases where they suspect, on reasonable grounds, that the owner or person in lawful position of the motor vehicle *provides false or misleading* information or *refuses* to provide information in response to a police request (in relation to the identity of the driver).

50. The NZAA has reservations about the new penalty in **Clause 35** to impound a vehicle if the owner *fails* to provide the information. There could be circumstances where the owner of the vehicle genuinely has no knowledge of who was driving at the time, and therefore has no information to provide, and therefore would be unfairly penalised under this amendment.

3.1 Technological solutions

51. Overall, the NZAA believes these legislative changes ignore the possibility of technology to provide solutions which could have large benefits in reducing the number and length of police pursuits, and these should be investigated further. For example:
    - improved use of GPS tracking technologies (in-vehicle telematics units which could be placed in vehicles following a failing to stop offence, so that Police would not need to pursue the vehicle, but could safely follow up later)
    - installation of forward facing cameras in police cars to capture footage of the vehicle, and to record the offence(s) – the driver will know this information is being recorded and will be used to find and help identify them should they choose to flee
    - technology which enables police to deploy tracking tags[3] onto fleeing vehicles which aids locating them following an abandoned pursuit.

4. Subpart 4 – Heavy vehicles

4.0 Management of infrastructure

52. The NZAA supports the amendments in the Bill (**Clauses 50-52**) for ordinary rules, and rule-makers, to have regard for the impact of vehicles on infrastructure, and especially whether the costs of this impact are offset by the economic value generated by its use.

[3] www.starchase.com/

5. Subpart 5 – Small passenger services

5.0 Provision of 24/7 services

53. The NZAA opposes proposals, via revised Rules, to remove the requirement to provide small passenger services 24 hours per day, 7 days a week in large cities. In metropolitan areas it is essential that passenger hire services are available at all hours. This is necessary for vulnerable people and medical emergencies. It also can enhance road safety by providing an alternative for alcohol or drug-impaired people who might otherwise drive.

54. With increased competition and innovation provided by technological developments, the cost of passenger services may fall, thereby making these services more affordable than self-drive. If 24/7 is not mandated however, there is a risk that operators or contracted drivers will choose not to make their services available at off-peak times. If services are withdrawn, then mobility will be restricted and consumers disadvantaged. There may also potentially be increased risks to road safety. Additionally, if only a few operators choose to maintain 24/7 availability, off-peak charges may rise and competition and flexibility be reduced if those operators have a near-monopoly with restricted availability.

55. Therefore, the NZAA recommends that 24/7 services continue to be a mandatory requirement in large cities, however we suggest that this requirement only be imposed on small passenger service operators with a vehicle fleet over a minimum size (to be determined).

5.1 Signage

56. While the NZAA supports proposals, via revised Rules, to remove the requirement for some information to be provided in Braille (as this information can be provided by other technology), we oppose the wholesale removal of mandatory signs for ‘hire and reward’ small passenger services. Signage provides safety benefits for both passengers (especially street hire) and other road users (in the event of a traffic altercation), as well helping to assist enforcement agencies to identify small passenger service vehicles. We recognise that the existing signage requirements do impose additional costs on providers, and suggest that the pending rule amendments could instead provide simplified, mandatory requirements that reduce costs while preserving the benefits. These could include retaining interior stickers for contact details and fare information (where applicable), and magnetic exterior decals in place of livery and roof signs small passenger services that accept street hire.

5.2 Small Passenger Service Licence

57. The NZAA supports the requirement in the Bill (**Clause 62**) that a small passenger service licence may only be granted to the person in control of the service, provided they live in New Zealand. However, this definition should explicitly define that the person must be a natural person, rather than a legal person who could instead just be a NZ-registered company.

6. Subpart 6 – Miscellaneous amendments

6.0 Enforcement of variable traffic signs

58. The NZAA does not support the proposed amendment in **Clause 80(2)** to amend the definition of "moving vehicle offence" in section (2)(1) to include *"a traffic sign that is a variable traffic or lane control sign"*. In our view, moving vehicle offences should be safety-related offences only, but the Bill amendment proposes to include non-compliance with variable traffic or lane control signs which are not safety-related, but rather related to traffic efficiency or demand management. Such an amendment could also include variable speed limit signs on motorways which are also designed to improve traffic flow, rather than for safety.

59. The police have for many years promoted a risk-based safety approach to enforcement. The NZAA contends this has developed into a strong and well understood social contract with the NZ public.

60. This risks undermining the understanding motorists have about the role of enforcement, and their support for it. We do not believe there is sufficient evidence base to support enforcement for traffic efficiency objectives, and this is a complicated issue which requires further policy analysis and engagement with motorists before such non-safety enforcement could be considered. As such, the NZAA would publicly oppose this change to the fundamental concept of traffic enforcement, and therefore we strongly urge that this amendment be removed from the Bill at this time.