

Drug driving

Land Transport (Drug Driving) Amendment Act

Summary of change

Legislation in force: 11 March 2023

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Law change supports our goal of safer roads

In March 2023, legislative changes will give Police additional powers to deter and detect drivers who have used drugs that impair their ability to drive safely.

New drug driving legislation

The Land Transport (Drug Driving) Amendment Act 2022 makes changes to the Land Transport Act 1998. This legislation change helps strengthen what we already do to deter drug-impaired driving and to reduce the number of deaths and injuries on our roads.

From 11 March 2023, new offences will be introduced for drug driving that include some prescription medication and illegal drugs where consumption is above legally allowed levels.

New enforcement levels for drugs have lower limits for infringements and higher penalties for mixing drugs and alcohol.

There are 25 drugs included in the legislation that have the highest risk to road safety in New Zealand.

If a person drives while drug impaired and tests positive for drug/s they could face an infringement or criminal conviction. The more drugs that are taken and mixed the higher the penalty.

A link to the legislation can be found [here](#)

What's behind this change?

Over the past few years, there has been a consistent rise in the presence of impairing drugs in drivers involved in road crashes that cause injury and death.

The presence of impairing drugs in a driver's blood in fatal crashes is now generally about equal to alcohol, having more than doubled since 2015. In 2021, there were 93 people killed in crashes where a driver was found to have the presence of drugs - nearly a third of all fatalities that year.

Police has an important role in the Government's Road to Zero strategy, which aims to reduce deaths and serious injuries on our roads by 40 percent by 2030. These changes will support our goal to make roads safer.

Implementation of drug driving legislation

Key information

The Act

- The Land Transport (Drug Driving) Amendment Act 2022 (The Act) was passed on 11 March 2022.
- The Act comes into force on 11 March 2023.

Phase 1

- Implementation of legislation into Police practices will commence from 11 March 2023, which includes:
 - Changes to the legislation (see following page).
 - New enforcement offence levels for drugs that have the highest risk to road safety.
 - Changes to the blood testing process and analysis that confirms the level the offence belongs to.
 - 113 new infringement and criminal offences.
 - Offences would result from a blood test being taken:
 - following hospitalisation, where a driver has been involved in a crash or incident involving a motor vehicle, or
 - after not satisfactorily completing a compulsory impairment test (CIT), or
 - a driver has been deemed incapable of proper control of a motor vehicle by a health practitioner.
 - Internal changes to systems (e.g., LRT, CheckPoint, and OnDuty), business processes and POL forms.
 - New support forms and training package created.

Phase 2

- Implementation date to be confirmed, which will include:
 - The introduction of random roadside drug driver testing via an oral fluid test (OFT).
 - A national and district deployment plan.

Changes to the Land Transport (Drug Driving) Act 2022

1. Section 56 of the Act (breath or blood alcohol offences) has been amended to replace any reference of section 57A(1) (previous drug driving qualifying offences) with sections 57A(1), 57B(1) and 57C(1) (new drug driving qualifying offences).
2. Section 57A of the Land Transport Act 1998 (the Act) which previously covered drug driving offences has now been replaced by sections 57A, 57B, 57C and 57D.
 - Section 57A - [Driving with blood that contains evidence of, or oral fluid that indicates, use of 1 qualifying drug](#)
 - Section 57B - [Driving while blood contains evidence of, or oral fluid indicates, use of 2 or more qualifying drugs](#)
 - Section 57C - [Driving while blood or breath contains alcohol and blood contains evidence of, or oral fluid indicates, use of 1 qualifying drug](#)
 - Section 57D - [Penalties for offences against sections 57A\(1\), 57B\(1\), and 57C\(1\)](#)

The new qualifying offences (which relate to criminal charges) are now sections 57A(1), 57B(1) and 57C(1).

Third or subsequent offences

All charges relating to impaired driving for a third or subsequent offences have now been amended in the Legislative Reference Table (LRT) to replace reference to the previous section 57A.

3. Section 64 of the Act (medical defence) has been expanded to include police being able to consider a medical defence with the introduction of infringement offences for drug driving.
4. Section 65AB (Qualifying offences) has been amended to include section 57C(1) as a qualifying offence.
5. Section 71A (previous CIT provisions) has been replaced in the Act by Sections 71A, 71B, 71C, 71D, 71E, 71F and 71G. The new provisions for CIT are set out in the new s71F of the Act.

Summary of key changes

1

Random roadside drug testing

Description	Key information
The introduction of random roadside drug driving testing will enhance the deterrence effect and align with the same kind of measures for the detection and testing of alcohol.	<p>Random roadside drug testing to be implemented following confirmation of an oral fluid testing device.</p> <p>The roadside drug test is an oral fluid test (OFT) which will use an approved drug testing device.</p> <p>Implementation date to be confirmed.</p>

2

Schedule 5 and associated changes

Description	Key information
The addition of Schedule 5 to the Act, which includes 25 drugs with the highest risk to road safety in New Zealand.	<p>All drugs in the legislation are 'qualifying' drugs. To differentiate the drugs in the Act, drugs in Schedule 5 are defined as 'listed' qualifying drugs. All other drugs are 'unlisted' qualifying drugs.</p> <p>The 25 drugs include four illicit and 21 prescription drugs.</p> <p>Each of the 25 drugs has a tolerance and high-risk blood concentration level.</p>

3

Blood testing and blood analyst change

Description	Key information
A new blood testing process will be in place for all drugs in Schedule 5 to enable testing against tolerance (infringement) and high-risk (criminal) blood concentration levels.	<p>A new blood test has been developed for listed qualifying drugs that analyses the proportion of drug/s in a person's blood. The analyst certificate will confirm the quantitative level.</p> <p>The blood test for unlisted qualifying drugs remains the same. The analyst certificate will confirm the presence of drug/s.</p> <p>This has resulted in new Analyst Certificate, which is sent to the officer in charge and used to help confirm the type of offence (as per the usual practice).</p>

4

New offences

Description	Key information
There are 113 new infringements and criminal offences from this legislation change.	<p>Any listed qualifying drug that exceeds the blood tolerance level is eligible for an infringement, or a criminal charge where drug/s exceed the high-risk level.</p> <p>For an unlisted qualifying drug, the enforcement action is determined by (a) whether a CIT is completed or not, and (b) if the blood test detects the presence of an unlisted qualifying drug. An infringement applies if no CIT is undertaken, and a charge if a CIT was not able to be completed in a satisfactory manner.</p>

About Schedule 5

Why is Schedule 5 key?

Schedule 5 is a new schedule that has been added to the Land Transport Act 1998. This schedule is specifically for drug-driving and includes 25 drugs with the highest risk of impairing the ability to drive safely.

Of the 25 drugs in Schedule 5 four are illicit and 21 are prescription drugs. The schedule includes the introduction of **tolerance** and **high-risk blood concentration levels** (refer to Schedule 5 on the following page).

The addition of 'levels' for drugs in Schedule 5

The only drugs in the legislation that have '**levels**' are the drugs in **Schedule 5**.

A drug blood test for a listed qualifying drug is therefore for a **quantitative** level. A blood drug test for an unlisted qualifying drug is for **presence** only.

A new blood testing analysis process has been developed to test for a quantitative level. The results of a drug blood test must **exceed** the tolerance or **exceed** the high-risk blood concentration levels for an offence to be applicable.

Changes to definitions and understanding the link with blood tests

All drugs in the Act are called '**qualifying**' drugs. New definitions help distinguish drugs in Schedule 5 from other drugs:

- Drugs in Schedule 5 are called '**listed**' qualifying drugs
- All other drugs are called '**unlisted**' qualifying drugs

The 'level' for a listed qualifying drug determines the enforcement action

If the blood test result is below the tolerance level, there is **no offence**. If it exceeds the tolerance level it will result in an **infringement**, and if it exceeds the high-risk level, it is a **criminal charge**.

Example

As an example, the tolerance blood concentration level for methamphetamine is 10ng/mL, the infringement applies from 10.01ng/mL.

Note for O/C: The qualitative level **must** be provided to determine the enforcement action.

This mirrors the current alcohol enforcement options where there is already a tolerance (ION) level of 30mgm, and high-risk (charge) level of 80mgm for blood analysis.

Unlike alcohol however the levels which apply to each of the listed drugs varies depending on the drug.

Schedule 5 of the Land Transport (Drug Driving) Amendment

Please note the below list is blood concentration levels for **blood tests**.

No.	Qualifying Drug	Drug-driving offences levels	
		Tolerance blood concentration levels	High-risk blood concentration levels
1	Alprazolam	20	50
2	Amphetamine	20	100
3	Buprenorphine	1	1
4	Clonazepam	20	50
5	Cocaine	5	20
6	Codeine	50	200
7	Diazepam	100	200
8	Dihydrocodeine	50	200
9	Fentanyl	0.5	0.5
10	GHB	10,000	50,000
11	Ketamine	10	50
12	Lorazepam	10	30
13	MDMA	10	50
14	Methadone	50	200
15	Methamphetamine	10	50
16	Midazolam	10	30
17	Morphine	10	20
18	Nitrazepam	20	50
19	Oxazepam	200	800
20	Oxycodone	20	50
21	Temazepam	200	800
22	THC (cannabis)	1	3
23	Tramadol	100	250
24	Triazolam	4	4
25	Zopiclone	20	50

Procedure pathways to blood analysis

A blood analysis is required to confirm the enforcement level and offence

A blood test could be taken:

1. following hospitalisation, where a driver has been involved in a crash or incident involving a motor vehicle, or
2. after not satisfactorily completing a compulsory impairment test (CIT), or
3. a driver has been deemed incapable of proper control of a motor vehicle by a health practitioner.

Key points

- A blood analysis with confirmation of either the presence (with or without CIT), or drug level/s is required for enforcement action.
- If a driver is stopped at the roadside we test first for alcohol.
- There are decision points during the alcohol impairment testing process where a decision to undertake a CIT can be made.
- If a driver has failed an evidential breath test (EBT) they are not required to do a CIT test (unless there is a specific reason to do so).
- We use the compulsory impairment test (CIT) to test for driving impairment for drugs.
- For a driver to undergo a CIT, the officer in charge must have good cause to suspect the person has consumed a drug or drugs. (Ref: S71F).
- The legislation applicable to the taking of a blood sample are sections 72 (see 1 and 2 below) and 73 (see 3 below) of the Act.
- For a blood test to be taken for drugs one or more of the following is required:
 - 1) the officer has arrested the person under [section 120\(1\)](#) and has good cause to suspect that the person has committed an offence against any of [sections 56 to 62](#), and either—
 - a health practitioner has examined the person and believes that the person may be under the influence of drink or a drug, or both; or
 - the person has refused to be examined by a health practitioner; or
 - 2) the person fails to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when the person is required to do so by an enforcement officer under section 71F;
 - 3) a driver is in a hospital or medical centre and there is reasonable grounds to suspect that the person is in the hospital or medical centre as a result of—
 - an accident or incident involving a motor vehicle;
 - an injury or a medical condition arising subsequent to an accident or incident involving a motor vehicle

For detail on procedures, please refer the Impaired Driving chapter, in the Police Instructions.

Compulsory impairment test (CIT)

A CIT is undertaken when there is good cause to suspect that a person has consumed a drug or drugs. This can occur for:

1. A driver of, or a person attempting to drive, a motor vehicle on a road.
2. A person who the officer has good cause to suspect has recently committed an offence against the Act that involves the driving of a motor vehicle.
3. If an accident has occurred involving a motor vehicle:
 - (i) the driver of the vehicle at the time of the accident; or
 - (ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person who the officer has good cause to suspect was in the motor vehicle at the time of the accident.

A failure to complete the CIT in a satisfactory manner, will result in the driver being required to provide a blood specimen for the purpose of analysis.

A person can be arrested and charged if they refuse to provide a blood specimen after being required to do so.

Alcohol impaired driving

All drivers involved in a crash or stopped for any reason should be subject to initial alcohol impairment driving procedures.

If the person fails an EBA process an enforcement officer should not request a person to undergo a CIT, except under the following circumstances.

At the first two stages of the breath testing procedure there is an option for an officer to progress to a CIT following:

1. A Passive Breath Test (PBT) where no alcohol is detected.
2. A Breath Screening Test (BST) where no alcohol is detected, or the driver is over twenty years, and under 250mcg/l.

Where an Evidential Breath Test (EBT) is undertaken, and alcohol is detected, this will result in either an offence, or a blood specimen being requested.

At any stage of the process, where an officer is unable to carry out EBA procedures due to no device being available a blood test could be required of the driver.

Drivers involved in a crash

All drivers who are stopped for any reason or involved in a crash are subject to alcohol testing procedures. As noted above a CIT could be undertaken following the alcohol impairment testing process.

Hospitalised drivers

A blood test is the usual practice for drivers who are hospitalised following a crash or injury involving a motor vehicle and a blood specimen collected.

A blood test can only be taken if the health practitioner has reasonable grounds to suspect the person is in hospital because of a crash or incident involving a motor vehicle and must be satisfied that the test will not affect care or treatment.

Breath tests or CIT can only be undertaken after a driver is no longer under care, treatment, or examination of a health practitioner. In practice, it is unlikely that taking a blood sample would undermine the person's care or treatment.

Incapable of proper control

If a driver is stopped because they are incapable of proper control of a motor vehicle, an officer will ask if they have:

- consumed drink or drugs (including medicines) recently; or
- have any medical condition that might affect their driving ability.

The officer will also consider whether the driver could be fatigued.

Following the usual procedure for determining evidence to proceed and the arrest of the driver, if the driver agrees to an examination by a medical practitioner, this could result in a blood test.

If the officer has good cause to suspect a driver is under the influence of a drug, a POL540 is filled in and the box for '**Hospital – DI / s58 (incapable)**' is ticked in Part D. For further details see 'Changes to POL540 form'.

Changes to blood analysis for drugs

Drug blood testing changes as part of new drug driving legislation

Changes to the blood testing process for drugs have resulted from the addition of Schedule 5 to the Act, which lists 25 drugs considered to have the highest risk of impairing a driver's ability to drive safely.

What's changing to the blood analysis process?

A new blood analysis process has been established with the Institute of Environmental Science and Research (ESR) and approved by Police.

Changes for Police are noted in the following table:

Procedure or process	What's changing?
Police procedures leading up to the decision to obtain blood.	No change.
Obtaining a driver's blood sample .	No change.
Requesting a blood sample using POL540 .	Minor changes to this form to include new options for testing blood samples for drugs.
New ESR Analyst Certificate for drugs.	Will include all drugs detected during the analysis process. This includes all qualifying drugs.
New blood test fee when seeking costs from the courts.	The new fee is \$1,784.77 (GST inclusive).

The blood test fee increase is a result of all listed drugs now requiring them to be analysed for quantitative levels, whereas the previous testing process only required a presence to be detected and reported.

For further information refer to the detail in the following sections.

2. Blood analysis type

There are six boxes to choose from. The officer selects the box that applies to the process or circumstances that the blood sample has been obtained. The blood analysis option chosen has an associated testing process that ESR follow (see table below).

Option	Blood process name	ESR Testing Process
1	Alcohol	Alcohol
2	Drugs – OFT / Non DI*	THC & listed drugs
3	Drugs - DI	THC & listed drugs > unlisted drugs
4	Drugs - CIT	THC & listed drugs > unlisted drugs > synthetic cannabinoids and other NPS**
5	Hospital – Non DI	Alcohol > THC & listed drugs
6	Hospital – DI / s58***	Alcohol > THC & listed drugs > unlisted drugs

*DI = death or injury **NPS = new psychoactive substances ***s58 = incapable driver

Once an enforceable level is obtained testing stops

Depending on why the blood sample was obtain a specific testing process applies. In the above table the first blood testing process would be either alcohol or THC **and** all listed drugs, this is then followed by either THC and all listed drugs, and/or unlisted drugs.

Once a result is obtained at an enforceable level, testing stops. The analyst certificate will note that this has occurred.

The O/C can make a request for additional testing, i.e., drug testing. Because of the cost of the new ESR analyst processes it is not feasible for all testing to be completed on all samples.

Examples

For blood testing options with THC, testing for THC and all listed drugs is completed in the first testing analysis process.

For blood testing options with THC, where the level is above 3ng, no further testing will be completed for any unlisted drugs.

For options with alcohol regarding hospital samples, the same process applies – if an enforceable level of alcohol is detected no drug test would be undertaken.

Important notes

- All listed qualifying drugs can be tested, apart from GHB due to its low prevalence and complexities for testing.
- The cascading testing process should be noted as relevant when a driver attempts to argue that either “no drugs were detected” (because the process stopped on a positive alcohol result), or a listed drug “was the only drug detected in a blood sample” (because the process stopped on a positive result when testing for the listed qualifying drugs first).
- There is no longer a requirement to select ‘alcohol’ and ‘drugs’ for a hospitalised driver, the ‘**Hospital**’ options now include testing for both (please note the cascade process still applies).

3. QID

A QID needs to be entered on every POL540 form.

This will enable ESR to move to an electronic process by using the QID to email the analyst certificate results. (For more information see 'New electronic process' in the next section.

Changes to the ESR Blood Analyst Certificate

The new ESR Blood Analyst Certificate will identify all drugs that are detected during the analysis process and report them on the certificate.

What changes have been made to the certificate?

Previous certificates only reported the presence of a qualifying drug, whereas the new analyst certificate will identify drugs as a listed or unlisted qualifying drug and specify the listed qualifying drug level, and for the unlisted qualifying drug if presence was detected.

Example

23ESR00012
P123456
24 January 2023

1

APPROVED ANALYST'S CERTIFICATE UNDER SECTION 75(5) OF THE LAND TRANSPORT ACT 1998

This is to certify that –

A blood specimen in a sealed container, taken from:

Joe Blogs
Labourer
123 Lane Street
Blogsville

was delivered on 05 January 2023 to Susan Gamble (a person employed by an approved laboratory within the meaning of the Land Transport Act 1998 and approved by me for the purpose) for analysis. It was delivered by NZ Couriers E20 12345678 from NZ Police.

On analysis of blood specimen 2, the following drugs were detected by analyst 3, 4, 5, 6.

Drug	Drug type	Tolerance legal limit	High-risk legal limit	Result	Result uncertainty	Range
		(ng/mL)	(ng/mL)			
Methamphetamine	Listed	10	50	80	± 24	56 to 104
Methylene dioxymethamphetamine (MDMA)	Listed	10	50	10	± 3	7 to 13
Tetrahydrocannabinol (THC)	Listed	1	3	3	± 1	2 to 4
Amitriptyline	Unlisted	N/A	N/A	Detected	N/A	N/A

There is a 95.4% probability that the level of any Listed drug(s) in the blood specimen is within the range stated in the table.

No such deterioration or congealing was found as would prevent a proper analysis.

1. Police event number
2. Drug names
3. Drug classification (listed or unlisted)
4. Drug tolerance level and high-risk level (legal limit)
5. Drug level or presence detected (Result)
6. Uncertainty level

Applying the uncertainty level

As with alcohol certificates officers should use the lowest level when applying the uncertainty level to the result for the charging. In the above pictured example, the methamphetamine result of 80ng/mL has an uncertainty of +/- 24, resulting in a range of 56 to 104 (add or minus 24 from 80). The resulting 56ng/mL (now accounting for uncertainty) is above the 'High-risk' level of 50ng/mL and would result in a charging document. If the result had been 55ng/mL for methamphetamine with an uncertainty of +/- 24, the result used would be 31ng/mL which would result in an infringement.

New electronic process

The new electronic process will see the ESR analyst sign the analyst certificate electronically and email it directly to the O/C and the File Management Centre (FMC) at the same time.

- This will be a quicker and more efficient process, and paper copies will no longer be supplied.
- FMC will load the certificate against the NIA occurrence using the police event number.
- If for any reason an O/C is absent another staff member will still be able to locate the analyst certificate through the NIA occurrence.

New blood test fee introduced

To meet the new evidential reporting requirements introduced by the Act, ESR has changed their analysis testing process which has led to an increase in the drug blood analyst fee.

The new fee for drug testing is: \$1,784.77.

As part of the gazetting process the fee for alcohol blood tests has also increased to account for a previous contractual price increase.

The new fee for alcohol testing is \$115.34.

Offences

As a result of the legislation change there are 113 new offences

All drug driving offences will now be found in the A800 series of the Legislative Reference Table (LRT), including new combination offences for drugs and alcohol (except TSV specific charges which are found in the A700 series).

Previous drug driving charges as of 11 March 2023 will become obsolete, including all current CIT charges, with the CIT process now being found under s71F of the Act (previously s57A), with a number now incorporated into the new offences.

Important note for offences relating to an Oral Fluid Test (OFT)

There are 31 offences related to oral fluid test (OFT), and while these offences will come into law on 11 March 2023, there is currently no approved device that will enable those offences to be enforced.

The basis of enforcement is new drug driving offence levels

Drug driving offences will be based on the result of a blood analysis. For listed qualifying drugs the offence is based on the blood concentration level reported, and for unlisted qualifying drugs it is based on the blood analysis of the presence of a drug and whether a CIT process was completed.

Listed or unlisted offences by blood levels or CIT

Where a drug is a listed qualifying drug, blood level alone determines the enforcement response which is either an infringement offence notice (ION) or charging document.

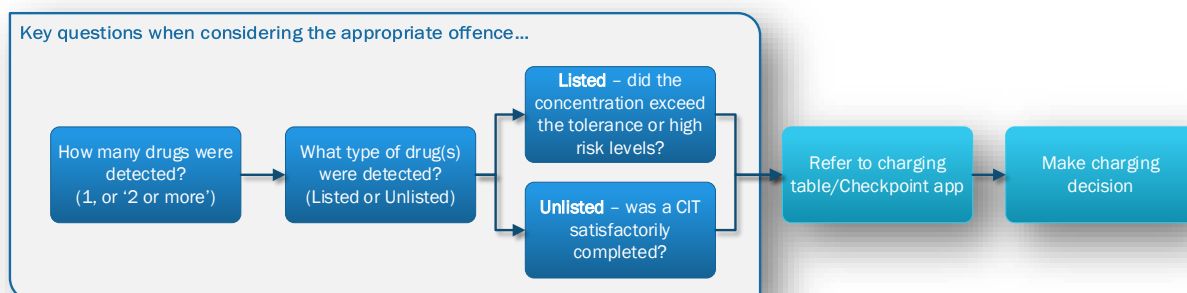
Where the presence of an unlisted qualifying drug is detected the outcome of an infringement or charge (in most cases) will be based on whether a compulsory impairment test (CIT) process had been undertaken prior to the blood sample being obtained.

If a CIT was not undertaken this would result in an infringement, and where a CIT is undertaken, and the driver does not satisfactorily complete the test, then a higher penalty (charge) is appropriate.

Evidence of unlisted drug and...	Prima facie outcome
No Impairment detected	Infringement level offence.
Impairment detected	Offence and liable to prosecution.
Unable to determine impairment (i.e., undergoing medical treatment)	Infringement level offence.

How do you decide the appropriate offence?

When interpreting the ESR Analyst Certificate and considering the appropriate offence(s), an officer should answer the following questions:



Tools to help determine the appropriate offence(s)

A new Checkpoint app menu item and a charging table have been developed to assist staff with making charging decisions. The charging table highlights the situations where a 'combination offence' is available.

Insert charging table for visual aid

[Link to Checkpoint](#)

Combination offences

Changes to the Act see the introduction of combination offences. Combination offences are where two or more drugs are detected, or there is a combination of alcohol and drugs detected. These offences will incur higher penalties, reflecting the higher crash risk associated with consuming multiple impairing substances.

Combination offences - combination offending

- 'Combination offences' is where more than one element (drug/s and alcohol) exist
- 'Combination offending' is multiple individual offences arising from the same set of circumstances.

Higher penalties for combination offences

There is strong evidence that driving under the influence of drugs has a varying degree of increased risk of crash involvement depending on the substance type. However, compared to alcohol breath testing, the role of drugs as a causal factor in crashes is not as well understood. We do know that drug intoxication presents the greatest risk when combined with alcohol.

The requirements for using substances in combination offences are:

- '**Contains alcohol**' – presence at any level above zero in a blood specimen
- '**Evidence of use**' for a qualifying drug:
 - Listed drugs - must exceed the tolerance level in a blood specimen
 - Unlisted drugs – presence must be detected in a blood specimen

Reference [LTDDAA22, 11A\(2\)](#)

New penalties for combination offences

Drug driving offences will incur penalties which are aligned to those for alcohol (\$200 for ION's, six months minimum disqualification for charges). For combination offences the penalties increase (\$400 and 75 demerit points for ION's, nine months minimum disqualification for charges).

The table below outlines the new penalties:

Offence	Penalty – Min Disqualification (DQ)
Alcohol only charge	6 months
Drug only charge	6 months
Combination charge (drugs and alcohol / two or more drugs)	9 months
Single drug or alcohol ION	\$200 – 50 demerit points
Combination - multiple drug and/or alcohol ION	\$400 – 75 demerit points

Conditions relating to combination offences

Situations can arise where drugs and alcohol are detected, but a combination offence is not available. Where both alcohol and drugs are present, a combination offence is only possible if one qualifying drug is detected, and the alcohol result is obtained through a blood specimen. No combination offence is available where the combination includes more than one drug detected with alcohol, or where a breath alcohol sample (not blood) is obtained with drugs.

Example

If a person exceeds the blood alcohol level of 80mg and has two or more listed qualifying drugs (QD's) in their blood specimen below the tolerance levels, then the drug result is an infringement offence (PREC code A812 - \$400 / 75 demerit points), while the alcohol result is a charge (PREC code A323 – three months imprisonment / \$4,500 / six months minimum disqualification).

In the above example a person could have a result of 100mg blood alcohol, with methamphetamine and cannabis detected in the blood specimen. While this combination potentially presents one of the highest risks to road safety, only the alcohol offence would be dealt with by the courts.

Alcohol Interlock and Zero Alcohol licences

There are further complexities created by the legislation regarding enforcement action where Alcohol Interlock (AI) and Zero Alcohol (ZA) licences are involved.

The legislation only specifies combination offences for AI and ZA licences where the blood alcohol reading is less than 50mg of alcohol per 100ml of blood. Where this combines with the use of one qualifying drug and the blood level is below 50mg this is a combination

offence for the courts to deal with together (where they can impose nine months disqualification).

The table below outlines the various options available where AI or ZA combination offending occurs.

AI & ZA offences table

AI / ZA blood result (mg)	Single Drug – Exceeds Tolerance		Multiple Drugs – Exceeds Tolerance		Single Drug – Exceeds High-Risk		Multiple Drugs – Exceeds High-Risk	
Alcohol Exceeds 50	ION	Charge	ION	Charge	Charge	Charge	Charge	Charge
Alcohol \leq 50	Combination		ION	Charge	Charge	Charge	Charge	Charge

Charging decisions

Where more than one offence is available (for example drug = ION and alcohol = charge) but no 'combination offence' is available, if one of the offences relates to a charge then both offences are required to be filed with the courts.

This will provide the opportunity for the courts to assess the offending in totality.

Infringement

Where combination offending occurs for impaired driving but only involve infringement offences, no offences are required to be filed with the courts.

Charge

Where combination offending for impaired driving occurs involving at least one offence, but no combination offence is available, staff proceed by way of filing charging documents for all relevant offences arising from the circumstances

Where combination offending for impaired driving occurs involving at least one other offence (for example dangerous driving), then where relevant to the circumstances of the offending consideration should be given to filing charging documents for all relevant offences.

The table below sets out the charging decision process:

Combination Offending	Example	Action
Combination of impaired driving offending at infringement level	ION – drug ION – alcohol	Issue infringements
Combination of impaired driving offending at infringement level – other relevant offending	ION – drug ION – alcohol Charge – Dangerous Driving	Where relevant to the circumstances of the offending consideration should be given to filing charging documents for all offences.

		If the charge was not relevant (for example theft) then infringements should be issued.
Combination of impaired driving offending – at least one of which is an offence	ION – drug Charge - alcohol	File charging documents for both offences.
Combination of impaired driving offending – all offences	Charge – drugs Charge – alcohol	File charging documents for both offences.

Medical defence

Prescription medication

A medical defence is a way to dispute a drug driving infringement by providing evidence that the prescription medication has been taken in accordance with a current prescription, and any instructions from a health practitioner or manufacturer.

Note: This process deals only with infringements. If a driver was 'charged' and they wanted to dispute this, they would request a defended hearing and state they have a medical defence. The medical defence policy in the Impaired Driving chapter in the Police Instructions, will apply to infringements and charges.

What are the requirements for applying?

A medical defence is available for prescription drugs only, where a driver wants to dispute an infringement. Police cannot consider a medical defence for any infringement notice that has either been paid or transferred to the Fines Collection Unit of the Ministry of Justice.

What is required to have a medical defence considered?

A person will be required to provide evidence that they have:

1. a current and valid prescription for the medication that they tested positive for; and
2. followed any instructions from a health practitioner or the manufacturer.

Where can a member of the public find this information?

Please go to the external Police Infringement Bureau webpage, and in the main menu on the left-hand side refer to 'Medical defence'. All information about applying for a medical defence can be found here. [Add web address when available](#)

The screenshot shows the New Zealand Police website's 'Medical defence' page. The top navigation bar includes links for News, Advice & Services, About us, Careers, Contact us, and Can you help us?, along with search and social media icons, and emergency numbers 111 and 105. The breadcrumb trail reads: Home > Advice & Services > Infringement Services > Medical defence. On the left, a sidebar menu lists 'Advice & Services' and 'Infringement Services' with sub-links: About Infringement Services, Payments, Dispute, Driver licence, Medical defence (highlighted), Infringements, Compliance, Forms, and Contact details. The main content area is titled 'Medical defence' and contains four expandable sections: 'What is a medical defence?' (explaining it as a way to dispute drug driving), 'Who can apply for a medical defence?' (stating it's for those with an ION for a qualifying drug), 'When can't you apply to Police for a medical defence?' (noting that paid or transferred notices are ineligible), and 'What are the requirements for applying?' (requiring a valid prescription and confirmation of use). Below these is a 'How to apply' section with the instruction to complete the following steps: 1. You can complete and [submit your application online](#).

Where the defence applies to a criminal charge your local PPS office should be consulted.

Changes to operational forms

1. Infringement Notice (ION) and Reminder Notice

ALLEGED INFRINGEMENT OFFENCE(S) DETAILS				
Date:	26/01/2023	Time: 16:01 (24 hour clock)	Day of the Week: S M T W T F S	
Vehicle Type:	r	Vehicle Make:	Registration No.:	
Road/Street:		Locality:	Officer No.:	
TSL No:	(if applicable)			
Offence Number	Offence	Infringement Fee Payable	Compliance Offered (see overleaf)	Demerit Points
1	Exceeded 30 KM/H Posted Speed Limit	\$80.00	No	20
2	1 or more listed and unlisted qualifying drug in driver's blood - no CIT	\$400.00	No	75
3	Overtook Another Vehicle - Insufficient Clear Road	\$150.00	No	35
DETAILS OF DRUG OFFENCE (IF APPLICABLE)				
Alleged Qualifying Drug 1 Methamphetamine		Alleged Qualifying Drug 2 Desmethylenlafaxine		
DETAILS OF SPEEDING OFFENCE (IF APPLICABLE)				
Speed Limit: 30		Limit Exceeded by: 1A		
<p>Defences</p> <p>2. You will have a complete defence against proceedings relating to an alleged offence if the infringement fee (including any towage fees) is paid to the enforcement authority and received at the address shown on this notice within 28 days after the service of this notice.</p> <p>3. Late payment, or payment made to any other address, will not constitute a defence to proceedings in respect of the alleged offence.</p> <p>3A. If the offence alleged against you is a drug driving offence (involving a blood test) against section 57A(2), 57B(2), or 57C(2) of the Land Transport Act 1998, you may have a defence if you have consumed the relevant qualifying drug(s) in accordance with a valid medical prescription (see section 64(1A) of that Act). If the offence alleged against you is a drug driving offence (involving an oral fluid test) against section 57A(3), 57B(3), or 57C(3) or (4) of the Land Transport Act 1998, you may have a defence if you have a valid medical prescription for the relevant qualifying drug(s) (see section 64(1AB) of that Act).</p> <p>Note: If you wish to raise a defence to an alleged drug driving offence against section 57A(2) or (3), 57B(2) or (3), or 57C(2), (3), or (4) of the Land Transport Act 1998, you can find more information by visiting the Infringement Services page on the New Zealand Police Internet site or by contacting the Police Infringement Bureau.</p>				

- New section displays the named drug(s) and penalties (see highlighted text).
- Added new guidance on making a defence on the back page.
- Same updates made to the Reminder Notice (not shown).

2. POL2141 – Summons to Defendant

Defendant copy – changes to offence codes

Charge details	
The charge against you is that	
on / on or about / between / on diverse dates	_____ and _____
<small>Cross out if not applicable.</small>	
at	_____
<small>offence location/specific address if appropriate</small>	
you	_____
<small>(short charge description):</small>	
<small>or choose an offence below</small>	
<input type="radio"/> drove with excess breath alcohol level (Adult offence code A518) (Youth offence code A521)	
<input type="radio"/> drove with excess breath alcohol level (3rd and subsequent) (offence code A530)	
<input type="radio"/> drove with excess blood alcohol content (offence code A323)	
<input type="radio"/> driver's blood had listed qualifying drug over high risk level (offence code A801)	
<input type="radio"/> driver's blood contained evidence of use unlisted qualifying drug (CIT) (offence code A803)	
<input type="radio"/> drove while the holder of a suspended or revoked drivers licence (offence code L143)	
<input type="radio"/> drove while disqualified (offence code L201)	
<input type="radio"/> drove while disqualified (3rd and subsequent) (offence code L230)	
<input type="radio"/> drove in a dangerous manner (offence code D201)	
First appearance hearing	
YOU MUST APPEAR	
at the	_____ District Court, sitting at _____

Drug related offence codes have been added (see highlighted text):

- A801 (driver's blood had listed qualifying drug over high risk level).
- A803 (driver's blood contained evidence of use of unlisted qualifying drug (CIT)).

The following offence codes have been removed:

- B184 (unlicensed driver, failed to comply with prohibition)
- D502 (operated a vehicle carelessly).

Police use only – last page

Drug – Oral Fluid Test / Blood Test		
Drug 1		Level (if applicable)
Drug 2		

- New section added for recording up to two drugs (which is required for the purpose of charge entry).

3. POL1000 - Vehicle Seizure and Impoundment Notice

ADVICE TO DRIVER

I am seizing and impounding, or seizing and authorising the impoundment of, the motor vehicle described below for 28 days because I believe, on reasonable grounds, that you drove the vehicle on a road while—
(Tick appropriate box)

☐ (a) you were disqualified from holding or obtaining a driver licence authorising you to drive that vehicle.

☐ (b) your driver licence was for the time being suspended for any other reason, or was revoked.

☐ (ba) you drove contrary to the conditions of an alcohol interlock licence.

☐ (c) you did not hold a driver licence and you were previously forbidden to drive on / / because you were unlicensed or your driver licence had expired

☐ (d) you have previously been convicted of 2 or more offences against any of sections 56(1) and (2), 57, 57AA, 57A(1), 57B(1), 57C(1), 58(1), 60(1), and 61(1) and (2) within the last 4 years, and—

☐ (i) had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath; or

☐ (ii) had a blood alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood; or

☐ (iii) had a blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or

☐ (iv) had any presence of an unlisted qualifying drug in your blood after failing to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when you were required to do so under section 71F; or

☐ (v) failed or refused to undergo a blood test, after having been required or requested to do so under section 72 or 73

☐ (e) your driver licence was for the time being suspended because

WHAT ARE THE GROUNDS FOR APPEAL?

4. The grounds for appeal are that—

(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or

(b) the enforcement officer who seized the vehicle did not believe on reasonable grounds that at the time of driving the vehicle on a road—

(i) the driver was disqualified from holding or obtaining a driver licence authorising the driver to drive that vehicle; or

(ii) the driver's driver licence was suspended or was revoked; or

(iii) the driver did not hold a driver licence and was previously forbidden to drive because he or she was an unlicensed driver or his or her driver licence had expired; or

(iv) the driver—

(A) had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath or a blood alcohol concentration exceeding 80 milligrams per 100 millilitres of blood or had a blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or had any presence of an unlisted qualifying drug in their blood after failing to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when the driver was required to do so under section 71F; or failed or refused to undergo a blood test after having been required or requested to do so under section 72 or 73 of the Act; and

(B) had been convicted of 2 or more offences against 56(1) or (2), 57, 57AA, 57A(1), 57B(1), 57C(1), or 61(1) or (2) of the Act within the last 4 years;

(v) the driver was driving contrary to the conditions of an interlock licence; or

(c) the enforcement officer who seized the vehicle did not believe on reasonable grounds that at the time of driving the vehicle on a road—

(i) the registered person did not know and could not reasonably be expected to know that the driver was not permitted to drive the vehicle; or

(ii) the driver drove the vehicle in a serious medical emergency carrying a person who was about to give birth to a child.

- Highlighted text shows addition to form.
- References updated: 57A(1), 57B(1), 57C(1).
- Select evidential blood test as applicable for the listed or unlisted drug for blood concentration found.

- The 'grounds for appeal' sections on the reverse pages have also been updated with the new references.

4. POL1005 – Notice of Mandatory Suspension of Driver Licence

Street..... Location.....

YOUR DRIVER LICENCE IS SUSPENDED FOR 28 DAYS EFFECTIVE IMMEDIATELY

1 This action has been taken because I believe on reasonable grounds that: (Tick appropriate box)

☐ (a) you have been convicted of a previous offence against any of sections 56(1) or (2), 57A(1), 57B(1), 57C(1), 58(1), 60(1), or 61(1) or (2) of the Act within the last 4 years; and

☐ you have undergone an evidential breath test under the Act and your breath alcohol concentration was found to exceed 400 micrograms of alcohol per litre of breath; or

☐ you have undergone an evidential blood test under the Act and your blood alcohol concentration was found to exceed 80 milligrams of alcohol per 100 millilitres of blood; or

☐ you have undergone an evidential blood test under the Act and your blood concentration was found to have a level of a listed qualifying drug exceeding high-risk level for the drug; or

☐ you have undergone an evidential blood test under the Act and your blood concentration was found to have an unlisted qualifying drug in your blood after you failed to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when you were required to do so under s71(F)

☐ (b) you have undergone an evidential breath test under the Act and your breath alcohol concentration was found to exceed 650 micrograms of alcohol per litre of breath; or

☐ (c) you have undergone a blood test under the Act and your blood alcohol concentration was found to exceed 130 milligrams of alcohol per 100 millilitres of blood; or

☐ (d) you failed or refused to undergo a blood test after having been required or requested to do so under section 72 or section 73 of the Act; or

☐ (e) you drove a motor vehicle on a road at a speed exceeding the applicable permanent posted speed limit by more than 40 km/h (which speed was detected by a means other than approved vehicle surveillance equipment); or

☐ (f) you drove a motor vehicle on a road at a speed exceeding any other speed limit by more than 50 km/h (which speed was detected by a means other than approved vehicle surveillance equipment).

2 You are required to immediately surrender your driver licence to me. It will be forwarded to the New Zealand Transport Agency.

2A If a blood sample has been taken, the suspension will cease to have effect when you are notified of the result of the blood test, but only if—

- the blood test shows that you had a blood alcohol concentration of, or less than, 130 milligrams of alcohol per 100 millilitres of blood; or, if you have been convicted of 1 or more previous offences against any of the sections 56(1) or (2), 57A(1), 57B(1), 57C(1), 58(1), 60(1), 61(1) or (2) of the Act in the last 4 years, 80 milligrams of alcohol per 100 millilitres of blood; and
- the result of the blood test is notified to you before the close of the 28-day suspension period.

- Highlighted text shows addition to form.
- References updated: 57A(1), 57B(1), 57C(1).
- Select evidential blood test as applicable for the listed or unlisted drug for blood concentration found.

5. POL990 - Statutory Declaration to Support Appeal Against the Seizure and Impoundment of a Motor Vehicle

4. I appeal against the seizure and impoundment of the motor vehicle on the following ground(s):—
(Tick box or boxes that describe the grounds for your appeal.)

(1) ☐ The impounded vehicle was stolen or converted at the time of the seizure and impoundment; or

(2) ☐ The enforcement officer who seized the vehicle did not have reasonable grounds of belief that at the time of driving on a road:—

(a) ☐ the driver was disqualified from holding or obtaining a driver licence; or

(b) ☐ the driver's driver licence was suspended or revoked; or

(c) ☐ the driver drove contrary to the conditions of an alcohol interlock licence; or

(d) ☐ the driver was an unlicensed driver or their licence had expired and they had previously been forbidden to drive; or

(e) ☐ the driver has previously been convicted of 2 or more offences against any of sections 56(1) and (2), 57, 57AA, 57A(1), 57B(1), 57C(1), 58(1), 60(1), and 61(1) and (2) within the last 4 years, and—

☐ (i) had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath; or

☐ (ii) had a blood alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood; or

☐ (iii) had a blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or

☐ (iv) had any presence of an unlisted qualifying drug in their blood after failing to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when they were required to do so under section 71F; or

☐ (v) failed or refused to undergo a blood test, after having been required or requested to do so under section 72 or 73

(g) ☐ if section 96(1A) of the Act applies, the operator operated the motor vehicle in a race, or in an unnecessary exhibition of speed or acceleration, in contravention of section 22A(1) of the Act; or

(h) ☐ if section 96(1A) of the Act applies, the operator operated the motor vehicle without reasonable excuse in a manner that caused the vehicle to undergo sustained loss of traction in contravention of section 22A(3) of the Act; or

(i) ☐ the operator operated the vehicle in circumstances referred to in section 96(1AA) of the Act; or

(j) ☐ the driver failed to stop in the circumstances referred to in section 96(1AB) of the Act; or

- Highlighted text shows addition to form.
- References updated: 57A(1), 57B(1), 57C(1).
- Select evidential blood test as applicable for the listed or unlisted drug for blood concentration found.

6. POL995 – Advice of Outcome of Appeal Against Impoundment of Motor Vehicle

2. You appealed against the seizure and impounding of the motor vehicle on the following ground(s):— (Tick box or boxes that describe the grounds for the appellant's appeal)

(1) ☐ The impounded vehicle was stolen or converted at the time of the seizure and impoundment; or

(2) ☐ The enforcement officer who seized the vehicle did not have reasonable grounds of belief that at the time of driving or operating the vehicle on a road:

(a) ☐ the driver was disqualified from holding or obtaining a driver licence; or

(b) ☐ the driver's driver licence was suspended or revoked; or

(c) ☐ the driver drove contrary to the conditions of an alcohol interlock licence; or

(d) ☐ the driver was an unlicensed driver or their licence had expired and they had previously been forbidden to drive; or

(e) ☐ the driver has previously been convicted of 2 or more offences against any of sections 56(1) and (2), 57, 57AA, 57A(1), 57B(1), 57C(1), 58(1), 60(1), and 61(1) and (2) within the last 4 years, and—

☐ (i) had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath; or

☐ (ii) had a blood alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood; or

☐ (iii) had a blood concentration level of a listed qualifying drug exceeding the high-risk level for the drug; or

☐ (iv) had any presence of an unlisted qualifying drug in their blood after failing to complete a compulsory impairment test in a manner satisfactory to an enforcement officer who is trained to give the test when they were required to do so under section 71F; or

☐ (v) failed or refused to undergo a blood test, after having been required or requested to do so under section 72 or 73

(g) ☐ if section 96(1A) of the Act applies, the operator operated the motor vehicle in a race, or in an unnecessary exhibition of speed or acceleration, in contravention of section 22A(1) of the Act; or

(h) ☐ if section 96(1A) of the Act applies, the operator operated the motor vehicle without reasonable excuse in a manner that caused the vehicle to undergo sustained loss of traction in contravention of section 22A(3) of the Act; or

(i) ☐ The operator operated the vehicle in circumstances referred to in section 96(1AA) of the Act; or

(j) ☐ The driver failed to stop in the circumstances referred to in section 96(1AB) of the Act.

- Highlighted text shows addition to form.
- References updated: 57A(1), 57B(1), 57C(1).
- Select evidential blood test as applicable for the listed or unlisted drug for blood concentration found

7. POL1115 – CIT (Roadside Assessment to Determine Good Cause to Suspect Drug Impaired Driving)

J COMPULSORY IMPAIRMENT TEST	
Name of compulsory impairment test trained enforcement officer	QID
This form is for use by Police employees trained to administer a Compulsory Impairment Test pursuant to the Land Transport Act 1998. Any medical condition or disability claimed and any response or gesture during any part of the Compulsory Impairment Test must be recorded. Complete all parts of the form by circling the applicable observations or completing the boxes below.	

Block J:
Removal of
legal
reference
57A.

J COMPULSORY IMPAIRMENT TEST	
Name of compulsory impairment test trained enforcement officer	QID
This form is for use by Police employees trained to administer a Compulsory Impairment Test pursuant to section 57A of the Land Transport Act 1998. Any medical condition or disability claimed and any response or gesture during any part of the Compulsory Impairment Test must be recorded. Complete all parts of the form by circling the applicable observations or completing the boxes below.	

P AIDE MEMOIRE - CHARGING DECISION			
Decision where the driver;	CHARGE	NOTES	
Is unable to complete the compulsory impairment test due to severe impairment	Consider whether a charge of driving while incapable of proper control of the vehicle is available. s58(1)(a) LTA	Medical practitioner certifies driver as incapable or officer in special circumstances gives evidence.	Go to Block T
Fails or refuses to accompany for the compulsory impairment test	s59(1)(b) LTA	Or detain and carry on to CIT requirement.	Go to Block T
Fails or refuses to remain at place required to undergo compulsory impairment test or blood test	s59(1)(c)(i) LTA		Go to Block T
Fails or refuses to undergo the compulsory impairment test	s60(1)(d) LTA	Driver makes no attempt to undergo CIT.	Go to Block T
Fails or refuses to complete part of the compulsory impairment test	Require Blood s72(1)(h) LTA	Driver does not satisfactorily complete part or all of the CIT.	Go to Block Q, Blood test
Fails to remain at place for compulsory impairment test result	s59(1)(d) LTA		Go to Block T
CIT not completed in a manner satisfactory to a trained enforcement officer (s61(2)(a))	Require Blood s72(1)(h) LTA		Go to Block Q, Blood test
Q BLOOD TEST			

Aide
Memoire -
Charging
decision:
Require
Blood
s72(1)(e) is
now
s72(1)(h)

8. POL540 – Blood Specimen Medical Certificate

Refer to previous section in this document for a full description of changes.

9. ESR Blood Analyst Certificate

Refer to previous section in this document for a full description of changes.

Legal definitions

Definitions of key terms and examples

Believe on reasonable grounds

This is a higher threshold than mere suspicion that something is inherently likely. For this threshold to be met, the officer must be satisfied that the state of affairs alleged by the applicant exists in an objective and credible basis, and that a search will discover the items identified in the warrant, or for impoundment that a person drove while meeting relevant criteria (e.g., drove while disqualified).

Reference: *R v Laugalis* (1993) 10 CRNZ 350, *R v Sanders* [1994] 3 NZLR 450, (1994) 12 CRNZ 12(CA); *R v Williams* [2007] NZCA 52, [2007] 3 NZLR 207, (2007) 23 CRNZ 1 at [213].

Good cause to suspect

Good cause to suspect has been defined as a reasonable ground of suspicion upon which a reasonable [person] may act. Further to this, it must be based on the evidence available to the officer at the time, this could include their own observations and of others. The Court must be satisfied on the objective facts known to the officer, who had reasonable grounds to suspect that a person had committed an offence.

Reference: *Police v Inoke* HC Auckland CRI-2006-404-103, 6 June 2006, *Selwyn v Police* [2015] NZHC 3185 Brewer J.

Injury

“Injury” is not defined in the LTA, but case law stated that an injury must be such as to interfere with the health or comfort of a victim. In other words, it need not be permanent but must be more than transitory or trifling. In this case, grazing to the victim’s knee and elbow, despite not incapacitating or in need of medical attention, were sufficient to meet the definition of “injury.”

Reference: *Dawson v Police* HC Rotorua CRI-2003-463-73 at [11].