

Impaired driving

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Policy statement and principles

What

This chapter outlines how New Zealand Police will enforce alcohol and drug impaired driving, specifically:

- the key stages of the alcohol and drug testing process, including:
 - how and when each test will be carried out
 - the criteria that will be applied at specific decision points.
- what happens if a driver tests positive for alcohol or drugs at any stage, including enforcement action.

Why

Alcohol and drugs can seriously impair the ability to drive - they can slow reaction times and affect senses. As the level of driver impairment increases, the risk of a crash also rapidly increases. The outcome risks also increase, for example fatal crashes involving impairment are often accompanied by failing to wear seatbelts.

We know that:

- Alcohol consumption alone increases both the likelihood of a vehicle crash and the seriousness of the resulting injuries. As the alcohol level rises, the risk of a crash increases.
- Consumption of drugs, including prescription drugs, can also impair driving. Many culpable drivers who have died or been injured in road crashes, had consumed drugs.
- Combinations of alcohol and drugs are likely to have compounding effects on driver impairment.

Note: Statistics from crash reports that have listed alcohol and/or drugs as a contributing factor can be found on the [Ministry of Transport](#) website.

How

Successful deterrence and enforcement of drug and alcohol impaired driving will inhibit these drivers and reduce the overall risk of death and serious injury on our roads.

To help achieve this, all stopped drivers, regardless of why they have been stopped, and all drivers who have been involved in a crash, regardless of who appears to be at fault in a crash, **must** be subject to:

- an alcohol test
- an assessment for behaviours that might indicate impairment (whereby further action may be required e.g., a Compulsory Impairment Test).

Testing should not be done on someone who requests a test, for example if they want to confirm they are under the limit before driving. Testing people before they drive may encourage them to take impairing substances up to a limit. The message continues to be that the only safe level for impairing substances while driving is zero.

Related policies and procedures

The Impaired Driving chapter should be read in conjunction with:

- [OnDuty EBA resources](#)
- [Alcohol & Drug Impaired Driving Guide](#)
- [Blood tests at a hospital or medical centre](#)
- [Land Transport Act 1998 \(LTA\)](#)

Definitions

For a full list of definitions for key terms and phrases pertaining to alcohol and drug impaired driving, see section [2\(1\)](#) LTA.

The 12-part process for detecting and enforcing impaired driving

This document outlines the following:

1. [General powers](#)
2. [Checkpoints](#)
3. [Alcohol impaired driving](#)
4. [Alcohol impairment test procedures](#)
5. [Compulsory Impairment Test](#)
6. [“Incapable of proper control” test](#)
7. [Blood taking procedures](#)
8. [Charging decision](#)
9. [Hospitalised drivers](#)
10. [Subsequent enforcement action](#)
11. [Prosecution files](#)
12. [Medical defence](#)

This flowchart is intended as an overview only. For further detail of each procedure and offence see the specific sections within this chapter.



Download a printable PDF version of the flowchart.

[PDF version of the flow chart](#)

132.09 KB

1. General Powers

Stopping a driver

Who is a driver?	<p>A driver is:</p> <ol style="list-style-type: none"> 1. Anyone driving, or attempting to drive, a motor vehicle on a road 2. Anyone who you have good cause to suspect has recently committed an offence against the LTA that involves driving a motor vehicle, or 3. If there has been a crash involving a motor vehicle: <ul style="list-style-type: none"> - the driver of the vehicle at the time of the crash, or - if you cannot ascertain who the driver was, anyone you have good cause to suspect was in the vehicle at the time. <p>See section 68(1) LTA.</p>
In charge of a vehicle	<p>Examples of being 'in charge' of a vehicle include situations where:</p> <ul style="list-style-type: none"> - a passenger who is not driving, but refuses to hand over the keys has de facto control of the vehicle - a person who parks a vehicle and walks away from it is in charge of the stationary vehicle, but not driving it.
Driver obligations	<p>In accordance with sections 13(1) & (2) of the LTA, a driver must comply with all lawful requirements, directions and requests made by an enforcement officer under sections 68, 69, 70, 71F, 72 and 73 of the LTA.</p> <p>These sections of the LTA govern who must undergo alcohol testing and a Compulsory Impairment Test (CIT).</p>
Vehicle stop	<p>Signal the vehicle to stop in accordance with section 114 Land Transport Act.</p> <ol style="list-style-type: none"> 1. Ensure your safety and the driver's safety when conducting a vehicle stop or checkpoint. 2. Check the driver's status and undertake any relevant enquiries. 3. If the vehicle fails to stop, respond in accordance with the Fleeing Driver Policy. <p>Note: Police must ensure that vehicles are signalled to stop lawfully e.g., if utilising the powers under section 9 or 121 of the Search and Surveillance Act 2012, the association to then utilise LTA powers must be formed.</p>
Safety requirements	<p>Signalling a suspected impaired driver to stop presents a high risk to your safety, as such drivers can be very unpredictable.</p> <p>You must:</p> <ul style="list-style-type: none"> - advise the Emergency Communication Centre (ECC) of your intention to signal a vehicle to stop, so they know your location. - ensure you are wearing your high visibility safety garment (day or night) to comply with the requirements under the 'High Visibility Safety Garments' chapter. - if you are double crewed, apply the contact and cover principles (in the 'Traffic patrol techniques' chapter) during the vehicle stop. <p>Refer to 'Traffic patrol techniques' for the procedures related to safe and effective vehicle stops.</p>

Entering a property

Fresh pursuit	<p>Private property can be entered if in fresh pursuit and the officer has good cause to suspect the driver has:</p> <ul style="list-style-type: none"> - failed to stop - failed to give their name and address - driven dangerously or recklessly, or - recently been under the influence of drink, or drugs, or both (section 119(2) of the LTA). <p>Note: The reason for entry must be announced immediately (e.g., 'I now require you to undergo a breath screening test without delay'). If asked to leave prior to doing so, the implied licence to remain at the property has been lost and the property must be vacated. See Shackelford v Police Westlaw NZ.</p> <p>After entering:</p> <ul style="list-style-type: none"> - EBA: you may start the EBA procedure. - CIT: provide their Bill of Rights advice, then you may start the CIT procedure.
To arrest a person	<p>A private property can be entered to arrest a person (section 8 of the Search and Surveillance Act 2012). Grounds for arrest must be established before you enter.</p> <p>After entry:</p> <ul style="list-style-type: none"> - arrest the individual; then - provide their Bill of Rights advice; then - start the EBA or CIT procedure. <p>Do not enter then immediately start the EBA or CIT procedure, as that will be an unlawful entry (essentially entry would have been effected to collect evidence which is not covered by section 8).</p>

Arresting a person

Power to arrest	<p>1. Arrest without warrant can be made if there is good cause to suspect has (s120(1) LTA):</p> <p>(a) committed an offence against any of sections 58 to 62 LTA</p> <ul style="list-style-type: none"> - driving under the influence of drink or drugs to the extent as to be incapable of having proper control of the vehicle, or if the person's blood as ascertained by analysis of blood specimen contains evidence of the use of a controlled drug. Note: must be arrested to enable blood to be taken under section 72 LTA. - failure or refusal to remain at specified place or to accompany enforcement officer - failure or refusal to permit blood specimen to be taken (or to undergo compulsory impairment test) - drink/drug driving causing injury to a person - causing injury or death in circumstances in which section 61 doesn't apply. <p>(b) assaulted a Police employee or any enforcement officer while acting in the course of their official duty.</p> <p>2. An enforcement officer may arrest a person without warrant if:</p> <ul style="list-style-type: none"> - the person does not complete a compulsory impairment test in a manner satisfactory to an enforcement officer, who is trained to give the test, when required to do so by an enforcement officer under (section 71F of the LTA).
Grounds to arrest	<p>To commence or complete EBA or drug testing procedures, Police may arrest impaired drivers when:</p> <ul style="list-style-type: none"> - the driver fails to accompany an enforcement officer to undertake a breath test, CIT, or blood test - there are reasonable grounds to believe that a driver, if released, would be likely to risk public safety by driving whilst still impaired, or would repeat the offence - there is doubt about the driver's identity, and - there is doubt that the driver would appear in court. <p>As some alcohol and/or drug impaired driving offences carry a term of imprisonment of more than three months, general powers of arrest also exist.</p>
If an arrested person is suspected of an offence	<p>The alcohol or drug procedures may be attempted if the driver has been arrested under section 120(1) LTA, including for the purpose of requiring the person to undergo a compulsory impairment test and:</p> <ul style="list-style-type: none"> - there is good cause to suspect that the driver has committed an offence against any of sections 56 to 62 LTA, and - a medical practitioner has examined the driver and believes they may be under the influence of drink/drug, or both, or - the driver has refused to be examined by a health practitioner for the purposes of this paragraph (section 72(1)(d) LTA). <p>As alcohol and/or drug impaired driving offences (except for ION level offences) carry a term of imprisonment of more than three months, general powers of arrest also exist.</p>

2. Checkpoints

Refer to the '[Traffic patrol techniques](#)' chapter, which gives instruction and guidance on:

- [powers to stop vehicles](#)
- [how to plan patrols](#)
- [carrying out vehicle stops](#)
- [interviewing drivers](#)
- [checkpoint planning](#).

Apply [TENR](#) at all times during the planning and execution of a vehicle stop or undertaking stationary enforcement.

3. Alcohol impaired driving

This part applies to all Police employees with constabulary powers, and those authorised officers with specific delegations (collectively referred to as enforcement officers).

All drivers involved in a crash or stopped for any reason should be subject to initial alcohol impaired driving procedures. This can include the following tests:

1. Passive Breath Test
2. Breath Screening Test
3. Evidential Breath Test

An officer must require a driver to undergo a Passive Breath Test or Breath Screening Test if a device is available. Where there is not the capability, a device can be brought to the location or, if there is good cause to suspect the person has consumed alcohol, they can be required to accompany the officer to another location for a breath screening test.

Following a crash

If the driver is under the care of a health practitioner or medical officer at the crash site, only undertake breath testing procedures once they are no longer under their care.

Also consider whether:

- it will interfere with their treatment (e.g., there is space for you to carry out the procedure)
- it will contravene the person's safety (e.g., there is a safe place to do the procedure)
- the person's level of injury does not prevent them from being able to physically do the test (e.g., they do not have breathing difficulties)

If unable to carry out EBA procedures, consider requiring blood as per the [hospital blood](#) section of this document (refer to section [73\(1\)](#) LTA).

Zero limits for some drivers

The following drivers have a ZERO legal limit for breath/blood alcohol concentration (BAC). Depending on their age and/or driver licence type, the presence of alcohol could result in the issue of an Infringement Offence Notice or a charging document.

- [Zero Alcohol Licence](#) holder [charging document],
- [Alcohol Interlock Licence](#) holder [charging document], or
- [Driver under 20 years of age](#) [ION if ≤150 micrograms of alcohol per litre of breath, charging document if 151 micrograms of alcohol per litre of breath or more].

Driver under 20 years

Drivers under 20 years old are subject to a ZERO legal limit for breath/blood alcohol concentration. Conduct all alcohol testing procedures for drivers apparently younger than 20 until you, or the driver is able to prove otherwise. Production of an apparently valid driver licence may be proof of age. If a NIA check cannot be made until you return to a station, continue with the EBT procedure for drivers under 20.

The meaning of 'apparently younger than 20'

Under section [71](#) LTA, you are entitled to regard a driver as being younger than 20 if they:

- produce a driver licence showing they are younger than 20
- produce a driver licence showing that they are 20 or older, but you have good cause to suspect:
 - the licence has been issued to some other person,
 - the licence is invalid, or



□

PDF version of Breath Testing a Driver flowchart

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No Alcohol	Alcohol Detected	Refused Test	No Device
Driver is free to go if no other actions required.	Require to undergo Breath Screening Test.		Require to Accompany for Evidential Breath Test
If Good Cause to Suspect the driver has consumed drug or drugs, document and initiate Compulsory Impairment Test	'Go to Breath Screening Test '	'Go to Breath Screening Test '	'Go to Evidential Breath Test '

A Breath Screening Test is conducted using an [approved device](#), which the driver will blow into.

All drivers may undergo a breath screening test (BST) where alcohol is suspected or detected. This includes all stopped drivers and drivers (or suspected drivers) involved in a crash, regardless of who appears to be at fault.

If you attend a crash and the driver is under the care of a health practitioner or medical officer as a result of that crash, only undertake BST procedures if it will not interfere with their treatment. If a BST is inappropriate in the circumstances, consider requiring blood as per the [hospital blood](#) section of this document. (refer to section [73\(1\)](#) LTA).

Outcomes following a BST result

	20 years or over	Under 20 years, Alcohol Interlock or Zero Alcohol Licence	20 years or over		
Pass	Under 251	1 - 250	Over 250	Over 400	No Machine
Driver is free to go if no other actions		Require to Accompany for Evidential Breath Test			
If Good Cause to Suspect the driver has consumed a drug or drugs, document and initiate Compulsory Impairment Test		'Go to Evidential Breath Test '			

Evidential Breath Test

All drivers who fail or refuse a Breath Screening Test must be required to undergo an Evidential Breath Test without delay.

An Evidential Breath Test (EBT) is done using an electronic device the driver blows into; it gives a reading that can be used in court as evidence of their breath-alcohol concentration.

An EBT may be carried out in the following circumstances (refer to section [69\(1\)](#) of the LTA):

1. a positive breath screening test result;
2. the driver failed or refused to undergo a breath screening test; or
3. a [breath screening device](#) was not readily available or, for some reason, the test could not be undertaken and there is good cause to suspect the driver has consumed alcohol.

Note: If you initiate the evidential breath testing procedure while operating a checkpoint, you must [require the driver to accompany you](#) to a place for further testing, even if this is only to the nearby Mobile Road Safety Base or patrol vehicle.

Requiring the driver to accompany an enforcement officer

A driver is required to accompany an enforcement officer to a place where it is likely the driver can undergo testing if:

- the driver has undergone a breath screening test under section [68](#) LTA and the test appears to indicate that the proportion of alcohol exceeds 250 micrograms of alcohol per litre of breath
- the driver holds an Alcohol Interlock or Zero Alcohol Licence and has undergone a breath screening test under section [68](#) indicates there is alcohol in the driver's breath
- it appears the driver is younger than 20, and a breath screening test undergone by the driver under section [68](#) indicates there is alcohol in the driver's breath
- the driver fails or refuses to undergo a breath screening test without delay after being required to do so under section [68](#), or
- the person could be required to undergo a breath screening test without delay under section [68](#) but cannot be tested because:

- a breath screening device is not readily available, or
- for any reason, a breath screening test cannot then be carried out, and/or
- there is good cause to suspect that the person has consumed alcohol.

In accordance with section [69\(3\)](#) LTA, a driver can be required to accompany an enforcement officer under subsection (1) if it is likely that the driver can undergo:

- an EBT at that place, whether or not it is likely that they do undergo a blood test there, or
- a blood test at that place, whether or not it is likely that they do undergo an EBT there.

If it is not practical to do an EBT at the first place, for example if test facilities are not available, section [69\(2\)](#) LTA empowers an enforcement officer to require the driver to accompany them to another place for an EBT, blood test or both. This is the last opportunity provided in the legislation to take the person somewhere for an EBT.

Bill of Rights

Under section [23\(1\)](#) of the [New Zealand Bill of Rights Act 1990](#), requiring a driver to accompany an enforcement officer constitutes 'detention under an enactment'. This means the driver must be advised of their rights to access legal advice. Refer to the Breath and Blood Alcohol procedure sheet (POL[515](#)) outlined in OnDuty.

Driver's right to consult a solicitor

The driver has several opportunities to consult a solicitor throughout the testing process. Allow the driver a reasonable period to consult and instruct a solicitor throughout the process as provided in POL[515](#) (outlined in OnDuty). For further guidance, refer to Lawyers in the New Zealand Bill of Rights chapter.

Search and Surveillance Act 2012 and NZ Bill of Rights Act 1990

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Process overview

The EBT process is made up of the following steps:

1. Requiring the driver to undergo an EBT
2. Outcomes following an EBT result
3. Next steps following the detection of alcohol
4. Blood test (if applicable)

Use OnDuty EBA or the Breath & Blood Alcohol Procedure Sheet (POL[515](#)) to guide you through the process and record the information required. Where the process chart refers to a POL[515](#), this is also applicable to OnDuty EBA.

This process can be found in the following image:



Download a printable PDF version of the flowchart.

PDF of the EBT Process

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Further information on each step can be found at steps 1-5 below.

Step 1. Requiring the driver to undergo an EBT

The driver can be required to undergo an EBT (without delay) in accordance with section [69\(4\)](#) LTA where the driver has:

- accompanied an enforcement officer to a place under this section, or
- been arrested under section [69\(6\)](#) and taken to or detained at a place to undergo, without delay, an EBT at that place.

When requiring to accompany, enforcement officers must give the driver advice, as detailed in OnDuty EBA or Block H on the POL[515](#), to comply with the requirement of section [69\(4\)\(a\)](#). This advice confirms consequences for the driver of (continued) non-compliance and indicates advice about potential blood test fee and associated medical costs, whether or not the result of the blood test is positive.

Further testing at another place

A person may be required to attend [further testing at another place](#) for the purposes of an EBT, blood test, or both; if:

- an EBT cannot be conducted
- the person refuses an EBT.

Incomplete test results

An EBT machine will produce only one of two results. The actual test result or an incomplete test.

If a first EBT does not produce a result, the enforcement officer may:

- require the driver to undergo a further EBT (section [70\(1\)](#) LTA); or
- require the person to provide a blood specimen (section [70\(1\)](#) LTA).

Note: an EBT result does not technically exist until a numerical result is obtained ([s70\(1\)](#) LTA), i.e., an incomplete test is not an EBT result.

Note: the test needs enough breath through the device to get a result. The test can be repeated if no result. However, if no result is produced after a fair and reasonable number of attempts, require the person to provide a blood specimen.

Note: If you are conducting an evidential test in a confined space ensure that the ambient air is free from alcohol by ventilating the space (e.g., if in a car, open the window slightly).

Step 2. Outcomes following an EBT result

The driver must be advised of their EBT result as soon as it is known, i.e. "without delay".

All Drivers	20 years or over	Under 20 years		Alcohol Interlock & Zero Alcohol	All Drivers	
0 (Zero)	251 - 400 mcg/L	1 - 150 mcg/L	Over 150 mcg/L	Any positive result	Over 400 mcg/L	Refusal or No EBT machine
Driver is free to go if no other actions.	Advise result without delay.					Require blood.
	ION	10 minutes to elect blood.				
		ION or go to Blood Specimen Election	Charging document or go to Blood Specimen Election		Go to Blood Specimen Election	
	Consider Subsequent Enforcement Action					
If good cause to suspect driver has consumed a drug or drugs, document and initiate Compulsory Impairment Test						

No result

If an EBT has been carried out on a person under section [69](#) of the LTA, and for any reason it failed to produce a result you can, at your discretion:

- require the driver to undergo, without delay, a further EBT (section [70](#) of the LTA), or
- proceed as if section [72\(1\)\(c\)](#) of the LTA applies, that is, the driver can be required to give a blood specimen.

(section [70\(1\)](#) LTA)

It is not a requirement for a driver to provide two EBT results. If a driver undergoes an EBT and the result contains a numerical value, there is no authority to require the person to undergo another EBT, regardless of whether a previous result gave a reading of "NO SAMPLE" (see [MOT v Muir](#) [1991 BCL2135]).

Step 3. 10-minute period to consider blood election

Before proceeding further after a positive EBT, remember:

- drivers who have not initially requested a blood test can change their mind within the ten-minute period,
- officers must not give the impression that drivers cannot change their mind,
- officers are under no obligation to inform drivers that they are entitled to change their mind,
- once the driver has made a clear decision to elect a blood test, the 10-minute period ends. Call a health practitioner or medical officer to collect a blood specimen (POL540).

Note: Drivers 20 years or over who have returned a result between 251 and 400 mcgs/litre of breath are not eligible to elect a blood test.

While the driver is coming to a decision:

- if the person asks a question, answer it directly and concisely without distracting the driver. Do not engage in conversation. Note there is no obligation to answer any questions and avoid giving any opinion or advice
- if a substantial period of time is taken answering the driver's questions or the period is unduly interrupted (e.g. they request to speak with their lawyer), make a note of that. Based on the circumstances, it may be reasonable to recommence the 10-minute period because it must be without undue interruption.

The detention continues until the expiry of the 10-minute period. If the driver attempts to leave within the 10-minute period, they should be warned of arrest. ([Rae v Police](#) [2000] 3 NZLR 452).

Consider that the decision is made (to request or decline a blood test) when that decision is unequivocal, regardless of whether 10 minutes has elapsed. If there is any uncertainty as to whether a decision has been made, wait until the end of the 10 minutes.

At the end of the 10-minute period, the enforcement officer is not required to ask the driver if they wish to elect a blood test. The obligation to request a blood test is entirely on the driver. However, at the end of the 10-minute period it is fair and reasonable to ask them if they have made a decision (e.g., “you’ve reached the end of the 10-minute period, do you wish to have a blood test?”).

If there is any discrepancy between the time displayed on the EBT device and that on your own device (e.g., your watch), note this on the POL515. If using OnDuty EBA, use the manually populated time picker and use the time according to the phone.

Note: If they opt for a blood sample and then refuse, consider a charge for refusing blood under section 60 LTA (and the EBT result can be included in the summary of facts). You cannot charge for both refusal and the excess breath result.

When the driver has made a decision

If after 10-minutes the driver...	then...
does not request a blood test	<ul style="list-style-type: none"> - if the driver is a high risk or recidivist impaired driver, an arrest should be considered where bail conditions or an opposition to bail would be considered appropriate to ensure public safety - where public safety is not at rise issue a Summons to Defendant (POL2141) in relation to the breath alcohol offence, and - consider subsequent enforcement actions <p>Note: Section 29 of the Criminal Procedure Act 2011 empowers you to issue a summons, provided that the charging document is filed:</p> <ul style="list-style-type: none"> - as soon as practicable after the summons is issued - with a first appearance date not later than two months after the date of the summons.
If after 10-minutes the driver...	then...
	<p>See also the summonses in the 'Criminal Procedure' chapter.</p> <p>Caution: If the diver is under 18 years old, see information about children and young people who commit an infringement offence in the 'Offense Notices' chapter.</p>
chooses the blood test option and gives a specimen when required	<p>Once a driver has elected to undergo a blood test i.e., whenever that decision is made within the 10-minute period, the driver must undergo a blood test. Call a health practitioner or medical officer to collect a blood specimen.</p> <p>Note: If the driver chooses a blood test, the choice is final, and it is not necessary to wait until the end of the 10-minute period to call the doctor or medical officer (Police v Irwin (1990) 6 CRNZ 171).</p> <p>Note: If the driver refuses to remain for the result, they may be arrested (section 69(6) LTA).</p> <p>Refer to the 'Blood Taking Procedure' section for further process details.</p>

Step 4. Next steps following the detection of alcohol

Drivers under 20 years old

Breath Result in mcg/L	Blood Result in mg/100ml	Outcome
Under 150	Under 30	<p>Infringement offence notice (\$200 and 50 demerit points).</p> <p>Right to elect blood test within the 10-minute blood election period.</p> <p>Consider forbidding to drive for 12 hours and confiscate the keys or immobilise vehicle as per the Forbidden Driver Policy.</p>
151 and above	31 and above	<p>An offence.</p> <p>Right to elect blood test within the 10-minute blood election period.</p> <p>However, if a blood test is taken for any reason and the result shows the presence of alcohol at a level of 30 milligrams or less of alcohol per 100 millilitres of blood, then an ION must be issued (\$200 and 50 demerit points).</p> <p>Consider section 121 powers (forbidding to drive or confiscate car keys if you have reasonable grounds as per Forbidden Driver Policy).</p>

Drivers over 20 years old

Breath Result in mcg/L	Blood Result in mg/100ml	Outcome
Under 251	Under 51	<p>No further action (in respect of the EBA process).</p> <p>Consider section 121 powers (forbidding to drive or take car keys if you have reasonable grounds as per Forbidden Driver Policy).</p>
251 - 400	51 - 80	<p>Infringement offence notice.</p> <p>Consider section 121 powers (forbidding to drive or take car keys if you have reasonable grounds as per Forbidden Driver Policy).</p> <p>Note: The result of the EBT is inadmissible (there is no blood test option).</p>
401 - 649	81 - 129	<p>An offence.</p> <p>Right to elect blood test within the 10-minute election period (as outlined in the Blood Test Consideration Period in OnDuty EBA or 'Block L' on the POL515).</p> <p>Consider forbidding to drive for 12 hours and confiscate keys or immobilise vehicle as per the Forbidden Driver Policy.</p>
Above 650	Above 130	<p>An offence.</p> <p>Right to elect blood test within the 10-minute blood election period (as outlined in the Blood Test Consideration Period in OnDuty EBA or 'Block L' on the POL515).</p> <p>Must suspend the driver licence for 28 days.</p> <p>Note: A suspension notice can be issued if a breath result above 650mcgs is obtained and the driver elects blood.</p>

Step 5. Admissibility of evidence

Except as provided in section [69\(4\)](#) LTA, a positive result of an EBT is **not** admissible in evidence in proceedings for offences under sections [56 to 62](#) LTA if:

The defendant was not advised by an enforcement officer without delay after the result was obtained, that the test was positive, and that if the driver did not request a blood test within ten minutes, the test itself could be conclusive of evidence to lead to a conviction; where:

- the amount of alcohol exceeded 400 micrograms of alcohol per litre of breath, or
- where the amount of alcohol exceeded 150 micrograms of alcohol per litre of breath but did not exceed 400 micrograms of alcohol per litre of breath, unless the person was 20 or older.

OR The driver was advised of the matters specified,

and

within ten minutes of being advised, told the enforcement officer that they wished to undergo a blood test,

and

complied with section [72\(2\)](#) LTA (that is, permitted the specimen to be taken).

(section [77\(3\)\(a\) & \(b\)](#) LTA)

Exception

Subsection [77\(3\)\(a\)](#) LTA does not apply if the driver failed or refused to remain at the place where the test was taken until they could be advised of the result.

(section [77\(4\)](#) LTA)

No Defence

There is no defence to proceedings for an LTA offence concerning the proportion of alcohol in a driver's breath if:

- there was, or may have been, an error in the breath screening test result or EBT, or
- the occurrence, or likely occurrence, of any such error did not entitle or empower a driver to request or require an EBT.

(see section [64\(4\)](#) of the LTA)

Note: Whether or not the driver requests blood, no defence ([\(4\)](#) and [\(5\)](#)) is available on the basis that the EBT machine was faulty.

Step 6. Subsequent enforcement action

The option to initiate further enforcement activity can be considered at the conclusion of the alcohol impairment process.

If the results of any alcohol tests are negative, or do not explain the driver's level of intoxication, and there is good cause to suspect the driver has consumed a drug or drugs, document the reasons for suspicion and arrange for a [compulsory impairment test](#) to be conducted.

Note: At the completion of any impairment testing the safety of the person should always be considered. All reasonable steps should be undertaken to ensure the driver has arrangements to get to their desired locations safely.

4. Alcohol impairment test procedures

Testing steps

The procedure for testing drivers for alcohol impairment is set out in [The Land Transport \(Breath Tests\) Notice 2015](#) and sections [68 to 74](#) of the LTA. These sections outline:

1. [Passive Breath Test](#)
2. [Breath Screening Test](#)
3. [Evidential Breath Test](#)
4. [Blood Test](#)

Usually, the first test carried out is a passive breath test.

Use the OnDuty EBA or POL515 to ensure correct testing

OnDuty EBA or the Breath & Blood Alcohol Procedure Sheet (POL[515](#)) should always be used, as they include a guide to the process, which includes providing the required Bill of Rights advice. Remember that in any defended hearing, the defence is likely to challenge how an alcohol impairment test was administered.

Approved devices

Breath testing devices must be approved, assembled, tested and results interpreted according to the [Land Transport \(Breath Tests\) Notice 2015](#). It is necessary to be able to explain how the test was carried out and satisfy the court that it was administered according to the requirements of the Notice.

This table details the devices currently approved for use.

Device name	Device purpose	Type of test
Dräger 7510NZ	This device tests the alcohol concentration of the driver's breath electronically. It displays a digital reading "No Alcohol", or "Alcohol" on its screen.	Passive breath test.
	It displays a digital reading "Pass", "Under 250", "250+Over", or "Over 400" on its screen.	Breath screening test.
	It displays a digital reading of the 'Evidential' result.	Evidential breath test

Previously used devices are the 6510 and 9510NZ. These devices should no longer be used as they will not be calibrated. If you find one of these devices, it must be returned to Police Calibration Services.











Breath screening test - Passive breath-testing devices


To conduct an effective passive breath test (section [68\(4\)](#) LTA), select 'passive' from the test menu and hold the device 2 - 5cm away from the driver's mouth (like a microphone). Ask the driver to slowly count to ten and push the 'OK' button to take the reading when the driver has reached a count of four. This is because alcohol vapour sits at the bottom of the lungs and the most accurate reading is when the person has exhaled most of the air from their lungs.

Note: Using or not using a passive breath test alone does not affect the validity of the breath screening test i.e. if a driver is suspected of having consumed alcohol, a breath screening test can be conducted without conducting a passive breath test.

Breath screening test using Dräger 7510NZ

Follow these steps to carry out a breath screening test with a [Dräger 7510NZ](#) device.

Step Action based on passive test result																	
1	<p>Select 'Screening' from the display panel, then press 'OK'.</p> 																
2	Tell the driver: "I now require you to undergo a breath screening test without delay".																
3	Attach a mouthpiece to the device's breath inlet port, then press 'OK' to confirm.																
4	Require the driver to blow through a mouthpiece steadily and for a period long enough to provide a breath specimen sufficient for analysis.																
5	<p>When the person stops blowing, check the display panel.</p> <table> <tr> <th>If the panel shows...</th><th>This means...</th><th>Then...</th></tr> <tr> <td>Insufficient volume</td><td>- insufficient breath specimen has been provided for analysis</td><td> <ul style="list-style-type: none"> - press the 'OK' button, and - repeat the test, unless there is a reason to believe the driver has failed, or refused, or will continue to fail, or refuse to undergo the test without delay. </td></tr> <tr> <td>  </td><td>- the test is negative. The indicator light will display a steady green</td><td>- the driver is free to go, unless testing for drugs is to be undertaken.</td></tr> <tr> <td>  <p>Under 250</p> <p>00022 27.03.2015</p> </td><td>- the proportion of alcohol in the driver's breath does not exceed 250 micrograms of alcohol per litre of breath. The indicator light will be a steady amber</td><td> <p>If under 20 years, Alcohol Interlock or Zero Alcohol Licence holder</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT <p>If 20 years or over</p> <ul style="list-style-type: none"> - the driver is free to go, unless testing for drugs is to be undertaken. </td></tr> <tr> <td>  <p>250+Over</p> <p>00301 11:01:08</p> </td><td>- the proportion of alcohol in the driver's breath exceeds 250 micrograms of alcohol per litre of breath (but does not exceed 400 micrograms of alcohol per litre of breath). The indicator light will alternately flash amber/red</td><td> <p>All drivers</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT. </td></tr> </table>		If the panel shows...	This means...	Then...	Insufficient volume	- insufficient breath specimen has been provided for analysis	<ul style="list-style-type: none"> - press the 'OK' button, and - repeat the test, unless there is a reason to believe the driver has failed, or refused, or will continue to fail, or refuse to undergo the test without delay. 		- the test is negative. The indicator light will display a steady green	- the driver is free to go, unless testing for drugs is to be undertaken.	 <p>Under 250</p> <p>00022 27.03.2015</p>	- the proportion of alcohol in the driver's breath does not exceed 250 micrograms of alcohol per litre of breath. The indicator light will be a steady amber	<p>If under 20 years, Alcohol Interlock or Zero Alcohol Licence holder</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT <p>If 20 years or over</p> <ul style="list-style-type: none"> - the driver is free to go, unless testing for drugs is to be undertaken. 	 <p>250+Over</p> <p>00301 11:01:08</p>	- the proportion of alcohol in the driver's breath exceeds 250 micrograms of alcohol per litre of breath (but does not exceed 400 micrograms of alcohol per litre of breath). The indicator light will alternately flash amber/red	<p>All drivers</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT.
If the panel shows...	This means...	Then...															
Insufficient volume	- insufficient breath specimen has been provided for analysis	<ul style="list-style-type: none"> - press the 'OK' button, and - repeat the test, unless there is a reason to believe the driver has failed, or refused, or will continue to fail, or refuse to undergo the test without delay. 															
	- the test is negative. The indicator light will display a steady green	- the driver is free to go, unless testing for drugs is to be undertaken.															
 <p>Under 250</p> <p>00022 27.03.2015</p>	- the proportion of alcohol in the driver's breath does not exceed 250 micrograms of alcohol per litre of breath. The indicator light will be a steady amber	<p>If under 20 years, Alcohol Interlock or Zero Alcohol Licence holder</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT <p>If 20 years or over</p> <ul style="list-style-type: none"> - the driver is free to go, unless testing for drugs is to be undertaken. 															
 <p>250+Over</p> <p>00301 11:01:08</p>	- the proportion of alcohol in the driver's breath exceeds 250 micrograms of alcohol per litre of breath (but does not exceed 400 micrograms of alcohol per litre of breath). The indicator light will alternately flash amber/red	<p>All drivers</p> <ul style="list-style-type: none"> - require the driver to undertake an EBT. 															

	- the proportion of alcohol in the driver's breath exceeds 400 micrograms of alcohol per litre of breath. The indicator light will be a steady red	All drivers - require the driver to undertake an EBT.
6 Notify the driver of the result.		

Test results

If the result ...	then...	
Is positive (i.e. above 400 mg of alcohol per litre of breath)	Process the driver for alcohol impaired driving, and forbid them from driving for up to 12 hours as appropriate under section 121 LTA.	
	Check NIA for any convictions entered against the driver within the last four years for specified offences .	
	If there...	then...
	is one previous conviction	suspend their driver licence for 28 days (section 95(1) LTA).
are two or more previous convictions	suspend their driver licence for 28 days (section 95(1)(a)(i)(A) and (B) LTA), and impound their vehicle for 28 days (section 96(1)(d)(ii) LTA).	
Exceeds 650 micrograms of alcohol per litre of breath	in all cases, suspend their driver licence for 28 days under section 95(1)(a)(ii)(A) LTA.	

Evidential breath test (EBT) procedures

Devices and facilities

Dräger 7510NZ is an approved portable hand-held EBT device.

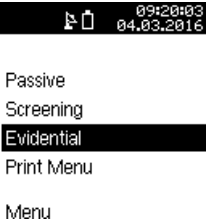
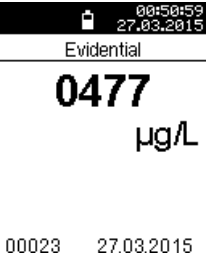
The EBT procedure can be conducted at the roadside or other such place (if appropriate, and in accordance with [TENR](#)). If it is not practical to do an EBT at the first place, for example if test facilities are not available, [s69\(2\)](#) LTA requires the driver to accompany the enforcement officer to another place for an EBT, blood test or both.

A driver must be required to accompany, even if it is to a nearby patrol car or Mobile Road Safety Base to continue testing procedures.

Note: The thermal printout paper used in the **DRÄGER 7510NZ** reacts with tape; staples should be used to attach the printout to the EBA Checksheet instead.

EBT using Dräger 7510NZ

Follow these steps to carry out an EBT with a [Dräger 7510NZ](#).

Step	Action								
1	<p>Select 'Evidential' from the display panel, then press 'OK'.</p> 								
2	<p>Say to the person: "I now require you to undergo an Evidential Breath Test without delay".</p> <p>Note: The term 'without delay' means 'as soon as reasonably practical'.</p>								
3	<p>The testing sequence starts by selecting 'Evidential'.</p>								
4	<ul style="list-style-type: none"> - follow the instructions on the device's panel - attach a new mouthpiece to the breath inlet port and instruct the driver to blow through the mouthpiece steadily until they have provided a breath specimen sufficient for analysis. A continuous clear tone will be heard when the driver is blowing into the device correctly  <ul style="list-style-type: none"> - repeat as required, until the testing sequence has been completed. 								
5	<p>The results of these steps are on the printout and include the EBT result which indicates the number of micrograms of alcohol per litre of breath.</p> <p>Where two samples are provided, the lower of the two results is the EBT test result.</p> <table border="1" data-bbox="137 1350 1520 1688"> <thead> <tr> <th data-bbox="137 1350 850 1400">If...</th><th data-bbox="850 1350 1520 1400">Then...</th></tr> </thead> <tbody> <tr> <td data-bbox="137 1400 850 1503">only one sufficient sample has been provided and the result is 600 or below,</td><td data-bbox="850 1400 1520 1503">the EBT result will be that result.</td></tr> <tr> <td data-bbox="137 1503 850 1606">only one sufficient sample has been provided and the result is over 600mgms,</td><td data-bbox="850 1503 1520 1606">that will print out as an incomplete test, and the test may be repeated.</td></tr> <tr> <td data-bbox="137 1606 850 1688">the EBT result shows "Incomplete Test",</td><td data-bbox="850 1606 1520 1688">the test has been unable to be carried out and the test may be repeated.</td></tr> </tbody> </table>	If...	Then...	only one sufficient sample has been provided and the result is 600 or below,	the EBT result will be that result.	only one sufficient sample has been provided and the result is over 600mgms,	that will print out as an incomplete test, and the test may be repeated.	the EBT result shows "Incomplete Test",	the test has been unable to be carried out and the test may be repeated.
If...	Then...								
only one sufficient sample has been provided and the result is 600 or below,	the EBT result will be that result.								
only one sufficient sample has been provided and the result is over 600mgms,	that will print out as an incomplete test, and the test may be repeated.								
the EBT result shows "Incomplete Test",	the test has been unable to be carried out and the test may be repeated.								

Procedure for further testing at a second place

Follow these steps for further testing at a second place.

Step	Action
1	Ensure the driver is cautioned: "I now require you to accompany me to the..... Police station (or other such place) for the purpose of an Evidential Breath Test, blood test, or both."
2	Ensure you caution the driver as detailed in OnDuty EBA or on the POL 515 .
3	<p>There is no obligation to discuss the consequences of a failure to accompany an enforcement officer with the driver. Do not threaten or discuss arresting the driver to further the process of securing evidence of intoxication.</p> <p>If arrest is mentioned in relation to the EBT process, it must also be mentioned that bail could be available.</p> <p>Refer to Ellicock v Courtney (1992) 8 CRNZ 390 (HC) on failure to mention bail.</p>

5. Compulsory Impairment Test

An officer may only require a person to undergo a Compulsory Impairment Test if they have good cause to suspect that the person has consumed a drug or drugs.

An enforcement officer should *not* require a person to undergo a CIT if the driver has failed the EBA process.

Note: If someone returns a positive result for alcohol, then they should not undertake a CIT unless there is a specific reason for doing so.

The CIT process is made up of the following:

1. Consideration of a CIT
2. Outcomes of a request for a CIT
3. Blood test

Process overview



Download a printable PDF version of the flowchart

[PDF of the CIT Procedure](#)

174.88 KB

Consideration of a CIT

The CIT is designed to test the driver's ability to concentrate on and carry out two or more tasks at the same time. This includes:

- an eye assessment
- a walk and turn; and
- a one leg stand assessment.

Trained enforcement officers also talk to the driver about any medical conditions that may affect their ability to perform the CIT.

If the driver fails, they may be forbidden to drive and required to have a blood test.

Approved CIT	<p>The CIT must be undertaken in accordance with the Land Transport (Compulsory Impairment Test) Notice 2009. The court will require an explanation of how the CIT was carried out and that it was administered in accordance with the Notice.</p> <p>Use the CIT Form (POL1115) to ensure the correct CIT procedure is followed, appropriate advice, and Bill of Rights is given. If the driver fails to complete the CIT in a manner satisfactory to a CIT trained enforcement officer, is charged and pleads not guilty, the defence is likely to challenge how the test was administered.</p>
Who can conduct a CIT?	<p>While any enforcement officer can require someone to undergo a CIT, provided they have good cause to suspect the driver has consumed a drug or drugs, only enforcement officers who have successfully completed the Compulsory Impairment Test training can administer a Compulsory Impairment Test (CIT).</p> <p>Note: Use the CIT Form (POL1115) to record all factors you have relied upon to establish good cause to suspect the driver has consumed a drug or drugs.</p>
Who can be required to undergo a CIT?	<p>Section 71F(1) of the LTA, provides that any enforcement officer who has good cause to suspect that a driver has consumed a drug or drugs may require these people to undergo a CIT without delay:</p> <ul style="list-style-type: none"> - a driver of, or a person attempting to drive, a motor vehicle on a road whom the enforcement officer has good cause to suspect has recently consumed a drug or drugs - if an accident has occurred involving a motor vehicle: <ul style="list-style-type: none"> - the driver of the vehicle at the time of the accident, or - if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person whom the enforcement officer has good cause to suspect was in the motor vehicle at the time of the accident.
Good cause to suspect	<p>An enforcement officer must have 'good cause to suspect' that a driver has consumed a drug or drugs in order to require the driver to undergo a CIT (section 71F of the LTA).</p> <p>Good cause to suspect has been defined as "a reasonable ground of suspicion upon which a reasonable [person] may act" (Police v Inoke HC AK CRI-2006-404-103 6 June 2006).</p>

Obligations of driver	<p>A driver required to undergo a CIT must:</p> <ul style="list-style-type: none"> - remain in the place where stopped, for a period of time that is reasonable in the circumstances, to undergo the CIT, or - accompany an enforcement officer to another place to undergo the CIT if going to be administered in another place. See 'CIT location' below. <p>(section 71F(3) LTA)</p> <p>A driver who has undergone a CIT must remain at the place where they underwent the test, until after the result of the test is ascertained.</p> <p>An enforcement officer may arrest a driver without warrant, if they refuse or fail to remain stopped or accompany the enforcement officer as required. See 'Powers to arrest'.</p> <p>Bill of Rights</p> <p>Requiring a driver to undergo a CIT, or to accompany an enforcement officer to a place for the purpose of undergoing a CIT, constitutes 'detention under an enactment' (section 23(1) of the New Zealand Bill of Rights Act 1990). Accordingly, the driver must be advised of their rights pursuant to that detention. Ensure the requirements in these documents are complied with:</p> <ul style="list-style-type: none"> - EBA Check Sheet via OnDuty EBA or the POL515. - CIT Form (POL1115).
CIT location	<p>If possible, a CIT should be carried out at the nearest police station or other place that provides a safe environment to conduct the CIT and provides the necessary means for the driver to speak to a lawyer, if required.</p> <p>Note: When choosing the location to administer the CIT, consider the proximity to other people/bystanders, the surface on which the test will be conducted, and other distractions which may affect the result of the CIT. The location of the CIT may have implications during a prosecution if it is thought that a driver has been unfairly dealt with.</p>
CIT initiation at an alcohol checkpoint	<p>If a CIT is initiated while operating a checkpoint, the driver must be required to accompany an enforcement officer to a safe place to conduct a CIT and given Bill of Rights advice. See 'CIT Location' above for further guidance.</p>
Drivers in hospital or a medical centre	<p>It is unreasonable to require an injured driver under care of healthcare services to undergo the assessments required for a CIT. Instead, drivers in hospital would proceed straight to a blood test. See 'Blood tests at a hospital or medical centre'.</p> <p><i>Following their release from hospital or a medical centre.</i></p> <p>If there is good cause to suspect the driver has consumed a drug or drugs, they may still be required to undertake the CIT.</p> <p>Any injuries sustained in the crash would need to be minor, and there would need to be minimal time delay between the crash and conducting the CIT.</p>

If no CIT trained staff available	Consider options under section 121 of the LTA, including FARMED: <ul style="list-style-type: none"> - Forbid to drive - All keys surrendered - Render immovable - Move vehicle to a safe place - EBA procedures - Direct to rest.
--	---

Outcomes of a request for a CIT

If a driver who has been required to undergo a CIT...	Then...	Specimen Charge (1st or 2nd offence)
refuses to accompany an officer to undergo a CIT	Arrest and charge with refused to accompany an enforcement officer. Take the driver to a location for a trained enforcement officer to conduct a CIT.	A836
failed to remain for a CIT	Arrest and charge with failed to remain for a CIT.	A837
refuses to undergo a CIT	Arrest and charge with refused to undergo CIT.	A840
does the CIT then fails to remain for the result	Arrest and charge with fails to remain for the result of a CIT.	A839
does not complete the CIT in a satisfactory manner	Advise the driver of CIT result without delay and require them to provide a blood specimen without delay (give further Bill of Rights).	n/a
completes the CIT in a satisfactory manner	Advise the driver of result without delay and release them. Consider forbidding to drive where appropriate.	n/a

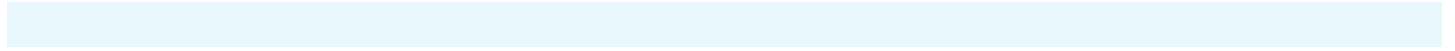
Note: This table is not comprehensive - refer to the [Legislative Reference Table \(LRT - Code Book\)](#) for a full list of offences. The driver must be advised of their CIT result without delay.

Blood test

If the driver has not satisfactorily completed the CIT, then the next stage is to require a blood specimen to be taken. Consider options under [section 121](#) of the LTA, including FARMED:

- Forbid to drive
- All keys surrendered
- Render immovable
- Move vehicle to a safe place
- EBA procedures
- Direct to rest

Note: Drivers commit an offence if they do not satisfactorily complete a CIT and a blood specimen taken under [section 72](#) LTA, contains evidence of a qualifying drug. This is pursuant to section [57A\(1\)](#), section [57B\(1\)](#) and section [57C\(1\)](#) of the LTA.



Refer to the '[Blood Taking Procedure](#)' section for further process details.

6. Incapable of proper control

All drivers should be subject to a medical examination where equipment or the availability of trained officers limit standard alcohol and drug impaired driving processes.

This diagram shows the procedure an enforcement officer should follow for an incapable offence.



Download a printable PDF version of the flowchart

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[PDF of Incapable of Proper Control](#)

195.19 KB

[Section 58](#) of the LTA makes it an offence for a driver to be under the influence of drink and/or a drug to such an extent as to be incapable of having proper control of the vehicle.

Incapable offence procedures

Step	Action
1	<p>Ask the driver if they have:</p> <ul style="list-style-type: none"> - consumed drink or drugs (including medicines) recently - any medical condition that may affect their driving ability. <p>Also consider whether the driver could be fatigued.</p>
2	<p>Note the results and general observations of the driver. Think 'evidence' all the time and note the driver's:</p> <ul style="list-style-type: none"> - eyes - smell of breath - speech, for example, slurred or rapid. <p>If the driver gets out of the motor vehicle, note:</p> <ul style="list-style-type: none"> - how they walk, for example, if they are staggering - their ability to stand, for example, unsteady or stumbling. <p>Note: Block E of the CIT Form (POL1115) provides a checklist of driver characteristics that can indicate impairment.</p>
3	<p>Arrest the driver under section 120(1) of the LTA if necessary, if there is good cause to suspect the driver has committed an offence against any of s58, s59, s60, s61 or s62 of the LTA. Refer to 'Power to arrest' for details.</p>

4	Contact a medical practitioner to conduct a medical examination to provide supporting evidence that the driver is incapable of driving. Get the medical practitioner to note their observations on the Medical Practitioner's Clinical Report (Motor Vehicle) (POL525), and whether the driver agrees to be examined, or not.
5	<p>S72(1)(d) of the LTA requires that a blood specimen be taken if the person has been arrested under section 120(1) of the LTA and the person has been required to undergo testing, and there is good cause to suspect that the driver has committed an offence against s58, s59, s60, s61 or s62 of the LTA, and either:</p> <ul style="list-style-type: none"> • a medical practitioner has examined the driver and believes they may be under the influence of drink/drug, or both, or • the driver has refused to be examined by a medical practitioner for the purposes of the above. <p>Note: it is not necessary for evidence of incapacity to be given by a medical practitioner; an officer's evidence will suffice if it is proved they are sufficiently qualified by training or experience to express an opinion as to the person's capacity to drive: Blackie v Police [1966] NZLR 910 (CA)</p>
6	<p>At this point, have a blood specimen taken under s72(1)(d) LTA.</p> <p>Note: If the driver refuses the request, charge the driver with refusing a request for blood (s60 LTA).</p>
7	Complete the Blood Specimen Medical Certificate (POL540), and if the enforcement officer or the medical staff believe the driver is under the influence of a drug, direct ESR to a drug analysis also (by ticking the box for 'Drugs' in Part D of the POL540).
8	<p>If required, an enforcement officer may immobilise the vehicle under section 121 LTA</p> <ul style="list-style-type: none"> - forbid the driver to drive (POL406) - direct the person to obtain rest - take the keys to the vehicle - remove the vehicle to a place where it does not constitute a hazard.
9	Send the blood specimen to ESR for alcohol and/or drug analysis.

Outcomes of incapable offence procedures

If the driver is under arrest and...	Then...	Specimen Charge (1st or 2nd offence)
the driver refuses a medical practitioner's examination	Require a blood specimen to be taken.	
the driver is deemed by a medical practitioner to be under the influence of drink or drug	Go to Charging Decision when a result is obtained.	
the driver refuses a health practitioner or medical officer's request for a blood specimen	Charge with failed to permit a blood specimen to be taken.	A305
the driver permits blood specimen to be taken by a health practitioner or medical officer	Forbid to drive (POL406) under section 121 LTA and release.	
ESR Analyst's Certificate indicates the presence of drugs and/or alcohol, and/or the medical practitioner certified the driver as being incapable of having proper control of a motor vehicle	Charge with incapable of proper control of a motor vehicle if alcohol result is under the EBA limit. Note: A blood specimen is not a requirement to prove this offence but will assist a successful prosecution.	A101, A102 or A109

A 's58(1)(a)' incapable of driving offence can be based solely on a medical practitioner's examination that deems a driver to be incapable of proper control of a vehicle. In some circumstances, this offence can progress based solely on an officer's experience, although it may be difficult to prove.

Note: This table is not comprehensive - refer to the '[LRT - Code Book](#)' for a full list of offences.

7. Blood taking procedures

When to do a blood test

Only a health practitioner or medical officer authorised under [s72](#) or [s73](#) LTA can take a blood specimen.

Note: Ensure you are satisfied that the person taking the blood meets the definition of health practitioner or medical officer as per the interpretation section of the LTA ([s2](#) LTA).

Driver's request

If an EBT result is positive, a driver has the right within 10 minutes of being advised of the admissibility matters set out in [s77\(3\)\(a\)](#), to elect to have a blood test ([s70A\(1\)](#) of the LTA).

Once the driver has requested a blood test, the enforcement officer must require a blood specimen to be taken ([s72\(1\)\(b\)](#) LTA) and the driver must permit the blood specimen to be taken ([s72\(2\)](#) LTA).

Officer's request

Under [s72](#) LTA, an enforcement officer can require a blood specimen to be taken by a health practitioner or medical officer, if:

- a driver fails or refuses to undergo, without delay, an EBT
- a driver has provided a positive EBT and elects to undergo a blood test
- an EBT device is not readily available
- it is not practical for the blood specimen to be taken at the place where the driver has been required to allow it to be taken. The driver must, under [s72\(3\)](#) LTA, accompany an enforcement officer to any other place where it is likely that it can be taken, or
- the driver has been arrested under [s120\(1\)](#) LTA.

The person is required to undergo a blood test on expiry of the 10-minute period, or when the person elects to undergo a blood test.

Upon [requiring a blood specimen](#), (in accordance the 10-minute period section via OnDuty EBA or Block M of the POL[515](#)), complete the Blood Specimen Medical Certificate POL540 and obtain the [driver's consent](#).

Driver Consent

Conditional consent

- the driver must submit to the blood test without delay when requested by Police and medical officer.
- they cannot dictate who will take the blood specimen, or its manner of collection; the blood is taken in accordance with normal medical procedures for the collection of venous blood.

Note: An attempt by a driver to impose conditions on the taking of their blood amounts to refusal to provide a blood specimen.

Obtaining drivers consent for a blood test

Follow these steps to obtain consent for a blood test.

Step	Action
1	<p>If using OnDuty EBA, follow the prompts in the blood test section or alternatively read:</p> <ul style="list-style-type: none"> - part M of the POL515 (alcohol). - block Q of the POL1115 (CIT) <p>After reading the form to the driver always give a simple explanation and answer any questions.</p> <p>Then ask: "Do you consent to the taking of a blood specimen?"</p>
2	<p>If the driver consents to the taking of a blood specimen, request a medical officer or health practitioner to attend the location. Once the driver has elected a blood specimen, they cannot change their mind.</p> <p>Note: If they then refuse, consider a charge for refusing blood under s60 LTA (with the EBT result included in the summary of facts).</p> <p>Note: Most stations and mobile road safety bases have an established roster of on-call practitioners who will take blood specimens. This must be kept in a secure location.</p>
3	<p>If a medical officer or health practitioner cannot attend, but is available elsewhere, the driver may be required to accompany an enforcement officer to that place if it is fair and reasonable to do so.</p> <p>Note: You can only change locations twice.</p> <p>Caution: This requirement applies only after the driver has been formally required to give a blood specimen.</p>
4	<p>Add the driver's details to the Blood Specimen Medical Certificate (POL540).</p>

Exclusions for hospitalised drivers

[s72](#) LTA does not apply if the driver is under examination, care or treatment in a hospital or medical centre. The provisions relating to taking blood specimens in those circumstances are set out in [s73](#) LTA.

Refer to '[Hospitalised Drivers](#)' for further information.

Driver Refusal

Outright refusal

If the driver refuses to give a blood specimen:

- record their reason in OnDuty EBA or on the POL515 or POL1115 and charge the driver with refusing blood in accordance with these steps in the table below
- do not try to persuade them to give consent, or threaten the driver with arrest.

Step	Action
1	Record details of refusal, interaction with medical staff and Docloc with the OnDuty EBA or POL 515 or POL 1115 .
2	Charge with an offence under s60(1) , as appropriate.

Deemed refusal

If a driver permits medical officer or health practitioner to take blood but the attempt is unsuccessful, due to physical or medical reasons, record the details of the failure and create a NIA alert.

Note: Blood to be taken in accordance with normal medical procedures, which would not normally exceed two attempts. However, it is for the blood taker to comply with their professional standards.

The driver does not commit a refusal offence at this stage; however, the person may be presumed to have refused to permit a blood specimen if the same failure to provide blood occurs in the future.

Please refer to this sample alert:

Section 60 Sample Alert	3.7 MB
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Remember: The maximum penalty for refusing to give a blood specimen is the same as that for being over the legal blood alcohol limit, or being convicted of driving while impaired with the presence of a qualifying drug.

Note: If a person refuses to permit a blood specimen to be taken it is not required for the purpose of a prosecution to *prove* they were the driver of a vehicle on a road, only that there was *good cause* to suspect they were:

- a driver or a person attempting to drive
- a driver who has recently committed an offence against the LTA
- in the vehicle at the time of a crash, if the officer is unable to determine who the driver is.

(See [s60\(1\)](#) of the LTA).

Procedure if driver changes their mind after opting for a blood specimen

Step	Police action
1	Ask the driver to give their reason for changing their mind. Note any explanation on the OnDuty EBA, POL515 or POL1115.
2	<p data-bbox="132 215 1517 293">In cases of alcohol impairment, consider charging the driver with refusal (the EBA result can be referred to in the summary of facts).</p> <p data-bbox="132 371 1517 450">Note: A positive EBT result becomes inadmissible <i>only if</i> the driver provides a blood specimen following a decision to do so and otherwise complies with the requirement to remain at the place until advised of the result of the test (s77(3) LTA).</p> <p data-bbox="132 607 1517 685">Note: A positive OFT result becomes inadmissible <i>only if</i> the driver provides a blood specimen following a decision to do so, and otherwise complies with the requirement to remain at the place until advised of the result of the test (s77A(3) LTA).</p>
3	<p data-bbox="132 797 1517 875">If they have not been charged under EBA provisions (s95(1)(a) LTA), consider suspending the driver's licence for 28 days, effective immediately.</p> <p data-bbox="132 898 1517 931">(s95(1)(b) LTA).</p>
4	Check NIA for previous convictions. If the driver has been convicted of two or more applicable qualifying offences within the last four years, impound the vehicle for 28 days, starting immediately (s96(1)(d) LTA).
5	<p data-bbox="132 1055 1517 1099">Consider arresting the driver - but only if you are satisfied that it is necessary to do so. See 'Power to arrest'.</p> <p data-bbox="132 1178 1517 1256">Note: An arrest may be made if... [the driver fails or refuses to allow a blood specimen to be taken when an enforcement officer, medical officer or health practitioner requires it (s120 LTA)].</p> <p data-bbox="132 1357 1517 1391">Refer to s120 LTA for powers to arrest.</p>

The blood test procedure

The O/C case (officer who initiated EBA procedure or CIT trained enforcement officer) that has led to taking a blood specimen must:

- oversee the blood specimen taken
- ensure the blood specimen collection kit has two-three months expiry date remaining (this covers the timeframe for second specimen analysis if requested*)
- ensure the specimen is secured as per the blood kit pack instructions for evidential purposes
- note the time the blood specimen was taken in part C of POL540. Note: time is only recorded by the person taking blood in part C of POL540 as it is an action taken by them. If the OC makes a notebook entry with a different time, issues may arise at Court.

***Note:** [Haines v Police](#) [CA647/2017]: Police failed to ensure the driver's blood sample was stored in a container with at least three months left before its expiry, meaning Mr Haines was unable to have an independent analysis as requested. The Judge found the expiry relates to the *integrity of the vacuum* and not the stability of the compounds (noting the independent analysis could have been carried out but for internal policy). It was also found there were enough safeguards throughout the process to negate a miscarriage of justice. However, Police does not wish to argue the Haines decision on a regular basis.

Blood taking procedure

Follow these steps to take blood.

Step	Police action
1	<p>The O/C case:</p> <ul style="list-style-type: none"> - completes Part A and Part D of the Blood Specimen Medical Certificate (POL540).
2	<p>Ensure the medical officer or health practitioner:</p> <ul style="list-style-type: none"> - confirms the driver's consent to provide a blood specimen for analysis - completes Part B of the POL540 if a hospital blood specimen is obtained - completes Part C of the POL540. Remember: redact irrelevant sections in parts B and C. - personally opens the sealed blood specimen collection kit and ensures it has at least 2-3 months expiry date remaining - takes sufficient blood for the drawing of the blood specimen into the two vacutainers. If insufficient blood is taken on the first occasion, the medical officer or health practitioner must request the driver to give another specimen, and the driver must undergo one more venepuncture immediately - seals each vacutainer with the tamper-evident security seal - writes the surname of the driver on both vacutainers - attaches a barcode sticker to each copy of the POL540 form and to each vacutainer - thoroughly agitate each vacutainer to mix the blood with the preservative and anti-coagulant contained in them - correctly completes the Blood Specimen Medical Certificate (POL540), keeps the green medical copy and hands the original form and pink copy to the O/C case, and the yellow copy to the driver - hands the plastic bag containing the blood kit and the kit's procedure card to the O/C case.
3	<p>The O/C case must then place the POL540, blood kit plastic bag and procedure card on the prosecution file. See Dealing with blood specimens'.</p>
4	<p>The O/C case must send the blood specimen to ESR with the correct packaging making sure to include the pink ESR copy of the POL540.</p> <p>Remember: ensure the courier customer label is affixed to part G (not put in the 'courier book').</p>

Post blood taking procedure

Advise the driver they will be notified of the test results when they are known. This is usually within 2 - 3 weeks for alcohol, and within 3 - 4 weeks for drugs.

If required, follow the licence suspension and vehicle impoundment procedures.

Summary

Action		Outcome
Blood Specimen Collected		Advise the driver that they will be notified of the test results when they are known. This is usually within 14 - 21 days for alcohol, and 28 days for drugs.
Blood specimen cannot be obtained.	No NIA alert of previous attempts	Docloc OnDuty EBA or POL515, POL1115 with POL540 and details of blood-taking attempt and medical staff.
	NIA alert for constructive refusal exists	Constructive Refusal. Go to Charging Decision
Blood Specimen Collection Refused		Create Charging Document.
		Go to Charging Decision
Consider Subsequent Enforcement Action		

Handling blood specimens

Blood specimens are the basis of a blood alcohol/drug driving prosecution. They must be handled and stored appropriately.



Blood specimens

A blood specimen taken under [s72](#) or [s73](#) LTA is drawn into two vacutainers. Each vacutainer is considered to be a separate blood specimen. Ensure they are thoroughly shaken, sealed, the driver's surname is written on each vacutainer, barcoded and secured to preserve the chain of evidence.

Note: The blood specimen needs to be secured by the officer immediately after it is taken to ensure the driver cannot attempt to destroy the sample.

Sealing blood specimen vacutainers

Follow these steps to seal a blood specimen:

Step	Action
1	Use the tamper evident security seals provided in the Blood Specimen Collection Kit.
2	Seals must go over the rubber caps and down the sides of the vacutainers.
3	Once applied, do not attempt to remove or re-adjust the seals.
	 

Once the O/C case has the blood specimens they must:

- check that the driver's surname and barcode number on the vacutainers are identical to those on the Blood Specimen Medical Certificate (POL540)
- pack the vacutainers for transport following the instruction provided in the kit
- store the specimens as per station requirements, until the kit can be sent to ESR.

Deliver the specimen

Within seven days ([s74\(3\)](#) LTA) after the date the specimen is taken, the O/C case must deliver the blood specimen, or cause it to be delivered, to ESR for the analysis of one vacutainer and the custody of the other. A courier can be used to deliver the blood specimens, or they can be personally delivered. Registered post must not be used.

Chain of evidence

For evidential reasons, it must be possible to prove the chain of evidence. Secure the specimen once it is taken (using a locked fridge or locker). Use a courier or deliver in person according to district procedure.

Refer to the '[Packaging, handling, and storage of exhibits](#)' section of the '[Exhibit and property management](#)' chapter of the Police Manual for further details.

Outcomes following blood alcohol test result

All drivers	20 or over	Under 20	Alcohol Interlock & Zero	All drivers			
0 (zero)	51-80	1 - 30	Over 30	'Any positive result'	Over 80	Refusal	Insufficient blood
Notify the driver of the result, and no drink impaired driving charge	Issue ION	Complete File and go to Charging Document			Notify the driver of the result, and no drink impaired driving charge. Create NIA alert.		
	Consider Subsequent Enforcement Action						

DNA sampling

When to request a DNA Sample

Part [2B](#) of the [Criminal Investigations \(Bodily Samples\) Act 1995](#) does not require Police to take a DNA sample from every driver to be summonsed for a drink or drug impaired driving charge. The Act provides Police employees with discretion as to whether they will use this power or not. The discretion must be exercised appropriately with consideration given to each case on an individual basis which must be justifiable. Refer to the '[DNA sampling](#)' (Part 2B Operational Sampling guidelines) for further details.

Who should be present when a DNA sample is taken

[s52](#) of the [Criminal Investigations \(Bodily Samples\) Act 1995](#) stipulates those persons who can be present when a DNA sample is taken from a person under this Act. Other than the exceptions provided by the Act, no-one unrelated to the sampling process can be present. Refer to the '[DNA sampling](#)' chapter for further details.

Request for independent specimen analysis

The driver or their lawyer may apply in writing for one of the two blood specimens to be sent to a private analyst, under [s74\(7\)](#) LTA.

This application must be made within 28 days of:

- the date the summons is served; or
- the date of arrest, following arrest on a warrant issued under [s34](#) of the [Criminal Procedure Act 2011](#); or
- in any other case, the date on which the driver is first charged in court (i.e. the date of filing the charging document).

8. Charging decision

Drivers who meet the level of proof for alcohol or drug driving offences will be charged, or issued an ION.

If a person's breath or blood alcohol reading results in a charging document, identify any applicable qualifying offence to ensure the correct specimen charge is used.

Note: Where there is an event and immediate infringements are available, but there is also the potential for a further ION or charge from an ESR result, then you need to wait until you have the ESR result before issuing any infringements. The reason for this is to ensure multiple demerit points aren't incorrectly loaded against a driver.

Alcohol impaired driving charging decision

The EBT machine or [Analyst's Certificate](#) shows:

- an alcohol result below the legal limit for the driver's age, then:
 - inform the driver of the result, and
 - that no further action will be taken in respect of an EBA charge
 - if the driver's licence has been suspended and vehicle impounded, return them immediately unless otherwise warranted
- an alcohol result at an infringement level for the driver's age, then:
 - inform the driver of the result and
 - issue an ION
- an alcohol result at an offence level for the driver's age, then:
 - prepare prosecution file and serve a copy of the [analyst's certificate](#) (if applicable) and a summons on the driver as soon as possible, and arrange for a charging document to be filed
 - copies can be served to the driver by mail, or in person.

And if:

- the alcohol result exceeds 650 micrograms of alcohol per litre of breath or exceeds 130 milligrams of alcohol per 100 millilitres of blood then:
 - the person's licence must be suspended for 28 days, unless it has already been suspended for 28 days for the excess breath alcohol reading from the same incident.

Note: Consider impounding the vehicle - Refer to '[Impounding a vehicle](#)' of this chapter.

Note: Consider charging with for combination offences where both drugs and alcohol have been detected. See the 'Charging Table' below.

Note: Refer to the [Legislative Reference Table \(LRT - Code Book\)](#) for a full list of offences.

ESR Analyst's Certificate for Blood Alcohol

The ESR Analyst's Certificate for blood alcohol reports a point value and a confidence interval. It also provides an interpretive statement of the result, linked to charging thresholds.

For example:

On analysis of the blood specimen by J Doe, analyst, a proportion of 110 ± 5 milligrams of alcohol per 100 millilitres of blood was found in the specimen.

There is a greater than 99.9% probability that the proportion of alcohol in the blood specimen is greater than 80 milligrams per 100 millilitres.

Police will report and make a charging decision on the lower value. For the example above, the officer will deduct 5 from the point value to give a reading of 105. This value, being the lower end of the confidence interval, is to be recorded as the blood level on the charging document and the summary of facts.

Examples:

Type of Driver	ESR Result per 100ml blood	Value Charging Decision made on	Decision	Value Recorded		
				ION	SoF	Charge Doc
Under 20 years old	25 ± 3	$25 - 3 = 22$	ION	22		
	34 ± 3	$34 - 3 = 31$	Summons		31	31
Adult full licence	85 ± 5	$85 - 5 = 80$	ION	80		
	86 ± 5	$86 - 5 = 81$	Summons		81	81
	110 ± 5	$110 - 5 = 105$	Summons		105	105
	136 ± 6	$136 - 6 = 130$	Summons		130	130
	138 ± 7	$138 - 7 = 131$	Summons		131	131
	331 ± 18	$331 - 18 = 313$	Summons		313	313

Please download the 'Charging Table' poster for your station from the link below.

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[Charging table](#)

630.42 KB

Note: Staff are reminded that [s75](#) LTA only requires Police to produce a copy of the ESR Analyst's Certificate for a blood alcohol result. A statement from an ESR analyst will only be required if ordered by the court. Contact the National Traffic Prosecutions Advisor, Police Prosecutions, PNHQ should you require further information.

Drink driving infringement offence notices

When...	Then...
a driver 20 years or over, without an Alcohol Interlock or Zero Alcohol Licence, provides a breath result of 251-400 micrograms of alcohol per litre of breath or 51-80mg/100 milligrams of alcohol per 100 millilitres of blood.	<p>Send the completed evidential documents to the Police Infringement Bureau, once the ION is affirmed, for processing.</p> <ul style="list-style-type: none"> - this file must include the: - Breath & Blood Alcohol Procedure sheet (POL515) with the ION number (Block O), - officers' notebook entries, - ESR analyst's certificate (where applicable), - POL540 (where applicable), and - any other applicable documents. <p>If using OnDuty EBA, you can create the ION from the OnDuty EBA. On submit, a NIA occurrence will automatically be created.</p>
OR a driver under 20 years, without an Alcohol Interlock or Zero Alcohol Licence, provides a breath result of 1-150 micrograms of alcohol per litre of breath or 1-30 milligrams of alcohol per 100 millilitres of blood.	

Note: If an electronic copy of the EBA process is completed, the POL515 and ION will go straight to the Police Infringement Bureau. If a hard copy of the EBA process is completed, an ION number must be attached to the POL515 and forwarded to the Police Infringement Bureau.

Refer to the '[Traffic patrol techniques](#)' chapter for guidance on collection of specified particulars under s113 LTA. For guidance on photographing at checkpoints, refer to '[Part 6 - Road blocks and stopping vehicles for search purposes](#)' in the '[Search](#)' chapter of the Police Manual.

Note: If a CARD event was created for the incident, ensure the CARD event number is recorded in OnDuty EBA where required, the Notes section of the ION where necessary, and on page one of the POL515 or POL1115.

Charging documents for offences that don't fall within the infringement range should be processed within district using existing processes.

Note: Consider charging with for combination offences where both drugs and alcohol have been detected. See the Charging Table.

Cost recovery

If a driver's blood alcohol reading results in a charging document, the blood test fee and associated medical expenses are deemed a fine upon conviction and can be sought as costs from the court.

If a driver's blood alcohol reading does not contravene the [Land Transport Act](#) or where the driver is 20 years old or over and an infringement offence notice is issued, costs may be recovered through civil cost recovery. Contact the Manager: Operational Support: National Road Policing Centre for advice (NRPC.Ops.Support@police.govt.nz).

Refer to the following table for offences for age and licence types.



Download a printable PDF version of the flowchart.

pol004 Impaired Driving PDF

630.42 KB

Drug driving charging decision

Changes to the LTA explained

The Land Transport (Drug Driving) Amendment Act 2022 introduces many more offences than existed prior to March 2023. This is because enforcement officers must now make enforcement decisions that take into account:

- three tiers of drug drive offending (infringement offences, combination infringement offences and criminal offences)
- evidence arising by way of a blood analysis (e.g., hospital bloods), potentially in combination with alcohol results
- ongoing availability of the CIT regime (where an officer has good cause to suspect the driver has consumed a drug or drugs)
- ongoing availability of a charge under s58 where a driver is incapable of proper control of a motor vehicle
- a driver's age and driver licence status (e.g., is the driver aged under 20, does the driver hold an alcohol interlock or zero alcohol licence?)
- the driver's history of similar offending.

Drivers who return positive blood tests for multiple drugs or for drugs and alcohol will be subject to higher penalties resulting from combination offences. This is to reflect the higher crash risk associated with consuming multiple impairing substances.

[Schedule 5](#) of the LTA is a list of 25 qualifying drugs ("listed" qualifying drugs). An expert panel was appointed to determine risk posed by drivers after consumption of drugs commonly used in New Zealand. The panel was tasked with determining levels of drugs thought to be impairing (tolerance level) and highly impairing (high risk level). The 'tolerance' and 'high-risk' thresholds are comparable to the infringement (30mgm) and charge level (80mgm) currently in place for adult alcohol offending.

"Listed" Qualifying Drugs

Where a drug is a listed qualifying drug, blood level alone determines the enforcement response (ION or charging document). It will be dependent on whether the person's blood is below or above the tolerance level, and again whether it's above or below the high-risk level. Where a listed qualifying drug is found in a person's blood at a level below the tolerance level that person has not committed a drug drive offence.

Tolerance level	Prima facie outcome
Below	No further action.
Above	Dependent on high-risk level (will be either ION or charging document).
High-risk level	Prima facie outcome
Below	Infringement level offence.
Above	Offence and liable to prosecution.

For example, the tolerance level for methamphetamine is 10ng/ml and the high-risk blood concentration is 50ng/ml of blood. This means a driver whose blood methamphetamine level exceeds 50ng/ml of blood has (provided the other elements of the offence are

made out) committed an offence and will be charged. Whereas a driver who returns a blood level of 25ng/ml (which is below the high-risk blood concentration level of 50ng/ml) has prima facie committed an infringement offence.

“Unlisted” Qualifying Drugs

For all unlisted qualifying drugs, the difference between enforcement by way of infringement notice and enforcement by way of a charging document (in most cases) is the person’s performance in a CIT. This is because the detection of an impairment indicates that the person is a high risk to other road users; accordingly, a higher penalty is appropriate.

However, a person who has given blood while undergoing medical treatment cannot be required to undergo a CIT ([s73](#) of the LTA). In these cases, (where a person’s blood indicates use of an unlisted qualifying drug and they have not undergone a CIT) an ION is the appropriate enforcement response.

These outcomes are summarised as follows:

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.

For further information, refer to [Schedule 5](#) of the LTA.

Blood test result

The ESR approved analyst sends the analyst's certificate, which records the result, to the enforcement officer named in Part D of the Blood Specimen Medical Certificate (POL540).

For further information:

- ['Evidential certificates'](#)
- [New infringement and criminal offences and penalties.](#)

Errors in enforcement procedure

It is no defence to proceedings for an offence that a provision forming part of [s68](#) to [s75A](#) and [s77](#) of the LTA has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.

([s64\(2\)](#) of the LTA)

[s68](#) to [s75A](#) and [s77](#) of the LTA set out the enforcement procedures for offences involving intoxication.

This 'reasonable compliance' provision is to be liberally applied: [Police v Tolich](#) (2003) 20 CRNZ 150 (CA).

New infringement and criminal offences and penalties

The new infringement and criminal offences and penalties can be found in the 'Charging Table'.

9. Hospitalised drivers

Breath tests and CIT procedures may not be administered on a driver who has been taken to a hospital or a medical centre as a result of a motor vehicle 'crash or incident'. However, testing may be resumed or carried out after the driver is no longer under the care, treatment or examination of the hospital or medical centre staff.

Where possible, all drivers in a hospital or medical centre after a crash or incident or injury involving a motor vehicle are to have a blood specimen collected, in accordance with [s73 LTA](#), for impaired driving procedures.

Note: The driver is no longer considered to be 'in hospital' once they have received treatment and are free to go home [Teretai v Ministry of Transport](#) 19/8/86, Thorp J, HC Auckland AP83/86].

Note: If the driver is admitted to hospital and they discharge themselves prior to treatment, then you can start the breath testing procedure at that time.

When can blood tests be taken?

A blood specimen may only be taken at a hospital or medical centre if the health practitioner who is in immediate charge of the driver's care or another medical officer or health practitioner has reasonable grounds to suspect the person is there as a result of ([s73\(5\) LTA](#)):

- a crash or incident involving a motor vehicle; or
- an injury or a medical condition arising after a crash or incident involving a motor vehicle; and
- be satisfied that the test will not prejudice the driver's care or treatment.

The blood test can be for alcohol and/or for evidence of a qualifying drug as defined under [s2\(1\)](#) of the [Land Transport Act 1998](#). ESR analysis will usually test for alcohol first and then for drugs, however, will stop when a single offence against the LTA is confirmed.

Where a hospital blood sample returns a positive result for alcohol, but drugs were also suspected, and there is a public interest in further testing being conducted, the officer in charge can make a request for the blood sample to be tested for drugs. References to where this is available will generally be made on the analyst certificate.

Note: A medical centre means any place where a medical examination or medical care or treatment is carried out or given.

Situations where it is unclear if the driver is impaired by alcohol or drugs

If it is suspected that a driver may have been impaired by alcohol and/or drugs, a request can be made to the health practitioner in charge of the driver's care to take a blood specimen or have another medical officer or health practitioner do so ([s73\(3\)\(b\) LTA](#)).

Note: Always remember that while the health practitioner or medical officer has full responsibility for the patient, they must comply with a request, except in circumstances where taking a blood specimen would be prejudicial to the driver's proper care and treatment. In practice it is unlikely that taking a blood specimen would be prejudicial to a person's proper care of treatment.

Notifying the driver of the reason for a blood specimen

The health practitioner or medical officer must tell the driver that a blood specimen is being taken for evidential purposes under [s73](#) LTA.

If the driver is unconscious, the health practitioner or medical officer taking the specimen must notify the driver in writing that the blood specimen was taken for evidential purposes under [s73](#) LTA by providing the driver with the driver's copy (yellow sheet) of the Blood Specimen Medical Certificate (POL540).

Consent

A driver in hospital must permit a blood specimen to be taken. If a driver refuses or fails to permit the health practitioner or medical officer to take a blood specimen, they have committed an offence under [s60\(1\)\(c\)](#) LTA.

It is sufficient to obtain a statement from the health practitioner or medical officer to this effect and charge the driver when appropriate. The POL540 provides suitable text as the basis for any statement from the health practitioner.

Note: A driver who is in a hospital or medical centre as a result of an accident involving a motor vehicle cannot be required to undergo an EBT ([s69](#) or a CIT).

Hospital or medical centre blood test procedure

Step	Action
Take blood specimen	<p>Hospital or medical centre staff will provide:</p> <ul style="list-style-type: none"> - a sealed blood specimen collection kit - the Blood Specimen Medical Certificate (POL540). <p>Inform the health practitioner or medical officer that the person they are in charge of is suspected to be the person who was, or may have been if the driver is unknown, the driver involved in the accident or incident involving a motor vehicle, and request that a blood specimen be taken.</p> <p>The health practitioner or medical officer should open the sealed blood specimen collection kit and take a blood specimen in accordance with the instructions supplied with the kit.</p> <p>Note: Hospital blood specimens must be treated as evidence and handled appropriately. They must be shaken, sealed, the driver's surname must be written on each vacutainer, barcoded and secured to preserve the chain of evidence.</p>

<p>Complete Blood Specimen Medical Certificate (POL540)</p>	<p>Part A of the POL 540 must be completed by either the O/C case, the medical officer or health practitioner.</p> <p>Part B of the POL 540 is specific to hospital or medical centre blood specimens, and must always be completed when a hospital blood specimen is taken.</p> <p>Part B must be completed by the health practitioner who is immediately responsible for the driver's/suspected driver's care.</p> <p>Part C must be completed by the health practitioner or medical officer who actually took the blood specimen.</p> <p>Remember: redact irrelevant sections in Parts B and C of the POL 540.</p> <p>After taking the blood specimen and completing the POL540, the medical officer or health practitioner:</p> <ul style="list-style-type: none"> - hands the vacutainers to the enforcement officer named on the certificate - provides the driver with the yellow driver copy of the POL540 to notify a driver who is unconscious that a blood specimen was taken for evidential purposes under s73 LTA - keeps the green medical copy. <p>The O/C case:</p> <ul style="list-style-type: none"> - attaches the original form to the prosecution file - ensures the pink ESR copy goes with the blood specimens. <p>Remember: ensure the O/C case is recorded on the POL 450.</p> <p>Note: If the driver is suspected of drug impairment, tick the box that represents the process for which the blood sample was obtained in Part D of the Blood Specimen Medical Certificate (POL540).</p>
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Summary of outcomes

Action	Outcome
Blood Specimen Collected	Advise the driver that they will be notified of the test results when they are known - usually, within 2-3 weeks for alcohol, and within 3-4 weeks for drugs.
Health practitioner in charge refuses specimen as prejudicial to drivers care.	No further action for alcohol or drug driving. <i>(This is rare).</i>
Blood Specimen Collection Refused	<p>Create Charging Document.</p> <p>Go to Charging Decision.</p>
Consider Subsequent Enforcement Action .	

On receipt of the ESR analyst's certificate see '[Receiving and notifying a blood test result](#)'.

Outcomes following blood test result

Outcomes following a blood specimen taken in hospital or medical centre ([s73 LTA](#)): see the Charging Table.

10. Subsequent enforcement action

Ensure all subsequent enforcement actions are taken against drivers to mitigate road safety risks.

The following actions may be applicable after processing impaired drivers.



Download a printable PDF version of the flowchart.

-

pol004 Suspension Licence PDF

194.75 KB

Forbidding a person to drive

When a person may be forbidden to drive for up to 12 hours

Someone may be forbidden to drive if the person:

- is incapable of having proper control of the vehicle (due to any physical or mental condition)
- has not completed a CIT satisfactorily or has failed to undergo a CIT altogether
- has failed or refused to permit a blood specimen to be taken (either through the EBT or CIT processes).

It must be also in the interests of the driver and public to forbid that person.

When a person *must* be forbidden to drive for up to 12 hours

Someone must be forbidden to drive if the person has a positive EBT result ([s121\(3\)](#) LTA).

This applies regardless of whether the blood testing process is undertaken.

Incapable of proper control

The prosecution does not have to prove that the [driver in charge](#) intended to drive the vehicle, but it must be able to show the driver was incapable of having proper control of the vehicle because of their physical or mental condition.

This means an enforcement officer does not have to wait to see if they drive or attempt to drive before intervening.

Powers to forbid a person to drive are outlined in [s121](#) of the LTA.

How to enforce prohibition

A prohibition can be enforced by:

- requiring the driver, or [person in charge of the vehicle](#), to surrender all vehicle keys, and/or
- rendering the vehicle immobile (no damage to the vehicle is permissible).

Forbid to drive in writing

Step	Action
1	Make the prohibition in writing on the Road Safety Directive POL406, advising that the driver, or person in charge of the vehicle, is forbidden to drive any motor vehicle.
2	State where and when the keys (or other part of vehicle removed to make it immobile) can be uplifted.
3	Provide access to a phone to arrange transport home. For security reasons do not offer personal issue mobility devices.
4	Notify your FMC or Support Officer to load the alert immediately. If Winscribe is used, provide the driver's name, DLICNO, the creation date, and period of forbidding.

Failure to comply

If the driver fails to comply with any direction or carries out any forbidden act, they commit an offence under [s52\(1\)\(c\)](#) and [s121\(4\)](#) LTA and, if necessary, can be arrested.

Remember the power under [s 122](#) to seize and impound the vehicle for a period not exceeding 12 hours if there are reasonable grounds to believe public safety is at risk. But there must be no other action that can be taken.

What to do with seized keys or vehicle parts

Put the seized keys or removed vehicle part in the watchhouse and record the details in the Seized Key Book before the end of shift.

If vehicle is moved to a safe place

If the vehicle has been moved to a safe place (or to remove a road hazard), record details of this in the Towed Vehicle Log and enter a NIA alert against the vehicle.

Suspending a driver licence

Suspension requirements:

Under [s95](#) of the LTA, a driver's licence must be suspended (including an [overseas driver licence](#)) for a period of 28 days in the following circumstances:

Type of offending	Offence
Alcohol	A person has been convicted within the last four years of an applicable offence and a breath test exceeds 400 micrograms of alcohol per litre of breath, or a blood sample exceeds 80 milligrams of alcohol per 100 millilitres of blood.
	Applicable offences: offences concerning alcohol or drug impaired driving.
	A blood sample exceeds 130 milligrams of alcohol per 100 millilitres of blood (unless the licence has already been suspended for 28 days for an excess breath alcohol reading from the same incident).
	A breath test exceeds 650 micrograms of alcohol per litre of breath.
Drugs	A blood sample exceeds the high-risk level for a qualifying drug.
	A blood sample is positive for an unlisted qualifying drug after the person failed to complete a CIT in a manner satisfactory to an enforcement officer.
Refusal	A person failed or refused to undergo a blood test.
Speeding	A person exceeds the permanent posted speed limit by more than 40 km/h,
	<i>or</i> A person exceeds any other speed limit by more than 50 km/h.

Applicable offences

Offences against any of [s56\(1\) or \(2\)](#), [s57A\(1\)](#), [s57B\(1\)](#), [s57C\(1\)](#), [s58\(1\)](#), [s60\(1\)](#), or [s61\(1\) or \(2\)](#) LTA, mandate the immediate suspension of a driver's licence and may give rise to the impoundment of the vehicle for 28 days, if the driver has been previously convicted of any of these offences in the past four years.

Demerit points

Under [s90](#) of the LTA, a driver's licence (including an [overseas driver licence](#)) must be suspended for a period of three months if a person receives a total of 100 or more demerit points in any two-year period.

Refer to [Licence suspensions](#) for further information.

Impounding a vehicle

Impoundment requirements relating to driver's alcohol and drug levels:

Under [s96\(1\)\(d\)](#) of the LTA, a vehicle must be impounded for a period of 28 days where a driver has been convicted within the last four years of two or more applicable offences and:

Type of offending	Further offence
Alcohol	Their breath test exceeds 400 micrograms of alcohol per litre of breath.
	Their blood sample exceeds 80 milligrams of alcohol per 100 millilitres of blood.
Drugs	A blood sample exceeds the high-risk level for a qualifying drug.
	A blood sample is positive for an unlisted qualifying drug after the person failed to complete a CIT in a manner satisfactory to an enforcement officer.
Refusal	They fail or refuse to undergo a blood test after having been required or requested to do so under s72 or 73 .

Refer to the '[Impounding vehicles](#)' chapter of the Police Instruction for further details.

DNA sampling

Refer to '[When to request a DNA Sample](#)' for further information.

11. Prosecution files

Remember your obligations under the '[Criminal Disclosures](#)' chapter.

General

Prosecution file content:

Prepare the Prosecution File in accordance with the '[Prosecution File Preparation](#)' guide.

Infringement offences

Drink and drug driving offences that are infringement offences should generally be pursued by issuing an infringement offence notice. Infringement offences may also be brought to court by way of a charging document. However, this must not be done unless the driver is charged with other, related non-infringement offences arising from the same incident, e.g., careless driving, assaulting the enforcement officer, etc. Even then, if alcohol or drug consumption would not be seen as an aggravating factor of the other offence, or if the drink or drug driving offence is not related to the other offence (e.g., establishing that the enforcement officer was acting in the course of his or her duty), an infringement offence notice should be issued.

Where an infringement offence is heard in court (either by way of a charging document or by a person requesting a hearing of an infringement offence notice) the prosecution file must be prepared to the same standard as for any other prosecution, as above.

Reminder: if a person is convicted of an offence against any of [sections 56-62](#) that relates to the driving or attempting to drive a vehicle being used in a transport service, [s63](#) of the LTA applies.

Combination offences

Where combination offences for impaired driving occur involving at least one offence, but no combination offence is available, staff should proceed by way of filing charging documents for all relevant offences arising from the circumstances. This allows the courts to assess the offending in its totality, acknowledging the risk that the combination of drugs and alcohol present to the safety of our roads and communities.

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

Where combination offences for impaired driving occur 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.

Combination offending where combination offences are not available:

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.

Seeking medical expenses and analysis costs from offenders

s67 of the LTA provides that a person convicted of a specified drug/alcohol driving offence for which a blood test was taken is liable to pay the relevant blood test fee and associated medical expenses. Costs are not recoverable for infringement offences, even if the case is taken to court on a charging document.

Costs associated with drink impaired driving infringements, for the collection and analysis of blood specimen, are a debt to the Crown and not recoverable at court, even if the person is taken to court on a charging document. Refer to '[Cost recovery](#)' advice under the 'Alcohol impaired driving charging decision' section.

Blood specimen analysis costs are found in the [Land Transport \(Blood Test Fee\) Notice 2018](#).

Police must seek recovery of these costs at court although they may not always be ordered. Request the costs in the Summary of Facts.

Judge-alone trials

Excess Blood-Alcohol Level

In a Judge-alone trial for EBA, the O/C case must check the:

- blood option was given without undue delay; and
- the correct Advice of Positive Evidential Breath Test Notice (contained in the OnDuty EBA or Breath & Blood Alcohol Procedure Sheet POL515) was used; and
- an evidential statement from the O/C.

Well before the hearing, the O/C case must make a request to the Police Calibration Unit by way of Road - Evidential Device Certificate Request on Outlook for a certified copy of the device's certificate of compliance. This must be produced at the hearing. Allow time to:

- receive the copy by mail
- disclose a copy of the certified copy to defence counsel well before the hearing.

Excess Blood-Drug Level

Following a CIT

In a Judge-alone trial, the O/C must include in their evidence:

- the process as described in the POL1115 and the POL540 has been followed; and
- an evidential statement from the O/C; and
- an evidential statement from the person who conducted the CIT (if different), including the date they received their CIT training; and
- an evidential statement from the Health Practitioner who took the blood sample (where necessary); and
- an evidential statement from ESR (where necessary).

Where necessary, ensure the reasons for the driver not satisfactorily completing the CIT are explained. To merely say the driver did not satisfactorily complete the CIT is insufficient. Refer to [Police v Harding](#) DC CRI-2010-069-622.

Following a Crash (Hospital bloods)

In a Judge-alone trial, the O/C must include in their evidence:

- the process as described in the POL540 has been followed; and
- an evidential statement from the O/C; and
- an evidential statement from the Health Practitioner who took the blood sample (where necessary); and
- an evidential statement from ESR (where necessary).

3rd and subsequent offences

Certified copies of the previous offences must be obtained from the court of issue as part of a 3rd and subsequent charge under [s56\(4\)](#) LTA. The certified copy is to satisfy [s139](#) of the [Evidence Act 2006](#).

Evidential certificates

The contents and evidential status of all certificates pertaining to alcohol and drug impaired driving are set out in [s75](#) LTA. Also see [s79](#) LTA for the circumstances where certificates are not admissible as evidence.

Certificates for specimens

Except as provided in [s79](#), production of a certificate described in [s75\(2\)-\(6\)](#) is, in the absence of proof to the contrary, sufficient evidence of:

- the matters stated in the certificate
- the sufficiency of the authority and qualifications of the person by whom it is made
- if a certificate is signed by an analyst, of the person who carried out the analysis.

([s75\(1\)](#) LTA)

Certificates referred to in [s75\(2\), \(3\) and \(4\)](#) are not admissible if the court orders under [s79\(1\)](#) that the health practitioner or medical officer who gave the certificate to appear as a witness at trial.

Certificates referred to in [s75\(5\) and \(6\)](#) are not admissible if the court orders under [s79\(3\)](#) that the person who made the analysis or the approved analyst who gave the certificate to appear as a witness at trial or (in the case of a specimen being sent for private analysis) the person who delivered the specimen, or the person who gave the specimen to the courier, or the approved analyst who gave the certificate, is to appear as a witness at trial.

These certificates are not admissible in such circumstances:

- [s75\(2\)](#): Blood Specimen Medical Certificate (POL 540).
- [s75\(3\) and \(4\)](#): Blood Specimen Medical Certificate (POL 540).
- [s75\(5\)](#): Analyst's Certificate.
- [s75\(5\)](#): Analyst's Certificate (specimen sent for private analysis).

EBT device certificates

In the absence of proof to the contrary, a document purporting to be a certificate of compliance, or a certified copy of one must be treated as such and is conclusive evidence of the sufficiency of the authority of the person who signed it.

A certificate produced in the correct manner is for all purposes conclusive evidence of the matters stated in the certificate. Neither the matters stated in the certificate, nor the manufacturer's specifications for the device may be challenged or questioned in any proceedings for an offence involving excess breath alcohol recorded by the device. [s75A\(3\) and \(4\)](#) LTA refers.

Presumptions and evidence

Specimens of blood

In proceedings for an offence against the LTA, it is presumed in the absence of evidence to the contrary, that:

- if a certificate referred to in [s75](#) LTA names a person having the same name, address and occupation as the defendant as the person from whom the specimen of blood was taken, the specimen was taken from the defendant
- every approved analyst who signed a certificate referred to in [s75\(5\)](#) LTA was duly authorised to sign it
- if the vacutainer in which a blood specimen was collected was received in a sealed blood specimen collecting kit, the vacutainer contained a preservative and anti-coagulant (whether or not this comprised two or more substances)
- ([s76\(1\)](#) LTA).

Breath alcohol

It is conclusively presumed that the proportion of alcohol in a driver's breath at the time of the alleged offence was the same as the proportion of alcohol indicated by the EBT. ([s77\(1\)](#) LTA)

Blood alcohol

It is conclusively presumed that the proportion of alcohol in a driver's blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen.

([s77\(2\)](#) LTA).

Blood drug

It is to be conclusively presumed that the proportion of a qualifying drug in the defendant's blood at the time of the alleged offence was the same as the proportion of the qualifying drug in the blood specimen. ([s77A](#) LTA)

Driver's age

If a certificate referred to in [s143](#) LTA is produced in EBA proceedings involving a person who is [apparently under 20](#), it is presumed, in the absence of evidence to the contrary, that the date stated in the certificate as the person's date of birth is accurate. ([s78](#) LTA)

[s143](#) LTA relates to certificates stating that a driver has no record in the register of driver licences, or showing that they have a current driver licence that has expired or was invalid for the class of vehicle driven.

Refusal to permit blood specimen to be taken

If, in proceedings for an offence against [s60](#) LTA, it is proven that the driver failed or refused to comply with [s13](#) LTA without reasonable cause, that failure or refusal may be treated as supporting any prosecution evidence, or rebutting any defence evidence, of the driver's condition at the time of the alleged offence. ([s77\(6\)](#) LTA).

[s13](#) LTA relates to the responsibility of drivers to comply with the enforcement officer's directions.

12. Medical Defence

Summary

A person charged with, or fined an infringement offence notice (ION), for drug driving may have a defence if the drug detected was a prescription medication and was taken in accordance with a current and valid prescription made out for that person (section 64 of the LTA).

There are two sections under section 64 which apply:

Process	Legislation
Blood samples	<p>S64(1A) It is a defence to proceedings for an offence against section 57A(1) or (2), 57B(1) or (2), 57C(1) or (2) or 62(1B) if the court is satisfied that the person has consumed the relevant qualifying drug-</p> <p>(a) in accordance with-</p> <p>(i) a current and valid prescription written for that person by a health practitioner; and</p> <p>(ii) any instructions from a health practitioner or from the manufacturer of the qualifying drug; or</p> <p>(b) because it was administered by a health practitioner, provided that the person complied with the instructions (if any) that the health practitioner has given.</p> <p>It should be noted that offences under sections 57A(1), 57B(1), 57C(1) and 62(1B) are criminal offences. Sections 57A(2), 57B(2) and 57C(2) relate to infringement offences resulting from blood analysis.</p>
Oral fluid testing	<p>S64(1AB) It is a defence to proceedings for an offence against section 57A(3), 57B(3), or 57C(3) or (4) if the person's oral fluid indicates use of a qualifying drug and-</p> <p>(a) the person-</p> <p>(iii) has a current and valid prescription for the qualifying drug that was written for that person by a health practitioner; and</p> <p>(iv) has complied with the instructions (if any) from a health practitioner or from the manufacturer of the qualifying drug about driving, consuming alcohol or other prescription medicines, or both, while consuming the qualifying drug; or</p> <p>(b) the drug was administered by a health practitioner, and the person complied with the instructions (if any) given by the health practitioner.</p>

We are currently operating without roadside Oral Fluid drug testing. This means the detection of prescription drugs will be through **blood samples** only.

Where a person is issued a charging document and seeks to rely on a medical defence, consult your local PPS for guidance.

All infringement notices are processed by PIB and any medical defence is considered by PIB.

Note: the PIB can consider matters raised in any infringement offence notice (ION) that has been issued and is not before the courts. For any ION (or charge) which has been put before the courts the appropriate assessment of any medical defence should be made by a Police prosecutor.

Infringement notices may be issued where:

1. Listed qualifying drug- is detected with concentration level of the drug provided (below high-risk level)
2. Unlisted qualifying drug - where the drug is detected but no CIT process has been undertaken.

Information Sharing

Staff managing medical defence applications are reminded that information provided by drivers in support of their application is both

personal and sensitive.

Personal information gathered by Police for the purpose of consideration of a medical defence may be used only for that purpose. It must not be shared with personnel not involved in assessment of medical defences.

Note: If the medical defence is accepted by PIB, any information given in support by the applicant should not ordinarily be shared with the Officer in Charge (OC) of the case; this is because enforcement action will not proceed. If the medical defence is declined, the OC will be provided that information by PIB as it may be required for evidential purposes.

Medical Defence process

Note: While the below information has been designed to enable PIB to consider any medical defence, the decision-making principles raised in an ION are also applicable to charging documents.

Consideration of a medical defence will be a two-step process:

1. Does the driver have a current and valid medical prescription for the drug(s) detected?
2. Has the driver taken the drug(s) in accordance with any instructions from the health practitioner or manufacturer?

Note: To raise a medical defence from an infringement notice a person must use the form provided on the Police website. This ensures provision of the required information.

Step 1: Medical Defence documentation received and reviewed

The onus is on the driver to:

- satisfy police that they have a current and valid prescription for the drug(s) detected, and:
- provide any relevant documentation in relation to that prescription to support their defence (including any instructions which were provided with the prescription).

1.1. PIB must receive:

- **medical defence application form**
- **current and valid prescription for the qualifying drug(s) detected in the driver's blood.**
- **a copy of the label from the container the drug(s) were dispensed in.**

Set up file - usual case management process.

1.2. Is the application complete?

Begin working through the Adjudication Checklist:

- Is the offence under [57A\(2\) or \(3\)](#), [57B\(2\) or \(3\)](#), or [57C\(2\), \(3\) or \(4\)](#)?
- Does it relate to a prescription qualifying drug or drugs?

- Has the applicant provided evidence of (section 64(1A)(a)(i)) LTA):
 - a current and valid prescription for the qualifying drug that was written for that person by a health practitioner (e.g. a copy of the prescription from their health practitioner, or a screenshot of the prescription from [ManageMyHealth](#))
 - a copy of the label from the container the drug(s) were dispensed in (e.g. a photograph of the container/package, or a copy of the label from the pharmacy).
- Is there any further information required to be supplied in order for the application to be properly assessed?

If the application isn't complete:

- Go back to the applicant indicating that they have supplied insufficient information for the medical defence to be considered. Applicant to be notified of the remaining required information that is missing.
- If the information is still not sufficient for PIB to properly assess the medical defence, or they do not respond, then the defence would likely be declined, or it would drop into Court in accordance with s21 SPA.

Note: if there is another issue (not medical defence) then the application goes through the general dispute process.

1.1. PIB Adjudicator to review the prescription for the following minimum requirements:

- **Applicant's name**
- **Drug matches the drug(s) detected**
- **Hasn't expired and/or valid at the time of infringement**
- **Valid medical centre/doctor**

(This step may be done alongside 1.2 as appropriate)

This is the first aspect of the process where the driver must prove that they have a current and valid prescription.

If the prescription provided does not meet the evidential threshold, go back to the driver for further information.

- For example, ask the driver for supporting information from the dispensary i.e., prescription indicating validity at time of offence.

If the driver is unable to provide sufficient information for a proper assessment to be made the application should be declined.

1.4. Do we have sufficient evidence to prove the drug was administered by a health practitioner?

If yes, proceed to Step 2.

Note: must meet threshold for Step 1 before proceeding to Step 2.

If the applicant has met their obligations to provide PIB with the required information (to the best of their ability), and the burden of proof has been met as to the authenticity of the information provided, then the adjudicator would need to have very good reasons for declining an application.

Step 2: Assess whether the person complied with the instructions (if any) given by the health practitioner

The person needs to have complied with the instructions (if any) about driving, consuming alcohol or other prescription medicines, or both, while consuming the qualifying drug. These instructions could come from either a health practitioner or the manufacturer of the qualifying drug.

If the medical defence is declined, Police must be able to show that the person did not comply with instructions given by the healthcare provider/manufacturer. For example, detection of multiple drugs, especially illicit drugs, in the person's blood can be evidence on non-compliance with the prescription.

2.1. Verification of information provided

Police may contact the medical provider to confirm the authenticity of the documents and information provided to them. This should only be done where there is suspicion that the driver has provided false or misleading information.

At no stage should police request any medical information about an individual, other than the relevant records of the prescription. If further information of this nature is sought the request should always be made to the driver.

2.2. Review prescription against the blood results

Consider against the therapeutic range of each of the listed qualifying drugs under Schedule 5 of the LTA. This will provide a level of guidance regarding the normal range at which you could expect to see someone's level at when taking a prescribed drug.

Consider whether they have complied with any specific instructions.

Are there any instructions (if any) from a health practitioner or from the manufacturer of the qualifying drug about driving, consuming alcohol or other prescription medicines, or both, while consuming the qualifying drug? (64(1AB)(a)(ii))?

Note: it is not uncommon for drugs to be prescribed without any instructions.

2.3. Do we have sufficient evidence to prove the person has not complied with the instructions (if any) given by the health practitioner? [\(64\(1AB\)\(b\)\)](#)

Does the blood level fit within the therapeutic range for particular drug(s) (if available)?

The levels are only an indicative range for the average person taking the average recommended prescribed dosage. There are drugs and situations where a person would have a higher dosage level of a drug in their system and still be taking the drug in accordance with the instructions of their medical practitioner. In most of these cases it would apply to persons who have been prescribed a particular drug over a long period of time and built up a tolerance for the drug which results in that person requiring a higher dosage.

Higher dosage levels than expected

It would be important to establish how long the person has been prescribed the particular drug in question, and only where the prescription has generally exceeded 2 years or more would you expect to begin seeing higher dosage levels in that person's blood.

Were there any other substances also detected (alcohol or illicit drugs such as cannabis)?

Detection of two or more prescription drugs where simultaneous use of those drugs is contra-indicated suggests non-compliance.

Decision

If the adjudicator cannot determine non-compliance with the prescription, then the ION should be waived.

Point of escalation

If the decision isn't clear, the adjudicator is to seek advice from their Team Leader or supervisor as to whether they feel expert advice should be sought. Any request for expert advice is required to be sent through either the manager of PIB for infringements, or the local District Prosecution Manager for criminal charges.

2.4. Preliminary decision

Reminder to complete the Adjudication Checklist.

Medical defence upheld

The grounds for a medical defence have been met where:

- there is no issue with the prescription; and
- the individual appears to have been following the instructions.

Medical defence declined

If there is evidence to show they didn't comply with the instructions (to an evidentiary standard) then the medical defence may be declined. This means there is sufficient evidence to prosecute the offence (apply the Solicitor General Prosecution Guidelines).

The driver would then be required to either pay the infringement or request a defended hearing.

2.5. Sign off on decision (PIB)

Medical defence upheld

If the preliminary decision is to uphold the medical defence, the steps are as follows:

- sign off by Adjudicator
- sign off by Team Leader
- let the Officer know of the outcome
- let the applicant know.

Medical defence declined

If the preliminary decision is to reject the medical defence, the steps are as follows:

- sign off by Adjudicator
- let the applicant know, including the option of a defended hearing.

Required information for a defended hearing:

- ESR analysts certificate (will be in NIA)
- POL 540
- CIT checklist (where applicable)

Note: for criminal charges it is recommended any final decision to accept a medical defence is approved by either a supervisor or prosecutor.

2.6. File is closed

Reminder to attach the Adjudication Checklist to the case file.

Usual BAU process.