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CHARACTER WAIVERS AND DRIVING WITH EXCESS ALCOHOL (TEMPORARY ENTRY)

This advice is a reiteration of previous advice given regarding character waivers and driving with excess breath alcohol (temporary entry).

This advice is to clarify that a conviction of driving with excess alcohol falls under immigration instructions [A5.45\(d\)\(ii\)](#), which state: "Applicants who will not normally be granted a temporary entry class visa, unless granted a character waiver include any person who... has been convicted at any time of... an offence in New Zealand for which the court has the power to impose a term of imprisonment of at least three months".

The three month threshold stipulated in A5.45(d)(ii) is met because the court may impose three months' imprisonment for a conviction of driving with excess alcohol (see below). Therefore, clients who have declared this conviction must be granted character waivers before temporary entry class visas can be approved.

Section 56 (3) of the Land Transport Act 1998:

56 Contravention of specified breath or blood-alcohol limit

- 3) If a person is convicted of a first or second offence against subsection (1) or subsection (2),—
- a. the maximum penalty is imprisonment for a term not exceeding 3 months or a fine not exceeding \$4,500; and
 - b. the court must order the person to be disqualified from holding or obtaining a driver license for 6 months or more.

The following note, which clarifies the fact that a character waiver is required in these circumstances, has been added to character instructions at A5.45:

For the avoidance of doubt, any offence in New Zealand that has the potential to result in a term of imprisonment of three months falls within the scope of A5.45(d)(ii). This includes, but is not limited to, potential sentences "not exceeding three months" or "up to and including three months".