TE MANATŪ WAKA
MINISTRY OF TRANSPORT

Te Whakahounga o Te Pire Tiaki Ture (Tūnuku) | Regulatory Systems (Transport) Amendment Bill

Ngā tūtohu whenua | Land proposals

May 2022

Consultation Document

Tē taea te kaupapa te ū,
ki te kore he māhere,
he huarahi mahi hoki ⌋
Nothing can be achieved
without a plan, workforce
and way of doing things

UARA
OUR VALUES

WHAKAPAKARI
IMPROVING OUTCOMES

AKO
CAPABILITY DEVELOPMENT

MAHI TAHI
WORKING TOGETHER

RANGATIRATANGA
EMPOWERING
AND LEADING

KAITIAKITANGA
GUARDIANSHIP AND
PROTECTION

WHANAUNGATANGA
COLLABORATION
AND UNITY

MANAAKITANGA
CARING FOR AND
VALUING OTHERS

Ngā ihirangi | Contents

Te Manatū Waka – Te wāhi tūnuku ki a mātou | Te Manatū Waka – our role in transport

> Transport is about freedom of movement. It touches everyone's lives and is fundamental to our wellbeing and lifestyles. It connects people to family, work, education, and recreation. It moves goods that are critical to the strength of the economy.

Te Manatū Waka – Ministry of Transport (Te Manatū Waka) is the Government's system lead for transport. We provide advice to Government on transport issues and then help implement their decisions.

We have a key leadership role in the stewardship of the transport regulatory system, in partnership with Waka Kotahi NZ Transport Agency, Maritime NZ, the Civil Aviation Authority and the Transport Accident Investigation Commission (the transport regulatory agencies).

We help make Aotearoa New Zealand's sea, air, land, and rail transport systems work together as a safe, efficient, and sustainable system. To do this, we work with government transport agencies, departments, councils, and transport operators and interest groups.

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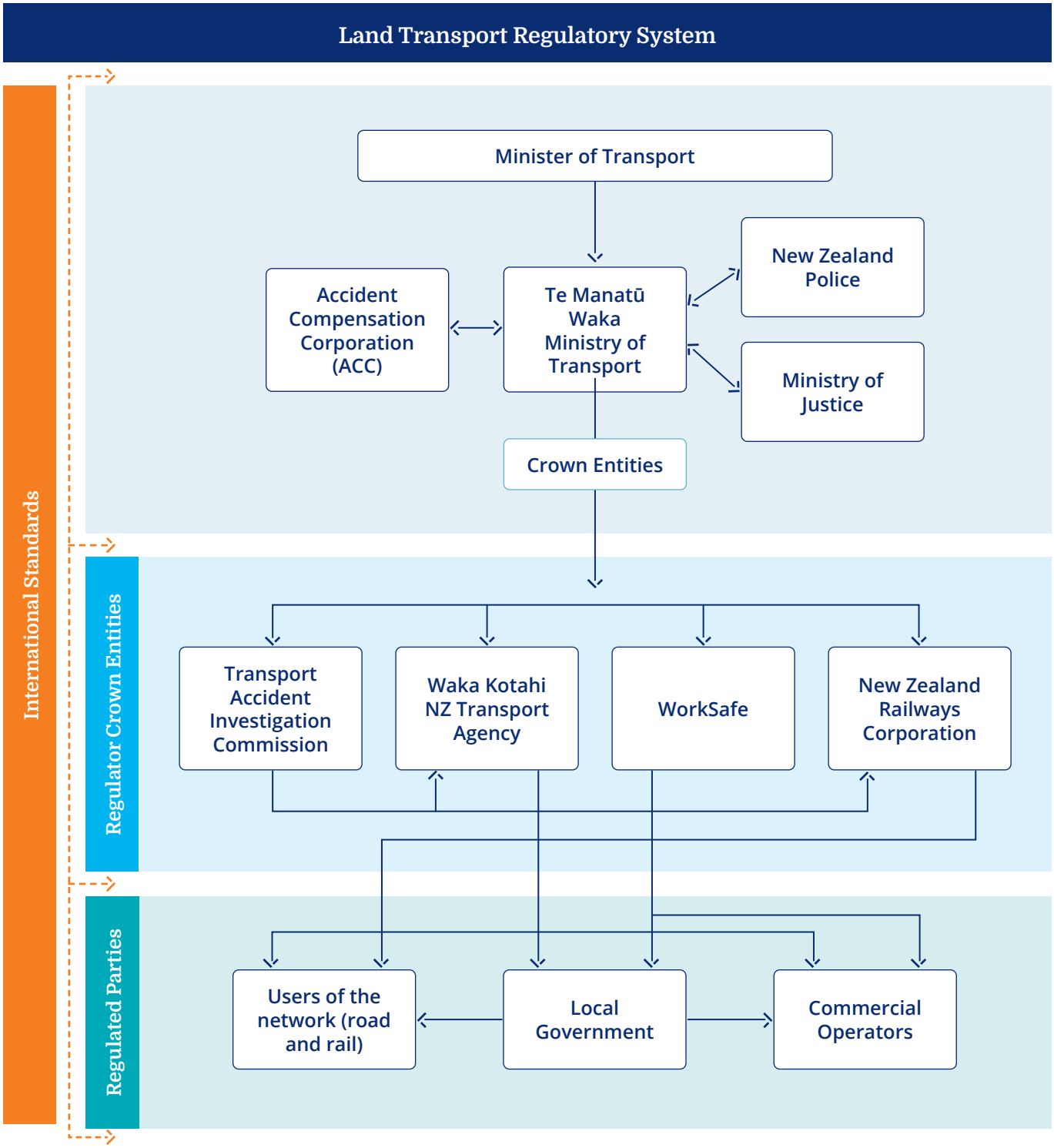
Diagram 1: Interactions in the land transport regulatory system



Roles and responsibilities of different actors in the transport system are outlined below:	
Te Manatū Waka	Develops and provides transport policy and advice for the government, develops legislation for Parliament to enact, drafts regulations and rules in association with the transport Crown entities and represents New Zealand's transport interests internationally. Te Manatū Waka also coordinates the work of the Crown entities, acting as an agent for the Minister of Transport.
New Zealand Police	Road policing, including speed enforcement, enforcement of alcohol laws, seatbelt enforcement, Community Roadwatch, commercial vehicle investigation and highway patrol units.
Accident Compensation Corporation (ACC)	ACC provides compulsory insurance cover for personal injury for everyone in New Zealand, whether a citizen, resident, or visitor. ACC is a no-fault scheme – it applies regardless of who caused the accident. This replaces the right to sue for compensation when a personal injury occurs in New Zealand.
Ministry of Justice	The lead agency in the justice sector. Administers the court system, the legal aid system, and the Public Defence Service. Collects and enforces fines and civil debts.
Transport Accident Investigation Commission	Investigates significant air, maritime, and rail accidents and incidents to determine their cause and circumstance, with a view to avoiding similar occurrences in the future. Operates on the basis of no blame being attributed to one particular person or party.
Waka Kotahi New Zealand Transport Agency	Allocates funding for land transport infrastructure and services through the National Land Transport Programme. Manages access to the transport system through driver, vehicle and rail licensing, vehicle inspections, and rules development. Provides land transport safety and sustainability information and education. Manages the State highway network, including maintenance, improvement and operations activities.
WorkSafe New Zealand	New Zealand's primary workplace health and safety regulator. Targets critical risks at all levels (sector and system-wide) using intelligence. Delivers targeted interventions to address harm drivers (including workforce capability, worker engagement and effective governance). Influences attitudes and behaviour to improve health and safety risk management.
New Zealand Railways Corporation	State-owned-enterprise that incorporates ONTRACK (rail track infrastructure) and KiwiRail (rail operator).
Local Government	Local authorities own, maintain and develop New Zealand's local road network and perform important regulatory transport functions. Regional councils (and unitary authorities) are required to develop regional land transport strategies that guide the transport decision-making of local councils, and also fund public transport and total mobility schemes in conjunction with Waka Kotahi.
Commercial Operators	Small/large passenger transportation services, rental and goods services, dangerous goods, professional drivers, and rail services.
Users of the network (road and rail)	Pedestrians, public transport users, cyclists, and drivers.

He aha kē Te Whakahoungao Te Pire Tiaki Ture – Regulatory Systems Amendment Bill? | What is a Regulatory Systems Amendment Bill?

> Regulatory System Amendment Bills are vehicles for regulatory stewardship changes to primary legislation. They are intended to maintain the effectiveness and efficiency of regulatory systems and to reduce the chance of regulatory failure.

They clarify and update statutory provisions to give effect to the intended purpose of the legislation and its provisions and keep the regulatory system fit-for-purpose, up to date and relevant.

Regulatory System Amendment Bills address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation and aim to remove unnecessary costs of compliance and doing business. They do not include significant changes of policy, rather they seek to address minor matters to ensure that legislation remains effective and fit-for-purpose.

Regulatory System Amendment Bills are moved through the parliamentary process as omnibus bills (which can make changes to more than one Act at the same time) and can therefore make effective use of parliamentary time.

He aha ngā whāinga hei tutuki mā mātou? | What are we seeking to achieve?

In the process of making changes to the legislative system, we are seeking to achieve five core objectives.

Objective / criteria	What this means	Proposal	Who this might be of interest to
1. **Improving the effective use of technology**	Legislation needs to adapt to allow for more effective and efficient methods of compliance and regulatory monitoring. Our objectives are to update our legislative provisions to reflect the fact that technology can improve the speed and efficiency of regulatory processes, while reducing costs. Where possible, legislation needs to be future proofed to ensure that system improvements are not delayed.	1.1 Enable electronic service of documents and electronic signatures 1.2 Clarify the enforcement of point-to-point camera speeding offences 1.3 Provide for the future use of automated infringement offences	Industry Local Government/ Road Controlling Authorities Public
2. **Clarifying regulatory roles, responsibilities and requirements in the regulatory system**	The effective application of legislation can be hindered when the underlying purpose of a regulatory role, responsibility or compliance requirement has not been effectively drafted. Our objective is to increase the coherence of the regulatory system by enhancing and clarifying the underlying intent.	2.1 Remove Road Controlling Authorities' restrictions on cost recovery charging for resident parking 2.2 Allow Waka Kotahi to proactively close parts of the State highway network to address safety concerns 2.3 Clarify pedestrian access to approved areas within motorway corridors	Local Government/ Road Controlling Authorities
3. **Maintaining safety through responsive regulatory action**	New Zealand's transport regulators are committed to maintaining the safety of the transport system. This is achieved by equipping the regulators with responsive regulatory powers that are flexible enough to allow maintenance of safety standards, while minimising unnecessary compliance costs and efforts for operators.	3.1 Introduce reactive investigation powers under the *Railways Act 2005* 3.2 Modernise the enforcement regime for Transport Service Licences 3.3 Strengthen and clarify requirements around limited access roads	Industry Unions/Representative Groups Operators

Objective / criteria	What this means	Proposal	Who this might be of interest to
4. **Addressing inconsistencies, improving system efficiencies and removing duplication**	Over time regulatory requirements can diverge as legislation and approaches to compliance are amended. Because of the complex interactions between parts of the legislative framework, inconsistencies, duplications and errors can occur. Our objective here is to identify and reduce these, or to mitigate the impacts these have.	4.1 Remove time constraints in rail safety case application process 4.2 Simplify the Rule consultation process to increase consistency	Local Government/ Road Controlling Authorities Industry Public
5. **Modernising transport legislation to ensure it is fit-for-purpose**	Legislation is an asset that requires maintenance and care over time. With the steady increase in the number of Rules, maintaining a clear structure and coherence of the entire system is necessary. Our objective is to assess the stock of regulation continually to ensure that the Rules are effective, fit-for-purpose and accessible.	5.1 Modernise roading provisions and consequential drafting improvements 5.2 Include Waka Kotahi in the New Zealand Transport Agency's name in legislation 5.3 Review Director's emergency powers in the land transport system 5.4 Increase the maximum level of fines and infringement fees	Industry Unions/Representative Groups Operators Local Government/ Road Controlling Authorities Public

Whakahoki kōrero mai: tukuna mai ki a mātou ōu whakairo me ōu kōrero hoki | How to have your say: providing us with your views and feedback

You can provide feedback and submissions from 19 May 2022 until date 24 June 2022.

You can make a submission about part or all of the issues and proposed options by:

- providing feedback to questions asked at www.transport.govt.nz/rsta2022
- writing a submission and sending it to rstaconsultation@transport.govt.nz with the subject line "RSTA Land Submission"; or
- posting it to: Te Manatū Waka, PO Box 3175, Wellington, 6011.

Electronic submissions are preferred, if possible.

Following the submission process, we will prepare a report for the Minister of Transport to make recommendations about the project. Your submissions will be used in part of this report.

Your submission is public information. Te Manatū Waka may publish details of your submission and identify you as a submitter, when publishing feedback on the consultation process. Personal details (such as your email address, postal address, or phone number) will not be disclosed if we identify you as a submitter in published feedback.

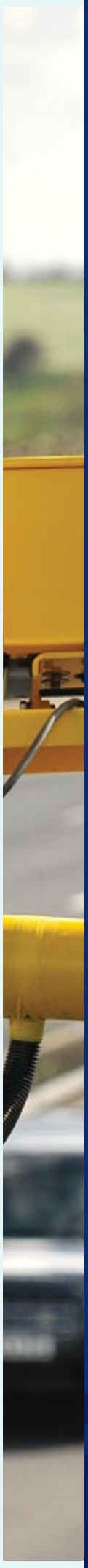
If you do not want your submission published, or you would like to submit anonymously, you must let us know within your submission.

Release of submissions under the *Official Information Act 1982* and the *Privacy Act 2020*

Even if we do not publish details of your submission, it may be subject to release under the *Official Information Act 1982* (OIA). If you want your response to be withheld under the OIA, please tell us in your response why you think it should not be released if requested. However, this does not guarantee we will be able to withhold it.

How to find more information:

More information on the Ministry's wider work programme is available at www.transport.govt.nz

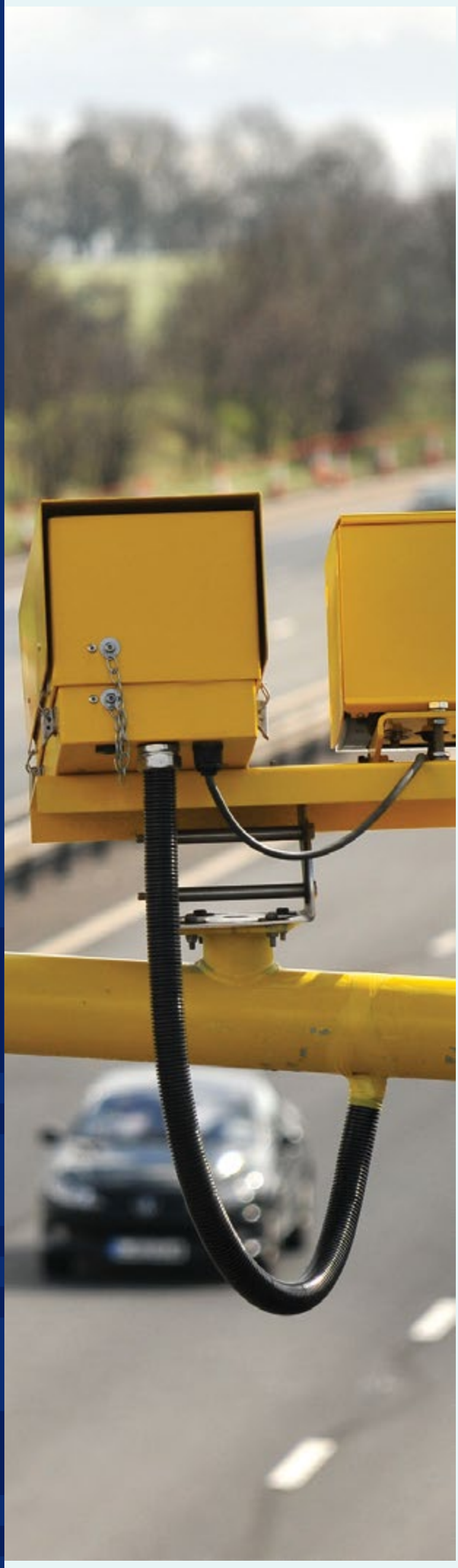


Whāinga 1. Kia whakakawhanake i te whakamahinga o ngā hangarau

Objective 1. Improving the effective use of technology

Legislation needs to be flexible enough to enable the use of technology. This future-proofs the regulatory framework and enables cost savings for the regulators. Proposals in this section enable Waka Kotahi to strengthen its position as a modern, efficient regulator.

In enabling the use of technology, consideration has been given to the equity of the proposed solution to reflect any potential harm on those with limited access.



OBJECTIVE 1

Proposal 1.1: Enable electronic service of documents and electronic signatures

> **This proposal would enable regulators to send regulatory notices electronically and future proof the regulatory system.**

Under the Land Transport Act 1998 (the LTA) and the Maritime Transport Act 1994 (the MTA), regulatory notices and the provisions about how these are served (ie provided to the person) are premised on written paper notices being created and mailed to the last known address.

These provisions have remained unchanged for decades, while technology has overtaken the exclusively paper-based means of administering notices under the legislation. Both provisions still work on a presumption of physical paper copies of regulatory notices being delivered (such as infringement notices, medical suspensions and revocations, etc).[2]

Electronic delivery would replace requirements for physical delivery which in some cases date back to legislation from the 1930s.[1] Electronic delivery:

- avoids the significant cost, delays and risks (including to privacy) associated with physical delivery
- helps to prevent people gaming requirements for physical delivery to avoid liability
- is, for many people, in many circumstances, the preferred method of interacting with regulators
- swiftly notifies people of non-compliant behaviour (which is more likely to modify their behaviour).

Even though documents can be sent to a person's last known residential address, there is no requirement for drivers to update their physical address. Most drivers are only required to update their residential address every 10 years when they renew their driver licence. If a person fails to update their address, Waka Kotahi often has no means of contacting them. This can create a safety risk both for that driver and the wider public.

The status quo also creates a privacy risk for that driver because documents containing sensitive personal information can be sent to a physical address the person no longer resides at.

The inability to serve notices electronically is also causing inefficiencies and costs within the regulatory system and delayed service can create a risk to road safety. Resources and costs are required and created to handle the paper documents, prepare them for post and deliver them. The integrity of penalty administration systems is critical to ensure the principles of deterrence, procedural justice and perceived fairness are met, thereby supporting the effective application of penalties.

Issues with the current provision requiring physical paper copies of regulatory notices were raised during COVID-19 Alert Levels 3 and 4 in 2020 and 2021, during which Waka Kotahi staff could not enter offices to produce, print and send any regulatory notice, infringement or infringement reminder notice. As different regions across New Zealand moved into different Alert Levels, allowing physical copies to be sent out, postal workers and couriers were put at additional (avoidable) risks as the service of documents recommenced.

1 The methods of service in the Land Transport Act 1998 are a direct copy of s 192 of the Transport Act 1962, s 161 of the Transport Act 1949 and s 53 of the Transport Licensing Act 1938

2 The land transport service section remains relatively unchanged from 1962 and still refers to an Act that was repealed in 2011, the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

This prompted a move to include temporary provisions in the COVID-19 Response (Management Measures) Legislation Act 2021, which will be repealed once the Epidemic Preparedness Notice expires. Waka Kotahi is using these temporary provisions in the interim, which requires phoning individuals to obtain consent to email the document then obtaining a current email address.

Provision of email addresses

Increasingly people's email addresses and phone numbers remain unchanged for longer than physical home addresses. At the present time, this means that renters are detrimentally affected, particularly those with lower socioeconomic backgrounds with insecure housing. Studies carried out by Statistics New Zealand in 2020 show that 40% of people renting from private landlords have been at their address for less than 12 months.[3] The fluidity of housing and the constraint on electronic service does mean that wider work being carried out by Te Manatū Waka in relation to offences and penalties will be undermined if there is not a fast, effective way to notify of non-compliance to influence behaviour changes. There is no easy or reliable way of knowing if someone has either expressly or impliedly consented to electronic service. Continuing the temporary practice of contacting people to gain consent and an email address is risky, as people are unlikely to consent to receiving a suspension notice. This vulnerability creates a risk to road safety, particularly where there is a need to revoke or suspend drivers on medical grounds or because of criminal or other serious offending.

> "Studies carried out by Statistics New Zealand in 2020 show that 40% of people renting from private landlords have been at their address for less than 12 months"

Example

People have been stopped by Police for driving whilst medically revoked. One person hadn't received the revocation notice due to no longer living at the address Waka Kotahi held on the Driver Licence Register. The courier package was returned some days later as a 'return to sender'. In between these times this person was stopped by Police. The driver advised that they would be prepared to accept service by email and Waka Kotahi sent it to them (as Police can't serve revocation notices on the roadside as they can for demerit point suspension notices).

There are obligations (such as in regulation 14 Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011) that require regulated parties to update their physical address with the relevant regulator. However, such provisions are widely ignored until someone actively wants to engage with a regulator and has a need to provide their address (eg when renewing a driver licence).

Enforcing requirements to provide or update physical addresses would not (because of the problems with physical delivery) likely be efficient or effective.

A permanent system for electronic delivery cannot though be built on consent for each interaction. The work needed to obtain consent from regulated parties would consume much of the efficiency gains of electronic delivery.

Additionally, regulated parties would not likely consent to electronic delivery of documents that imposed a significant liability or restricted their activities (eg a speeding infringement or a driver licence stop order).

Rather, a system for electronic delivery needs regulated parties to provide an electronic address which can be used to serve notices or deliver documents. Not everyone uses or is able to use an email address (eg some elderly people), so there must be a default to physical delivery for this group.

3 https://www.stats.govt.nz/assets/Uploads/Reports/Housing-in-Aotearoa-2020/Download-data/housing-in-aotearoa-2020.pdf

Proposal

We propose to include a provision in the both the LTA and the MTA that allows the regulator discretion to use traditional means of service or electronic service. Provisions would be modelled on Part 4 of the Contract and Commercial Law Act 2017.

These provisions were taken from the Electronic Transactions Act 2002 which was itself modelled on the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law on 16 December 1996 and provides a well-tested and internationally recognised set of rules on these matters.

Regulatory notices that could be served electronically could include those that:

- inform a person that they have committed an infringement offence (where a person has contravened the LTA or a provision made under it via a land transport rule or regulation), and associated reminder notices (eg where a fee has failed to be paid in the time specified)
- inform a person that their licence (or a transport service licence) has been cancelled, suspended, revoked, or has expired, or is otherwise subject to new conditions
- require a person to follow the direction given by an enforcement officer (eg to not operate a vehicle until a particular requirement has been met)
- inform a person of demerit points accrued against their licence (eg where a person has accrued 50 demerit points, or 100 demerit points)
- require a person to undergo a medical examination or attend a driving improvement course or satisfy some other requirement as a condition on their licence.

Consequential amendments to sections 113 and 118 of the LTA would include the requirement to provide and update electronic addresses, where available. This would encompass interactions with both NZ Police and Waka Kotahi.

The use of electronic service will also be supported by operational changes at Waka Kotahi and NZ Police.

Questions / views

Do you agree with the proposal to serve regulatory notices electronically?

Why/why not?

Proposal 1.2:
Clarify the enforcement of point-to-point camera speeding offences

> **This proposal has been classified under this objective because it will enable the use of modern technology to reduce road deaths.**

Road to Zero (RtZ), the 2020-2030 Government road safety strategy, proposed a new approach to road safety cameras. As part of this approach, Waka Kotahi will take over the ownership and operation of the safety camera network from New Zealand Police. Both RtZ and subsequent Cabinet papers indicated that alongside the transfer of the network, there would be an expansion of the road safety camera network, which will include average speed (point-to-point) cameras.

Waka Kotahi and Te Manatū Waka will complete robust Privacy Impact Assessments and work closely with the Privacy Commissioner on how the information will be used for enforcing speed limits and other necessary law enforcement, but only so far as permitted by the Privacy Act 2020.

This reflects feedback from when tolling was introduced in New Zealand, where concerns were raised about the use of automated number plate recognition technology.

International evidence demonstrates point-to-point cameras are one of the most effective and cost-efficient means of reducing speeds as well as reducing emissions.[4] The use of these cameras has been identified as a critical component of the overall safety camera programme and will be key to achieving the RtZ target of a 40% reduction in deaths and serious injuries by 2030.

Point-to-point cameras are in the process of being purchased and locations for their installation and use are being identified. Point-to-point speed cameras rely on two images, each with a time stamp, and a formula for calculating speed travelled over the distance between the two points, typically at least two kilometres apart. As with current static image cameras, the technology will be tested and Gazetted prior to being widely introduced.

The current legislation was written with just one image and camera in mind, so does not explicitly provide for enforcing speed offences detected by point-to-point speed cameras.

We are therefore seeking amendments to the Land Transport Act 1998 (the LTA) to clarify the law by explicitly incorporating average speed camera offence detection and evidentiary requirements to ensure efficient enforcement and prosecution, prior to significant investment in rolling out the new technology.

40%

The use of these cameras has been identified as a critical component of the overall safety camera programme and will be key to achieving the RtZ target of a 40% reduction in deaths and serious injuries by 2030.

4 Job, S., Cliff, D, Fleiter, J.J., Flieger, M., & Harman, B. (2020). *Guide for Determining Readiness for Speed Cameras and Other Automated Enforcement.* Global Road Safety Facility and the Global Road Safety Partnership, Geneva, Switzerland. https://www.grsproadsafety.org/wp-content/uploads/Guide-for-Determining-Readiness-for-Speed-Cameras.pdf

OBJECTIVE 1

Proposal

We are proposing to amend and create new provisions in the LTA to clarify the enforcement of point-to-point camera offences. These provisions would be similar to those that currently exist for speed offences captured by fixed safety cameras but focus on the new issues raised by the introduction of point-to-point safety cameras. In particular:

- Section 145(1) of the LTA will be amended to clarify that, for the purposes of a 'moving vehicle offence', multiple images will be used to enforce average speed offences.
- A clear definition of 'average speed' as it pertains to a corridor with a single or multiple speed limits will be introduced.
- Limits on challenging evidence from point-to-point cameras in relation to speed, distance and elapsed time would be introduced. These limits would be justified by provisions that require accurate and assured measurement, calibration, or certification of the key functions of the cameras and associated systems.
- Further to this, the LTA will clarify that an approved surveyor's certificate will be admissible as evidence to confirm the distance between the two cameras.

Consequential amendments will also be made to the Land Transport (Offences and Penalties) Regulations 1999 to include the necessary offence for exceeding the average speed limit.

The existing process to challenge an infringement notice issued by a point-to-point and fixed safety camera would remain the same as for a fixed safety camera. That is, members of the public will have the same options available to them to challenge current road safety camera infringement notices.

Questions / views

Do you agree with the changes to support enforcement of point-to-point camera offences?

Why/why not?

Proposal 1.3:
Provide for the future use of automated infringement offences

> This proposal has been classified under this objective because it will enable the use of modern technology to strengthen the position of both Waka Kotahi and Road Controlling Authorities (RCAs) as modern and efficient regulators, as well as enable potential cost-savings.

Some current law is drafted on the assumption all infringement notices are issued by individual enforcement officers. With developments in technology, a range of methods for the detection of traffic offences could be employed without requiring current levels of human involvement. Currently infringement notices (following the committing of an offence) are issued by enforcement officers. The term 'enforcement officer' is defined as a being a Police officer, a warranted person or Waka Kotahi.[5]

As currently drafted, the legislation requires an enforcement officer to believe that an infringement has been committed. There is some doubt as to whether this allows for the use of automation technology, and if a human should make the final decision on whether an infringement notice is issued.

In the current circumstances, a determination made by an automated system might need to be verified independently by a human enforcement officer for the offence to be pursued.

5 Waka Kotahi is an enforcement officer for certain infringement offences per s 208A LTA.

OBJECTIVE 1

Proposal

We are considering whether to include provisions in the Land Transport Act 1998 that put beyond doubt the ability to make determinations or issue infringement notices by relying on technology. Because of testing and assurance work, this technology would be something the regulator has confidence in, without needing to have an individual check every individual determination or notice.

The existing ability to appeal or challenge infringement notices would remain in place. In practice, this means that in the case of a legal challenge against an infringement notice, a human enforcement officer and an avenue for legal recourse remain in place. The proposal will seek to allow for existing technology to be used more effectively to improve the efficiency of enforcing regulatory requirements.

Waka Kotahi is also seeking legislative amendments to enable the automated decision-making (verification) and issuing of speeding and other types of infringement notices (such as special vehicle lanes). This will bring about efficiency gains and allow Waka Kotahi to increase the road safety camera network more cost effectively.

Automation of safety camera infringement issuance will also assist Waka Kotahi in ensuring timely notification of infringements to notice recipients, especially in combination with the automated retrieval of camera incidents and electronic servicing of documents (a further proposal in this Bill). The swiftness of the 'punishment' (infringement) is known as one of the three key factors in deterrence (alongside certainty of punishment and severity of punishment) and will be key to driving behaviour change.[6]

Questions / views

Do you agree with the proposed changes to support automated infringement offences?

Why/why not?

6 Sakashita, C. Fleiter, J.J, Cliff, D., Flieger, M., Harman, B. & Lilley, M (2021). *A Guide to the Use of Penalties to Improve Road Safety. Global Road Safety Partnership*, Geneva, Switzerland.

Whāinga 2. Kia whakamārama atu i ngā tūranga whakahaere, ngā haepapa me ngā herenga

Objective 2. Clarifying regulatory roles, responsibilities, & requirements

The effective application of legislation can be hindered when the underlying purpose of a regulatory role, responsibility or compliance requirement has not been effectively determined, or no longer reflects the current situation. Proposals that have been categorised under this section will ensure coherency of the regulatory framework by better clarifying the intent.

OBJECTIVE 2

Proposal 2.1:
Remove Road Controlling Authorities' restrictions on cost recovery charging for resident parking

> This proposal has been classified under this objective because it will enable the management of resident parking to be modernised. This will help ensure consistency across the parking management framework and address equity issues stemming from resident parking.

The responsibilities for car parking policy and regulation are split between central and local government. The Land Transport Act 1998 (the LTA) allows Road Controlling Authorities (RCAs) (mostly local Councils) to make local bylaws to regulate vehicle parking. RCAs can set policy objectives through local bylaws but are bound by provisions in the LTA when doing so. This has meant that local councils can be restricted by the LTA when setting parking fees.

A notable restriction is section 22AB(1)(o)(iii)(B) of the LTA. This provision requires that fees charged by RCAs for reserved residential parking cannot exceed the reasonable cost of the service involved in granting the permit.

This provision means meter-based parking and resident permit-based parking have widely disparate costs to the user (due to permits being relatively inexpensive to administer, while metre-based parking is more expensive). This issue was identified as a barrier in Wellington City Council's review of its parking policy in 2020, and has also been raised with Te Manatū Waka by Auckland Transport.

Resident permit parking schemes are designed to prevent situations where residents are unable to park in areas where they live. These parks would otherwise be used more widely by non-residents, (eg where commuters who drive, park, then travel the remaining journey to work using a different form of transport). This type of use creates congestion and competition for space to park vehicles between non-residents and residents.

Resident parking schemes do not guarantee parking spaces, but do exempt residents from time restrictions which are imposed on people using metre-based parking. However, the cost-recovery restriction for RCAs means ratepayers can end up subsidising the cost of resident parking.

This issue is symptomatic of a regulatory system for parking that has not been reviewed or updated for many years. Section 22AB(1)(o)(iii)(B) of the LTA was drafted in the 1960s, when land use issues, urban design and car ownership were considered very differently. In practice this may create fairness and equity issues and limit the use of permit-based parking. It is intended that through the review of cost recovery functions, fairness and equity issues that may have been a by-product of the original drafting in the 1960s will be considered.

Proposal

We are seeking views and feedback on three options.

We are consulting on two proposals that would, in two separate approaches, consider removing the restriction on cost-recovery when RCAs set up resident parking schemes. In practice this would remove a legislative barrier, and allow RCAs to continue to consider factors such as land use, and the availability of on-street and off-street parking within roads under their control. These proposals are outcome neutral in the sense there is not an expectation resident parking fees would increase, but that the prescriptive limitation is removed.

1 Option 1 – status quo (no changes)

This would leave the LTA section unchanged. This would not cause significant risks in the medium-term, but would perpetuate the inequity of some neighbourhoods enjoying cost-reduced parking subsidised indirectly by ratepayers elsewhere.

2 Option 2 – remove the cost recovery restriction in the LTA

This option would remove the cost recovery restriction in the LTA. This would allow RCAs to charge a cost it deems appropriate for resident parking.

3 Option 3 (preferred) – remove the cost recovery restriction and replace it with reasonable costs

This option would remove the cost-recovery restriction in the LTA (as option 2), but would make the cost of resident parking limited to a 'reasonable' amount. This would be achieved by explicitly making this bylaw-making power subject to section 150(3) of the Local Government Act 2002.

Section 150(4) of the Local Government Act 2002 reads:

> *'The fees [set by the bylaw for residents parking] must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.'*

Q Questions / views

- Which of the proposed options do you think offers the best solution?
  – Why?
- Which of the proposed options do you think would not offer a good solution?
  – Why?

In your answer, you may wish to consider commenting on:

- Whether you think there are alternative options to these issues that are not outlined above.
- Whether there are any changes you believe should be made to the proposed options.

OBJECTIVE 2

Proposal 2.2:
Allow Waka Kotahi to proactively close parts of the State highway network to address safety concerns

> **This proposal has been classified under this objective because it will improve system efficiency and land transport safety.**

Under current settings, Waka Kotahi cannot proactively close parts of the State highway network to address safety risks to the public (eg potential risk of landslides, avalanche, bushfire or other severe weather events or disasters) or for proactive traffic management (eg to address known congestion points at peak times).[7]

In these situations, Waka Kotahi relies on obtaining agreement from NZ Police to exercise its broader road closure powers under section 35 of the Policing Act 2008 (the Policing Act). This process can increase the risk of public harm if there are delays obtaining agreement from NZ Police, and Waka Kotahi is unable to close the road in a timely matter.

Waka Kotahi would still be expected to engage with NZ Police at the earliest opportunity to support the wider contingency planning and emergency response.

Waka Kotahi does have some road closure powers included in the Transport (Vehicular Traffic Road Closure) Regulations 1965 and the Heavy Motor Vehicle Regulations 1974. However, these closure powers are limited to specific events or purposes,[8] or only apply to specific vehicles.[9]

Waka Kotahi can also temporarily close parts of the State highway network to conduct any work or investigation being undertaken for the structural protection of a State highway or to execute repairs or remove obstructions from the State highway under sections 61(4)(h) and 61(4)(i) of the Government Roading Powers Act 1989 (the GRPA). However, these actions are largely limited to operational maintenance, and do not explicitly state that Waka Kotahi can temporarily close sections of the State highway to address safety concerns. This means that if Waka Kotahi uses these powers proactively for safety concerns (or traffic management), it could be legally challenged for doing so.

7 Waka Kotahi's road closure powers are generally limited to maintaining the operational condition of State highways and motorways, but it may also close State highways for planned events such as parades or sports events.
8 Such as vehicle races, processions, carnivals,
9 Such as a heavy motor vehicle which is defined as a motor vehicle (other than a motorcar that is not used, kept, or available for the carriage of passengers for hire or reward) the gross vehicle mass of which exceeds 3 500 kg; but does not include a traction engine or vehicle designed solely or principally for the use of fire brigades in attendance at fires.

Increasingly, Waka Kotahi needs to close roads at short notice due to potential safety issues, especially those associated with severe weather events brought on by climate change. The inability to respond quickly to these risks is a crucial gap in the Waka Kotahi road controlling powers and is an impediment to Waka Kotahi being able to efficiently deliver its State highway management function. If action is not taken to temporarily close parts of the State highway network more efficiently, this could result in unacceptable safety risks to the public.

If introduced, this proposal would help Waka Kotahi to respond more efficiently to higher risk sections of the state highway network, such as:

- Milford Road (SH94) – for snow and avalanche risk
- Auckland Harbour Bridge (SH1) – for weather related events (such as high winds)
- Former Manawatu Gorge (SH3) – for safety reasons relating to potential hazards (slips and rockfall)
- Kaikoura (SH1) – for safety reasons relating to potential hazards (slips and rockfall)
- Remutaka Hill (SH2) – for weather related events such as high winds
- Desert Road (SH1) – for weather related events
- Paekakariki Hill Road intersection (SH1) – for traffic management purpose to proactively address congestion and related safety risks, and
- passing lanes during holiday periods – for traffic management to proactively address congestion.

Proposal

We are proposing to amend the GRPA to provide broader powers for Waka Kotahi to close parts of the State highway to address safety concerns or carry out proactive traffic management. Broadening Waka Kotahi road closure powers will align its powers with other RCAs, contributing to overall system coherence.

Q

Questions / views

- Do you agree with the proposal to provide broader powers for Waka Kotahi to close parts of the State highway?
  – Why/why not?

In your answer, you may wish to consider commenting on:

- Whether you think these road closure powers should be prescriptive (ie list the potential reasons for why Waka Kotahi could close a State highway, similar to Clause 11, Schedule 10 of the Local Government Act 1974), or broad (ie allow for any reason that contributes to 'safety').
- Whether there are any other events that might necessitate closure of part of a State highway that are not considered above.

Proposal 2.3: Clarify pedestrians access to approved areas within motorway corridors

> This proposal has been classified under this objective because it will improve system coherence through addressing an inconsistency in the legislation that may be creating confusion for users.

Sections 82 and 83 of the Government Roading Powers Act 1989 (the GRPA) restrict a pedestrian's use of a motorway. This is because people are only allowed to use a motorway if they are:

- in a vehicle entitled to be on the motorway
- on the motorway due to a breakdown, crash, or other emergency
- involved in work authorised by Waka Kotahi
- carrying out enforcement activities, or
- a cyclist using approved cycling infrastructure within the motorway.

This means that pedestrians are unknowingly committing offences[10] when they use infrastructure (such as shared paths or bus stops) provided for them within a motorway corridor. When pedestrians use these spaces, they are liable upon conviction for a fine up to $500 or an infringement fee up to $250.

Existing motorways include approved areas for pedestrians and future projects such as the planned bus stop on the motorway ramp in Te Atatū Peninsula will also provide spaces for pedestrians within motorway corridors, despite legislation stating that pedestrians are not permitted in these areas.

This inconsistency creates confusion among users and discourages the creation of safe pedestrian spaces in areas where motorists travel at higher speeds.

Proposal

We are proposing to update provisions in the GRPA to clarify that pedestrians can use approved areas and infrastructure within motorway corridors. If implemented, pedestrians would no longer be committing an offence when using these spaces.

This would reflect a similar approach in the GRPA that allows cyclists to access approved cycling infrastructure within the motorway corridor.

Q

Questions / views

The proposed change would clarify that pedestrians can use approved areas and infrastructure (such as shared paths and bus stops) within motorway corridors. Do you agree with this proposed clarification?

Why/why not?

10 If pedestrians use infrastructure provided for them within a motorway, they are committing an offence under section 87(1)(a) of the Government Roading Powers Act, and Regulation 4 of the Land Transport (Offences and Penalties) Regulations 1999.

Whāinga 3: Kia ū tonu ki ngā tikanga whakahaumaru nā runga i ngā whakahaerenga torohū

Objective 3. Maintaining safety through responsive regulatory action

New Zealand's transport regulators are committed to maintaining the safety of the transport system. Legislation needs to provide regulators with responsive regulatory powers that are flexible enough to allow maintenance of safety standards, while minimising unnecessary compliance costs and efforts for operators.

OBJECTIVE 3

Proposal 3.1: Introduce reactive investigation powers under the Railways Act 2005

> **This proposal has been classified under this objective because it will enable Waka Kotahi to be a more responsive and effective regulator and will help maintain land transport safety.**

The Railways Act 2005 (the Railways Act) was drafted based on a co-regulatory approach between Waka Kotahi and operators. The approach acknowledged that risks were to be identified, assessed and mitigated by the party that had control over those risks, using a safety case system.[11] Waka Kotahi is charged with ensuring these risks are appropriately identified, assessed and mitigated through safety case approval, ordinary safety assessments[12] and special safety assessments.[13] The safety case is intended to be the main instrument by which the appropriate balance is achieved between operators and Waka Kotahi. In applying for a licence, all licensed participants[14] must provide an initial safety case for approval by Waka Kotahi, in order to obtain a licence.

The Railways Act intends for Waka Kotahi to arrange with the licensee the frequency with which its rail activities should reasonably be assessed. For those who demonstrate a consistently good safety record, the time between assessments may be extended, thereby reducing their compliance costs. Waka Kotahi may require a participant with an unacceptable safety record to develop a safety improvement plan.

This plan encourages improvement and allows the participant to work proactively with Waka Kotahi to achieve agreed safety outcomes. It should also help the participant achieve a good safety record and reduce compliance costs in future.

However, the current safety assessment process checks compliance with a system that may be outdated or ineffective. As such, there is a need to allow the regulator to more regularly review safety cases. This would occur in situations where Waka Kotahi can reasonably demonstrate the nature of a business or activity has changed considerably, and that the business or activity is significantly different from that for which the safety case was originally approved.

In situations where an incident or accident has occurred, Waka Kotahi does not have a clear role or powers to investigate. The lack of an investigatory power poses risks to system coherence. The Railways Act currently recognises the necessity for investigations by the rail safety regulator in other ways, eg allowing for prosecutions, requiring the regulator to have a memorandum of understanding with WorkSafe regarding investigations conducted and prosecutions taken under either the Railways Act or the Health and Safety at Work Act 2015 (the HSWA). The Land Transport Management Act 2003 also recognises investigation as a function of Waka Kotahi. Waka Kotahi is currently the only regulator with the jurisdiction to prosecute safety failings in all parts of the rail sector.

11 See sections 29 – 36 Railways Act 2005.
12 Section 37(1)(a) – used as a routine assessment
13 Section 37(1)(b) – used if there are safety concerns, in response to a notifiable occurrence or to target a specific area of risk (identified through incidents or trends)
14 A 'rail participant' is defined in section 4 as an infrastructure owner; a rail vehicle owner; a railway premises owner; an access provider; a rail operator; a network controller; a maintenance provider; a railway premises manager; any other class of person prescribed as a rail participant by regulations..

Relying on the cooperation of partner agencies, such as NZ Police and the Transport Accident Investigation Commission (TAIC), is curtailed by the limited resources available from those agencies to support rail investigations in relation to their competing priorities. NZ Police and TAIC have very broad jurisdiction to investigate accidents and incidents and are not able to dedicate resource to thoroughly investigate every rail accident or incident.

The powers in the Policing Act 2008 (the Policing Act), and the Transport Accident Investigation Commission Act 1990 (the TAIC Act) are also not suited to address the system-specific aspects of rail safety. The Policing Act establishes a legislative framework to prevent and investigate the commission of crimes, while the TAIC Act is premised on no-fault findings and not ascribing liability to individual operators or entities. It is generally not possible to use any evidence TAIC gained through its investigations in a prosecution. Further, neither piece of legislation is specific to the operation of rail transport.

Currently a combination of powers under the proactive safety case system and information-gathering provisions of the Railways Act are used to allow Waka Kotahi to investigate these incidences. This required combination is significantly different from other transport and safety regulators. In considering if/how to include reactive investigation powers we considered a range of similar powers from other safety regimes, especially the HSWA, the Civil Aviation Bill[15] and overseas regulatory regimes like the Australian Rail Safety National Law.

As it stands, the Railways Act does not include any reactive powers of investigation. Parties to an incident cannot be compelled to:

- allow Waka Kotahi access to a scene
- prevent disturbance of the scene while an investigation is ongoing
- provide evidence or give an interview.

While the use of ordinary and special safety assessments allows Waka Kotahi to obtain information and entry to premises, the powers are limited in scope to be used in relation to rail participants as defined in the Railways Act and cannot immediately be used for incident investigations.

This means Waka Kotahi must rely on consent from parties to provide information without compulsion to do so, or on other regulatory agencies with a broader remit (such as NZ Police). This effectively means that when Waka Kotahi commences a safety assessment, the party who may be non-compliant is being relied on to provide information that could be damaging.

In undertaking an investigation, the purpose is to:

- determine the causes of a safety occurrence, and factors which could have contributed to worsening the harm caused, or likely to have been caused, in order to:
  - identify any measures or steps that can immediately mitigate any harm (noting implementation is not a matter for the investigation)
  - determine any party's liability for a breach of their legal obligations (and potentially provide evidence for use in a prosecution)
  - identify any long-term interventions to prevent or lessen harm or improve safety on the network (again noting implementation is not a matter for the investigation)
  - capture and codify the causes of the harm in order to assist future policy development
- enable a feedback loop so lessons learned during the course of the investigation can be analysed to improve the capability of investigatory staff and of the efficiency and effectiveness of future investigations.

15 Currently in Select Committee, see: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_115765/civil-aviation-bill

The table below compares the proposed power with established powers from similar safety regimes, both locally and internationally.

Table 1: Comparison of powers

Proposed power for Waka Kotahi	Health and Safety at Work Act 2015	Civil Aviation Bill 2021	(Australian) Rail Safety National Law 2014
Freeze a scene	Section 55 Duty to preserve a site Section 108 Power to issue non-disturbance notice	Section 304 Power to issue non-disturbance notice	Section 182 Issue of non disturbance notice
Access to sites to investigate or carry out verification inspections	Section 168 Powers of entry and inspection Section 169 Power to enter homes	Section 285 Powers of entry and inspection Section 286 Power to enter homes	Section 143 Power of entry Section 153 Places used for residential purposes
Request materials for examination	Section 172 Power to take samples and other objects and things	288 Power to take samples and other objects and things	158 Power to seize evidence
Interview personnel	Section 176 Duty to assist inspectors	Section 294 Duty to assist inspectors	Section 154 Power to require production of documents and answer to questions

Proposal

We are proposing to introduce a new section in the Railways Act that includes specific powers for Waka Kotahi to:

- freeze a scene to preserve and collect evidence
- access sites to investigate or carry out verification inspections
- request materials to be supplied for examination
- interview personnel involved in a safety occurrence
- require identified failings to be remediated by the rail participant.

Q

Questions / views

Do you agree with the proposal to provide Waka Kotahi with reactive powers for railway investigations?

Why/why not?

In your answer, you may wish to consider whether there are any other powers Waka Kotahi might need to fulfil its investigation functions, as outlined under the Railways Act, the Land Transport Management Act, or other applicable legislation.

Proposal 3.2:
Modernise the enforcement regime for Transport Service Licences

This proposal has been categorised under this objective because it will help prevent improper use of Transport Service Licences and provide Waka Kotahi with greater insight and responsive regulatory powers.

Drivers and owners of freight, vehicle recovery and passenger service industries are required to comply with a range of requirements before they can legally operate these businesses. One of these requirements is holding a Transport Service Licence (TSL). A TSL is intended to ensure safe management practices and protections for a transport business's employees/contractors, and other road users.

TSLs are required for different types of services.

- Goods services – delivery or carriage of goods using a motor vehicle with a gross vehicle mass of 6,000kg or more. A TSL is needed, even if not carrying goods for hire or reward. For example, a scaffolding company moving its own equipment on its own 7-tonne trucks would require a goods service licence.
- Large passenger services – carrying more than 12 passengers, regardless of whether operating for hire or reward.
- Rental services – hiring out vehicles to carry goods or passengers.
- Small passenger services – carrying 12 or fewer passengers for hire or reward, and includes taxis, app-based services, shuttle services and private hire services.
- Vehicle recovery services – for all vehicle recovery vehicles (eg tow trucks), bar those exempt under the Land Transport Act 1998 (the LTA).

TSLs are either granted to individuals or to corporate entities. When granted to corporate entities, a 'person in control' (PIC) is also required. Obtaining a TSL requires a 'fit and proper person' check. This includes a vetting process wherein a range of matters are considered, including criminal conviction history.[16] Having a TSL shows that an operator and PIC have passed the required 'fit and proper' check at application.

Operators must also complete a general knowledge test on the laws and practices relating to the safe and proper operation of a transport service. This certificate needs to be attained by at least one of the named PICs of an operation, through passing a 40-question multiple choice, open-book test.

If at any time, the TSL holder or a newly added PIC does not hold the required certificate, meet worktime or logbook requirements, meet general safety requirements, or there is no longer a PIC (or a representative) residing in New Zealand, then this provides the grounds for an immediate TSL suspension.

Transferring, assigning or leasing a Transport Service Licence

The LTA prohibits transferring, assigning or leasing a TSL, but there is currently no corresponding offence. The lack of a corresponding offence means some operators are unlawfully 'sharing' their TSL with other operators in numerous circumstances, such as:

- where an operator has been denied a TSL
- when vehicles are being inspected for a Certificate of Fitness (CoF), where they are being used as part of an unlicensed service
- to obtain work while operating as an unlicensed service
- where an operator has had their TSL revoked and they continue to operate an unlicensed service.

16 Section 30C of the LTA – criminal conviction history, including charges or convictions relating to violent or sexual offences; drugs or firearm offences, or offences involving organised criminal activity; any transport-related offending, especially offences relating to safety; any history of behavioural problems; any past complaints about a transport service provided by the person; any history of persistent failure to pay fines for transport-related offences; any other relevant matter which could be considered in regard to public interest.

OBJECTIVE 3

When an operator borrows a TSL, they evade the required 'fit and proper' check. TSL holders who lease, lend or assign their own licences allow these non-compliant operators to continue operating. Having operators who cannot obtain a TSL – because they have a history of unsafe or fraudulent behaviour – undermines the regulatory objectives of a safe and efficient land transport system.

There are also frequent cases where operators use a TSL for the incorrect entity (eg using their individual TSL for a company).

There are currently few tools to use against the person lending a TSL. As a result, Waka Kotahi has insufficient oversight of all operators in the commercial sector. Waka Kotahi also has little in the way of regulatory levers to audit an operation, mitigate associated risks, or compel operators to cease any illegitimate behaviour. Creating an offence for assigning, leasing or transferring a licence is an important tool to help stop this non-compliant behaviour.

> "A TSL is intended to ensure safe management practices and protections for a transport business's employees/contractors, and other road users."

Immediate suspensions for health and safety concerns

Waka Kotahi also cannot immediately intervene for the purposes of road safety under section 30U of the LTA.[17] Waka Kotahi often becomes aware of health and safety shortcomings through the auditing process. However, audits can take anywhere from 6 weeks to 6 months, with the final regulatory decision of a full suspension referred to a Waka Kotahi compliance panel. A final decision can take months due to the decision-making processes involved in suspending a TSL, following an investigation. As a result, TSL operators being investigated due to road safety concerns can continue operating during the auditing process, which increases risk to the public and road safety outcomes.

Persons in charge

Additionally, Waka Kotahi does not have the ability to stop a new person being added to an existing TSL. When a person is added to a TSL who does not go through, or meet, all the usual entry requirements (such as 'fit and proper person' checks), Waka Kotahi has no leverage under current legislation to deny them from operating. This means Waka Kotahi is then tasked with trying to exit them from the system as a PIC of the active TSL.[18]

This has serious consequences for operators. Rather than being able to decline a PIC's application to join a transport service, the only current option for Waka Kotahi is to take action against the entire transport service. Waka Kotahi can do this by either revoking the TSL if the PIC is not fit and proper or suspending the TSL if the PIC doesn't comply with certain legal requirements.

17 Section 30U(1) outlines the circumstances in which Waka Kotahi may suspend a TSL. As this is an adverse decision, Waka Kotahi must provide the operator with at least 28 days' notice to make submissions, amongst other requirements.

18 Exiting a PIC from the TSL regime is considered an adverse decision. The criteria of section 30W of the LTA applies. Waka Kotahi is required to write a Notice of Proposal, notify the operator of the proposed decision and allows up to 21 days for a submission to be made to Waka Kotahi in respect of that decision.

There is no ability for Waka Kotahi to require information from the undeclared new PIC, or to conduct a Police clearance check. While Waka Kotahi can write a Notice of Proposal to revoke a TSL when it is identified (normally after an incident requiring regulatory intervention) that a new PIC is not fit and proper,[19] preventing unfit PICs from controlling a transport service in the first instance would be a more efficient and fair regulatory lever.

The safe and responsible operation of TSL holders is core to our road safety strategy: Road to Zero, as well as the overarching principles for Waka Kotahi and the government of active, effective and efficient regulation.[20] By providing the powers to address the issues identified above where an individual is not suitable to be a PIC of a TSL, Waka Kotahi could capture everyone purporting to operate in the system and provide enhanced safety oversight. Waka Kotahi could better interact with all operators to ensure safety and other concerns are being addressed.

Proposal

We are proposing four measures to modernise the enforcement regime around the TSL system.

Creation of an offence for transferring, assigning or leasing a TSL

There is currently a prohibition on transferring, assigning or leasing a TSL in section 30N of the LTA. However, the terms 'transferring', 'assigning', and 'leasing' are not defined in the LTA, and there is no corresponding offence for transferring, assigning or leasing a TSL.

This creates a situation that has been exploited by operators to loan out TSLs. Those then operating a service under the loaned TSL have not met the regulatory requirements set out in the LTA. This can have a detrimental impact on public safety and increases risk.

We propose to introduce fines for offences under section 30N for transferring, assigning or leasing a TSL of:

- up to $30,000 for individuals
- up to $100,000 for businesses or undertakings.[21]

The proposed fees and fines have been assessed against the Ministry's Effective Financial Penalties Framework and Tool (the Tool). The Tool references 'special regulated individuals', which is defined as an individual in a position of responsibility, usually acting in a professional capacity eg commercial passenger service drivers or holders of dangerous goods endorsements. This is a new category of offenders and further work will need to occur at a later date to apply this across transport legislation.

At this stage, a TSL holder would be considered a 'special regulated individual' as these individuals have gone through an application process in order to be granted this licence type. There is little to no risk of non-licensed parties carrying out this offence; use of the Tool means the offence has been targeted towards the appropriate group of regulated individuals.

Ability to audit someone purporting to operate a land transport service

A TSL is a land transport document allowing for regulatory oversight by Waka Kotahi, using powers to audit and inspect an operator holding a document (section 198 of the LTA). It is an offence not to display a current TSL or to provide information to Waka Kotahi when required. However, Waka Kotahi have limited oversight over operators that purport to offer a transport service without holding a TSL.

We are proposing expanding the ability of Waka Kotahi to audit someone purporting to operate a transport service but doing so without a licence.

19 Under section 30W of the LTA, Waka Kotahi is required to write a Notice of Proposal, as this is an adverse decision. This requires the operator to be notified of the proposed decision and allows up to 21 days for a submission to be made to Waka Kotahi in respect of that decision.

20 Road to Zero Action Plan 2020 – 2022: https://www.transport.govt.nz/assets/Uploads/Report/Road-to-Zero-Action-Plan_Final.pdf. Action no. 9 includes strengthening the regulation of commercial transport services.

21 This is based on harm category 6 of the Penalty scale for harm and types of offenders in the Ministry of Transport Financial Penalties Categorisation Tool.

Extend the power to suspend a TSL for health and safety concerns – section 30U(1)

This would enable Waka Kotahi to suspend a TSL immediately when significant concerns surrounding health and safety are recognised or reported.

Waka Kotahi could be notified by NZ Police, through roadside inspections, that an operator's fleet was being used with significant vehicle maintenance issues, or that an operator was knowingly encouraging employees to flout worktime requirements. Waka Kotahi often becomes aware of health and safety shortcomings through the auditing process. Tools available in this situation are limited to further inspecting the company and vehicles in question. However, operators in question are still able to operate during the audit and investigation process.

Audits can take anywhere from 6 weeks to 6 months, with the final regulatory decision of a full suspension referred to a Waka Kotahi compliance panel. A final decision can take months due to the necessarily extensive decision-making processes involved in suspending a TSL following an investigation.

Requiring a fit and proper check when a new person in control added – section 30C

This proposal would require any new PIC to undergo a fit and proper check. Currently a PIC subsequently added to a TSL is not subject to the requirement of passing the fit and proper check. This undermines the integrity of the system and allows for unchecked persons, or previously revoked or declined persons, to in effect bypass the regulatory requirements of holding a TSL. This proposal seeks to remedy this gap in the system.

Questions / views

Do you agree with the proposals to create a new offence, introduce the ability to audit, extend the powers to suspend a TSL, and require fit and proper person checks when a new person in control is added?

Why/why not?

In your answer, you may wish to consider commenting on:

- Whether there are alternative solutions to the issues outlined above that should be considered.
- Whether there are other safety or other concerns associated with TSLs that would not be addressed by the above proposals.

Proposal 3.3:
Strengthen and clarify requirements around limited access roads

This proposal has been classified under this objective because it will provide Waka Kotahi with greater responsive regulatory powers, and help improve land transport safety, compliance, and system coherence.

Limited access roads (LARs) are sections of the State highway, usually bordered by residential or commercial properties, which can only be accessed from an authorised crossing place (eg a driveway onto a residential property from the State highway). About 3,850km (ca. 37%) of the State highway network are limited access roads.

Limited access roads are created in the interests of road user safety. This is because they are often in areas with the potential for residential or commercial development – which leads to more vehicles needing access and higher safety risks.

When a road is declared a limited access road, Waka Kotahi authorises existing crossing places to the road through notices to the landowners, which specify where the crossing places are in relation to the title boundaries. The chosen location of a crossing place is based on safety considerations, such as the visibility of the crossing place to motorists using the limited access road.

There are three specific issues with limited access road provisions that have been identified:

1. It is not mandatory to register crossing place notices on property titles

It is currently not mandatory for a notice authorising a crossing place to be registered alongside the property title when lodging this with the Registrar-General of Land (under the Land Transfer Act 2017).

This could result in landowners or land occupiers unknowingly misusing a crossing place, which reduces the safety of people using the crossing place, or the limited access road.

2. Enforcement powers and penalties are insufficient where unauthorised crossing places are created or when people do not comply with the conditions of a crossing place notice

There are three offences under section 97 of the Government Roading Powers Act 1989 (the GRPA) relating to limited access roads. These are where a person:

- contravenes or fails to comply with any provision of section 92 of the GRPA[22]
- fails to comply with any condition specified in an authorisation under sections 91 or 92[23] of the GRPA
- uses or makes any unauthorised crossing place on to a limited access road.[24]

Section 51 of the GRPA also outlines how Waka Kotahi can recover repair costs, when the misuse of a crossing place on a LAR causes damages to the State highway network.

These powers are only enforceable if Waka Kotahi takes the offending party to the District Court. For offences under section 97 of the GRPA, a person is liable upon conviction for a fine up to $500. For offences under section 51 of the GRPA, a person is liable upon conviction for a fine up to $1,000 and for a further fine not exceeding $50 for each day or part of a day during which the offence is continued.

22 In way in which restricts movement to and from limited access roads – section 97(a) Government Roading Powers Act 1989.
23 See section 97(b) Government Roading Powers Act 1989.
24 See section 97(c) Government Roading Powers Act 1989.

However, the legal cost of taking a landowner, land occupier or other offending party to the District Court can be anywhere between $20,000 – $30,000. Furthermore, the time it takes to prosecute means safety concerns cannot be remedied in a timely manner. As a result, Waka Kotahi has not taken anyone to the District Court over a LAR issue.

There is also no option for Waka Kotahi to give infringement notices to low-level offending parties, or to deter landowners/occupiers or others from misusing crossing points as a first step.

3. When a LAR is transferred to a local authority, it is unclear who is responsible for the administration of crossing place notices.

When a State highway has its status revoked, all LARs on the former State highway are transferred to the relevant local authority and administered as a local LAR. However, legislation does not specify who is responsible for the administration of crossing place notices when a transfer occurs. This means it is not clear who has the decision-making delegation to register a crossing place notice or if that notice is enforceable.

Proposal

There are three proposals to address issues with LARs, which are outlined below.

Require crossing place notices created by Waka Kotahi to be registered on property titles

We propose to make it mandatory for a notice authorising a crossing place to be registered alongside the property title when lodging this with the Registrar-General of Land (under the *Land Transfer Act 2017*).

We propose to make this mandatory by changing the wording in the provision from 'may' to 'must'.

By making this mandatory, landowners will be aware if an existing crossing place applies to their property, including the conditions of that notice, and can consider its potential implications for any future development on their property. This will better enable landowners to be aware of any compliance requirements.

The proposed change would not apply to crossing place notices created before law changes are implemented. Over time, Waka Kotahi will work to ensure that all legacy crossing place notices are registered.

Better provision for, and enforcement of, offences relating to limited access roads and crossing places

We propose to introduce an infringement offence regime for breaches of requirements under sections 51 and 97 of the GRPA. Introducing the ability to issue an infringement notice would provide Waka Kotahi with greater flexibility in enforcing offences, which will assist with the safe and efficient functioning of limited access roads.

We propose to introduce infringement fees of:

- up to $1,000 for individuals
- up to $10,000 for businesses or undertakings.[25]

The proposed infringement fees align with provisions in the Resource Management (Infringement Offences) Regulations 1999 which currently allows for infringement fees between $300 to $1,000.[26]

We also propose to increase fines for offences under sections 51 and section 97 of the GRPA relating to limited access roads.

We propose to increase fines to:

- up to $10,000 for individuals
- up to $100,000 for businesses or undertakings.[27]

As businesses tend to have a higher number of vehicles or users accessing their property (meaning that a higher number of vehicles have the potential to misuse crossing places and increase safety risks for other road users) the fine is significantly higher than what is proposed for individuals.

The proposed fees and fines have been assessed against the Ministry's Effective Transport Financial Penalties Framework (the Framework) and Financial Penalties Categorisation Tool (the Tool).

The Framework and Tool reference a 'special regulated individual', which is defined as an individual in a position of responsibility, usually acting in a professional capacity eg commercial passenger service drivers or holders of dangerous goods endorsements. This is a new category of offenders and further work will need to occur at a later date to apply this across legislation.

At this stage, where an individual member of the public could be liable for an infringement offence, the lower of the 'individual' and 'special regulated individual' has been applied for the purposes of the infringement fine and offence.

Those who breach crossing place notices will be provided with a notice to remedy the breach before Waka Kotahi uses these additional enforcement powers.

25 This is based on harm category 5 of the penalty scale for harm and types of offenders in the Ministry of Transport Financial Penalties Categorisation Tool.
26 Resource Mangement (Infringement Offences) Regulations 1999, Schedule 1, *Infringement offences and fees.*
27 This is based on harm category 6 of the Penalty scale for harm and types of offenders in the Ministry of Transport Financial Penalties Categorisation Tool.

Administration of crossing place notices

We propose to amend section 96 of the GRPA to clarify that the administration of crossing place notices will also pass to the territorial authority responsible for the control of roads, in situations where the status of a State highway has been revoked. This means that the crossing place would be regulated under provisions relating to LARs in the Local Government Act 1974, rather than the GRPA.

There is also an opportunity to ensure that property titles are more accurate by requiring revocations of LARs to be registered under section 94 of the GRPA, which specifies the requirements related to the declaration of LARs.

Questions / views

Do you agree with the proposals to require crossing place notices to be registered on property titles, enable better enforcement of offences related to LARs and crossing places, and improvements to the administration of crossing place notices between Waka Kotahi and territorial authorities?

Why/why not?

Whāinga 4. Kia aro pū atu ki ngā tūāhuatanga hārakiraki, te whakapai ake i ngā tukanga me te whakakore i ngā tāruatanga

Objective 4. Addressing inconsistencies, improving system efficiencies and removing duplication

Over time, as legislation is amended to reflect changes to regulatory frameworks and approaches to compliance, complex interactions between the legislative framework can create inconsistencies and errors. Proposals under this section have been identified as there may be minor drafting amendments required to address errors, duplications or inconsistencies, or there are opportunities for wider system efficiencies.

OBJECTIVE 4

Proposal 4.1: Remove time constraints in rail safety case application process

> This proposal has been classified under this objective because it will enable better system efficiency and remove the need to duplicate an application process under the Railways Act 2005.

All rail licence holders are required to have a safety system with an overarching safety case approved by Waka Kotahi. As part of the application process, WorkSafe NZ is also consulted before a safety case is approved.

A rail safety case provides an overview of an organisation's approach to safety. It demonstrates how safety management systems work together to achieve safety commitments. This process is designed to encourage rail participants to best consider how to keep people safe, rather than simply focusing on only equipment or procedures. Most serious accidents in the sector come about not just from one thing going wrong, but from a build-up of failures across its systems.

A safety case must cover all rail activities undertaken by a licence holder and include those of any rail participants for which a licence holder is responsible. It must show how an organisation will be structured to manage safety and risk. Operational arrangements with other rail participants are covered to minimise the chances of gaps in responsibility or accountability occurring with regards to safety.

A key principle of the rail safety regime is that the organisation which creates the risk is best placed to, and ultimately carries the responsibility for, managing it.

Currently if Waka Kotahi requests more information for either a new application or a variation to a safety case, a 20-working day limit applies to the whole application. That is, the 'clock keeps ticking' while an applicant gathers and presents information. The time taken between requesting and receiving supporting information often requires an application to be declined due to the statutory time limit being reached, necessitating an inefficient re-starting of the whole process with a new application.

While an applicant does not need to pay another licence application fee, all time spent considering an application is chargeable, regardless of whether the application is granted or declined. As at 2021/22, this fee is currently set at $120 per hour under section 10(2) of the Railways Act.

Proposal

We are proposing to include a 'stop-the-clock' provision when further information is required from an applicant, either for a new application or a variation to safety case. This would be modelled on the provisions found in other licensing regimes (eg the application for a National Multiple-Use Approval under the *Building Act 2004*[28]).

Questions / views

Do you agree with the proposal to include a 'stop-the-clock' provision when further information is needed from an applicant?

Why/why not?

28 Cf. section 30E(3) Building Act 2004.

Proposal 4.2:
Simplify the Rule consultation process to increase consistency

This proposal has been classified under this objective because it will address inconsistencies in the Rule consultation process within the Land Transport Act 1998 (the LTA), and across land and maritime modes.

Consultation is a key step in policy development and analysis: it provides a tool for the collection of opinions on proposed changes before key decisions are made. The products of consultation are not policy advice, but inputs to policy advice: it is not a substitute for analysis, and Government still must make final decisions. Public consultation is intended to improve the responsiveness of Government policy by involving the public in the development process. Consultation has the potential to improve the quality and effectiveness of policies, to enhance transparency to citizens, and to strengthen the legitimacy of final decisions.

"Public consultation is intended to improve the responsiveness of Government policy by involving the public in the development process"

Consulting the public or affected stakeholders on significant decisions has the following benefits:

- It increases the transparent and inclusive nature of decisions, which improves their legitimacy.
- It improves the quality of decisions by ensuring that decision makers take into account the perspectives of those affected by them.
- It helps promote public understanding and acceptance of the decision (and so is likely to improve compliance).
- It enables those to whom the legislation or policy decision will apply to plan and adjust systems or processes appropriately.

If there is a duty to consult, the common law provides the details of how consultation should be conducted when the legislation itself is silent on that detail. The 1993 Court of Appeal decision in *Wellington International Airport Ltd v Air New Zealand* describes the nature of the consultation obligation, which applies except to the extent that legislation specifically provides otherwise:

- Consultation includes listening to what others have to say and considering the responses.
- The consultative process must be genuine.
- Sufficient time for consultation must be allowed.
- The party obliged to consult must provide enough information to enable the person consulted to be adequately informed so as to be able to make intelligent and useful responses.
- The party obliged to consult must keep an open mind and be ready to change and even start afresh, although it is entitled to have a work plan already in mind.

OBJECTIVE 4

The LTA and the Maritime Transport Act 1994 (the MTA) specify a list of consultation requirements, including publishing a notice of intent, providing a reasonable time to make submission and outlining who, at a high level, should be consulted.

Waka Kotahi also has specific consultation requirements under the LTMA, introduced through the Land Transport (NZTA) Legislation Amendment Act 2020. These relate to consultation required for spending relating to regulatory funding.

The two distinct consultation requirements create an inconsistency in process. This makes the process more complicated to follow, while arguably not meeting the purposes of consultation ie genuinely seeking external views and taking them into account. There is also a question of what consultation under section 161(2)(c) of the LTA looks like in this context, and on its own, as this could be interpreted as another separate process for representative groups. This is not the intention of the consultation requirements.

> "If there is a duty to consult, the common law provides the details of how consultation should be conducted when the legislation itself is silent on that detail"

2

The two distinct consultation requirements create an inconsistency in process. This makes the process more complicated to follow.

Table 2: Specific consultation requirements currently in transport legislation

LTMA	LTA	MTA	Civil Aviation Bill (v23.o)
Section 9(1C)	**Section 161(2)**	**Section 446**	**Section 61**
Before making a recommendation, the Agency must –	Before making an ordinary rule, the Minister must –	Before making any rule under this Act, the Minister shall –	Before making a rule, the Minister must, as the Minister in each case considers appropriate, –
a publish a notice of the Agency's proposed recommendation on its Internet site; and	a publish a notice of his or her intention to make the rule; and	a publish a notice of his or her intention to make the rule in the Gazette, and any other media the Minister considers appropriate; and	a publish a notice of the Minister's intention to make the rule; and
b give interested parties a reasonable time, specified in the notice, to make submissions on the proposed recommendation.	b give interested persons a reasonable time, which must be specified in the notice published under paragraph (a), to make submissions on the proposal; and	b give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposal; and	b consult representative groups within the aviation industry or elsewhere, and any other persons.
	c consult with such persons, representative groups within the land transport system or elsewhere, government departments, and Crown entities as the Minister in each case considers appropriate.	c consult with such persons, representative groups within the maritime industry or elsewhere, government departments, Crown entities, and in the case of rules made under Part 4 (to the extent that the rules relate to pilotage or harbourmasters) or Part 27 with such regional councils or other local authorities, as the Minister in each case considers appropriate.	

We propose simplifying the consultation requirements, so all involved have more certainty of what is required.

OBJECTIVE 4

Proposal

We are proposing to remove the requirement in section 161(2)(c) of the LTA to "consult with such persons, representative groups within the land transport system or elsewhere, government departments, and Crown entities as the Minister in each case considers appropriate". This requirement to a large extent duplicates the requirement in section 161(2)(b) of the LTA, which already requires consultation with "interested people".

For consistency across the transport system, the MTA would also be amended. Consultation requirements would be aligned with those in the Civil Aviation Bill, as this reflects the most modern consultation process in the wider transport system.

Questions / views

- Do you agree with the proposal to amend section 161(2)(c) of the LTA to remove duplication and improve consistency across transport legislation?
  – Why/why not?

In your answer, you may wish to consider commenting on:

- Whether you believe that 161(2)(b) adequately captures consultation requirements for rule-making.
- Whether there are any other changes that would improve consistency of the rule-making power across transport legislation.

Whāinga 5. Kia whakahou mai i ngā whakatureture tūnuku e hāngai ana ki te wā

Objective 5. Modernising transport legislation to ensure it is fit-for-purpose

Legislation is an asset that requires maintenance and care over time. Maintaining a clear structure of the entire system and the legislation itself is necessary. Our objective is to continually assess the stock of legislation to ensure it is effective, fit-for-purpose and accessible.

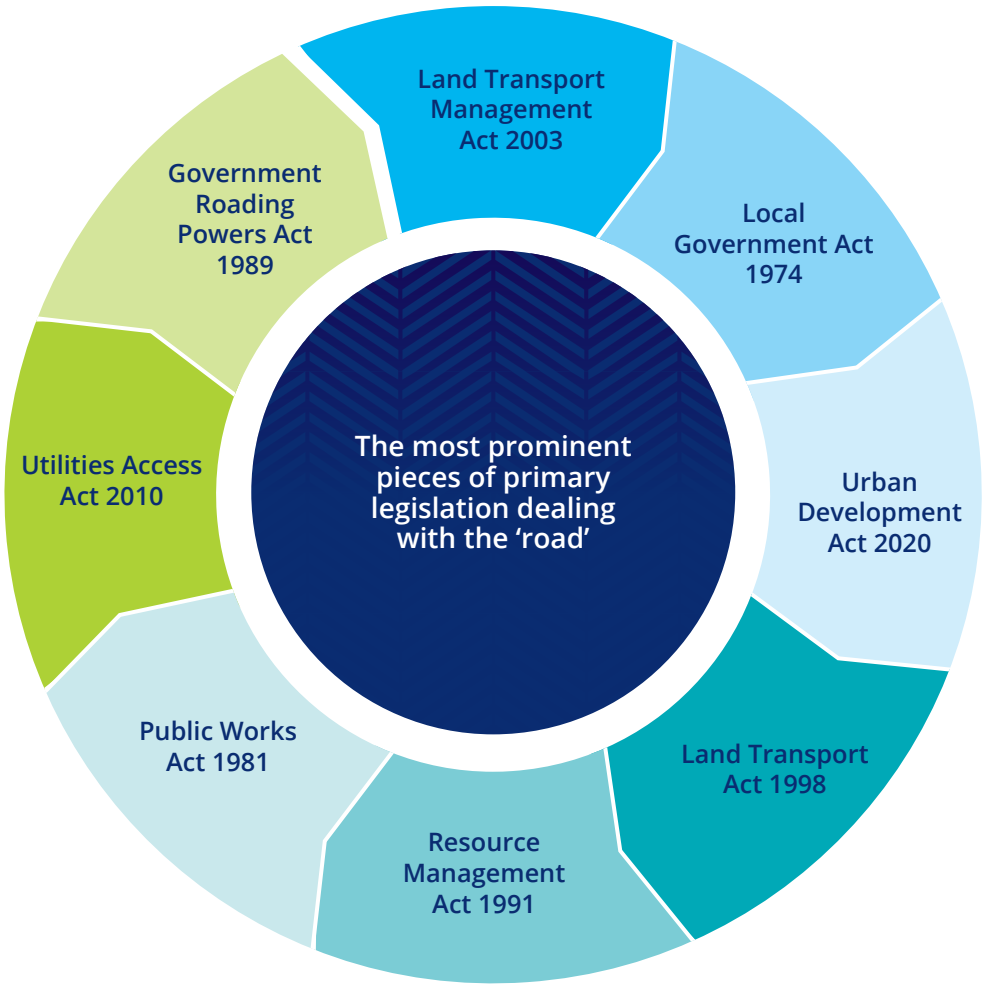
OBJECTIVE 5

Proposal 5.1: Modernise roading provisions and consequential drafting improvements

This proposal has been classified under this objective because it will simplify the land transport legislative framework.

Provisions that deal with the regulation of the road as a transport system component are spread throughout various pieces of legislation. In contrast with other jurisdictions,[29] New Zealand does not have a single dedicated piece of legislation on funding, regulation and responsibilities for roading powers.

Figure 2: The most prominent pieces of primary legislation dealing with the 'road'



29 Australia (eg Victoria Road Management Act 2004) and Republic of Ireland (Roads Act 1993).

To reduce and streamline the number of pieces of primary legislation governing roads, there is a regulatory stewardship opportunity to transfer Part 21 (sections 315 to 361) of the Local Government Act 1974 (LGA74) into a new part of the Government Roading Powers Act 1989 (the GRPA). Currently, LGA74 includes provisions on the administration of roading powers and responsibilities for Road Controlling Authorities (RCAs) and is cross-referenced in a number of other Acts.

In its current state, LGA74 is administered by the Department of Internal Affairs as a piece of local government legislation. This is because LGA74 has largely been repealed in favour of the Local Government Act 2002, with only the sections pertaining to roads or land drainage schemes and water race schemes remaining. However, from a subject-matter perspective, it makes sense to transfer the road-specific sections of LGA74 into legislation that deals with roads.

The GRPA is the preferred candidate to accommodate provisions relating to the control of roads and provides the necessary powers to build, maintain and manage roads. In transferring Part 21 of the LGA74, which regulates the powers of RCAs over local roads, specific re-drafting could occur to create either a new part, or sub-part, around Part 4 ('Roading') of the GRPA, with consideration given to the title of this part. Given that Part 12 relates to roading powers, it would make sense to move these into legislation that is administered by Te Manatū Waka.

Proposal

In order to improve the overall framework of roading legislation, we propose a two-step process. As a first step, the proposal would see the transfer of the existing sections 315 to 361 (Part 21) and Schedule 10 of the LGA74 into the GRPA.

A second step would be to make minor and technical amendments to make sure no inconsistencies occur and to make minor adjustments to sections to make them fit into the GRPA better. The title of the GRPA may need to be reconsidered as a consequential amendment.

Examples of proposed minor and technical amendments include:

- updating references from 'Chief Surveyor' to 'Surveyor General and Chief Executive of LINZ'
- renumbering and removing repealed sections
- amending 'united council' to 'unitary authority'.

Questions / views

- Do you agree with the two-step process to transfer Part 21 of the LGA74 to the GRPA?
  – Why/why not?

In your answer, you may wish to consider commenting on:

- Any other minor or technical amendments you believe should be addressed during this process.
- Any major or significant changes you believe should be made to the LGA74 Part 21 provisions.

OBJECTIVE 5

Proposal 5.2: Include Waka Kotahi in the New Zealand Transport Agency's name in legislation

WAKA KOTAHI NZ TRANSPORT AGENCY

This proposal has been classified under this objective because it will update land transport legislation to reflect the Government's commitment to te reo Māori revitalisation.

While Waka Kotahi New Zealand Transport Agency (Waka Kotahi) uses its full name including the te reo Māori component publicly, its empowering legislation refers only to 'New Zealand Transport Agency'. The Agency[30] was established in 2008 as successor to Land Transport NZ and Transit New Zealand and re-named.

In keeping with the public sector commitment to Te Tiriti o Waitangi and the promotion and use of te reo Māori, Waka Kotahi now uses the te reo Māori 'Waka Kotahi' to refer to itself. 'Waka' means 'vessel' and 'Kotahi' means 'one'. This word choice was specifically given to the Agency, and conveys the concept of 'travelling together as one' while embracing integration, affordability, safety, responsiveness and sustainability.

However, section 99 of the *Land Transport Management Act 2003* (LTMA) renders only the words 'New Zealand Transport Agency' (or terms that resemble those words) as legally protected. This means the name Waka Kotahi cannot be used by either the Agency – or companies interacting with it – contractually/through other legal exchanges. This legal protection is required to prevent companies trading under misleading names and currently does not extend to the te reo Māori component (though Waka Kotahi has trademark protection for some marks that use the words Waka Kotahi).

The use of the Māori name Waka Kotahi also contributes to Maihi Karauna, the Crown's strategy for Māori language revitalisation. Maihi Karauna aims to support a strong, healthy and thriving Māori language in Aotearoa New Zealand and a number of other public sector agencies have made the conscious choice to use their te reo Māori names in recent years. By following suit, Waka Kotahi will be aligned with the more inclusive approach to naming New Zealand's public sector agencies.

Proposal

We are seeking views on whether this formal name change via legislation is supported. The final decision on which form the name of Waka Kotahi will take will be reserved for a Cabinet decision.

Consequential amendments will be required in all primary and secondary legislation where Waka Kotahi is explicitly referred to. This work would be carried out as part of the Bill process. No contracts with Waka Kotahi, or other usage of the current legal name, will be invalidated through this process.

Q

Questions / views

Do you agree with the proposal to include 'Waka Kotahi' as a legally recognised name for the New Zealand Transport Agency in legislation?

Why/why not?

30 See section 93(1) Land Transport Management Act 2003.

Proposal 5.3:
Review Director's emergency powers in the land transport system

This proposal has been classified under this objective because it will provide Waka Kotahi with greater responsive regulatory powers to help maintain land transport safety, and improve administrative efficiency.

The Director of Land Transport (the Director) is a role that was established in April 2021, through the Land Transport (NZTA) Legislation Amendment Act 2020. The role is intended to provide a greater focus on regulatory delivery and drive more accountability for regulatory outcomes and decision making. To enable this, the role was provided with certain functions, powers and duties in relation to land transport regulatory matters (that were previously held by Waka Kotahi). These functions include monitoring how the land transport system complies with a variety of legislation, as well as for the provision of powers that could be suitable for use in emergencies, such as exemptions.

The COVID-19 pandemic has prompted Te Manatū Waka to consider whether the scope of the Director's powers is sufficient to deal with any future emergency or reactive situations, such as natural disasters, pandemics, a cyber-security risk or the need for a safety recall of a vehicle.

As shown in the 2020 and 2021 lockdowns, the Director's ability to waive regulatory requirements for time-critical emergency situations is restricted under current legislation. For instance, during the restrictions associated with Alert Levels 3 and 4, compliance requirements such as the renewal of driving licences, Warrant and Certificate of Fitness checks, and vehicle licensing services, were not able to take place due to lockdown restrictions. Services that required an in-person examination, such as eyesight tests for renewal of driver licences, or relevant theory or practical testing, and the removal of alcohol interlock licence conditions, were also unable to take place. This was challenging for both the Government, general public, industry, and enforcement authorities
such as NZ Police, as it left some individuals non-compliant through no fault of their own.

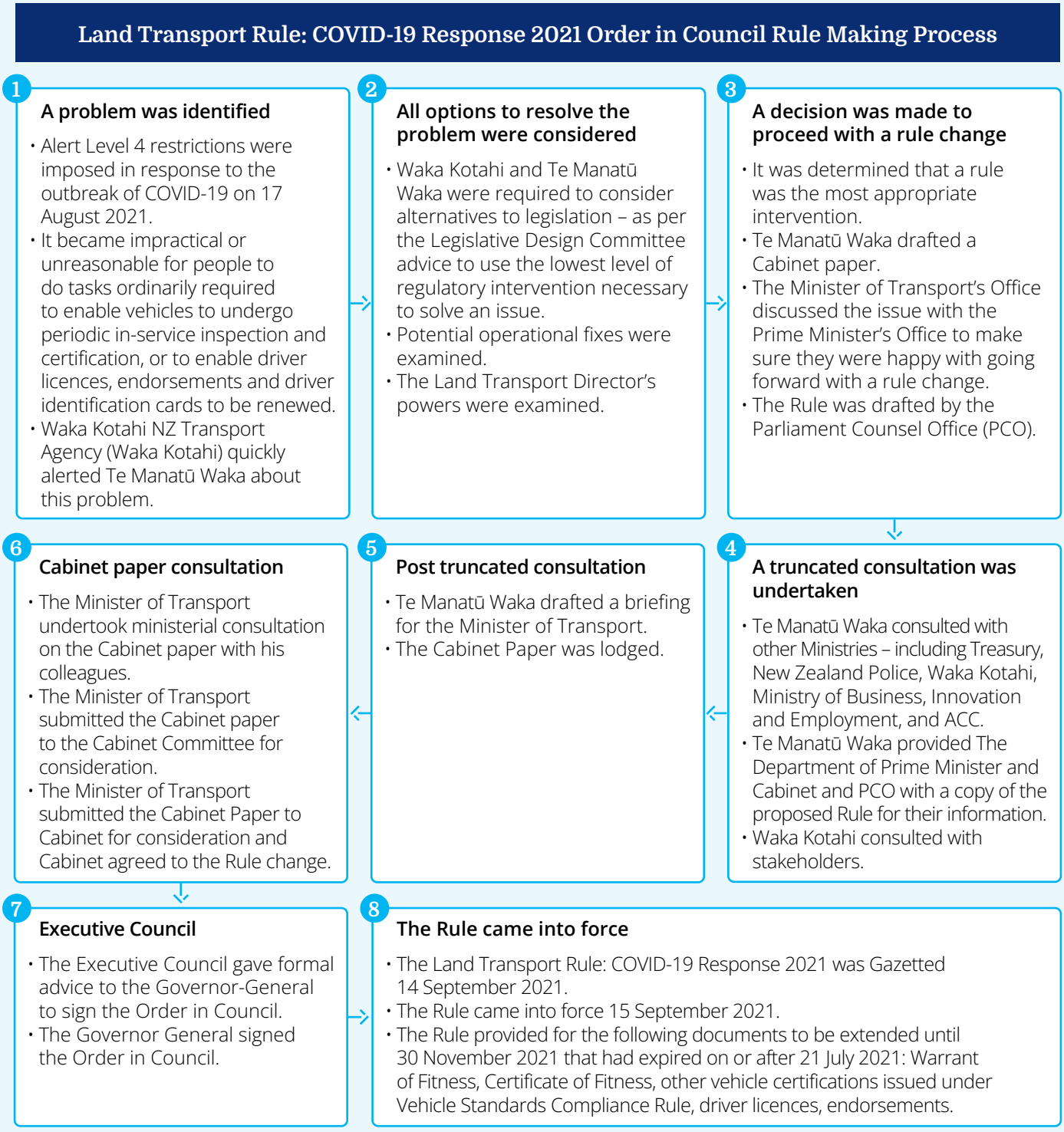
The current scope of the Director's powers provided in the Land Transport Act 1998 (the LTA) made responding to this scenario complex and slow. For instance, whilst the Director could grant a class exemption for Warrant and Certificate of Fitness requirements under section 168D, the Director could not extend driving licences that had already expired, which numbered some 250,000 in the second lockdown in 2021.

In order to rectify this, the Minister, on advice from Te Manatū Waka, twice made Amendment Rules and Regulations to extend the temporary validity of certain land transport documents through an Order in Council. In the case of the COVID-19 lockdowns, the process took time and left motorists and authorities, such as NZ Police, in a state of uncertainty around compliance and regulatory expectations.

The LTA contains a range of different regulatory regimes, which vest emergency powers in the Director for some processes but not others. We are considering whether there is a need to provide the Director with a consistent set of powers that can be used across different land transport regulatory regimes to make emergency or time-critical interventions.

OBJECTIVE 5

Diagram 2: Land Transport Rule: COVID-19 Response 2021 Order in Council Rule Making Process



Proposal

At this stage, we are not in a position to consult on concrete policy proposals to address this discrepancy, but we are looking to understand the public's views in order to shape our approach to this issue, and whether we should amend the Director's powers. We are interested in your thoughts on both the situations in which these powers could be used, but also how these powers are put into action.

We need to consider what constraints exist on the Director to act in an 'emergency or other time-critical safety event' under the current framework, and whether extending the Director's powers would be useful within the context of the land transport regulatory system. A change to the Director's current powers could range from being:

- minor technical improvements to the Director's current powers (eg designating which requirements the Director can exempt people from in relevant regulations, and making amendments to limiting provisions on the exercise of these powers), to
- similar to that of Ministers (eg giving the Director the ability to recall land transport-related products in the event of a safety risk).

The term 'emergency or other time-critical safety event' could be wide ranging in scope, and account for:

- technological developments, such as risks posed by autonomous vehicles (eg a software malfunction causes the brakes on autonomous vehicles to fail)
- future localised emergencies, such as floods or earthquakes (eg a flood closes a number of key access routes to a town)
- another global event, such as a pandemic (eg a national lockdown means people are unable to renew their required land transport documents).

This term would cover events that are emergencies, where there is a direct risk of injury or loss of life, as well as events that are time-critical, where there is an indirect risk of injury or loss of life, or the risk is to the clear and effective administration of the regulatory system.

Dependent on the scope of these powers, they could be:

- time-restricted, meaning they are only able to be applied when there is an emergency or other time-critical safety event (eg if the Prime Minister declares that there is a national emergency that this automatically triggers the Director's powers)
- subject to approval by, or consultation with, another actor in the land transport regulatory system (eg the Ministry of Transport Chief Executive, the Waka Kotahi Board).

The purpose of any change would be to allow for the seamless use of powers by the Director during an emergency or other time-critical safety event, without the need to progress legislative change (such as the Rule used to respond to COVID-19), which necessarily takes time. These powers would not enable the Director to make permanent changes to the land transport regulatory framework. Permanent changes would continue to be subject to both Cabinet and public scrutiny.

However, there is a trade-off between the Director having powers that enable them to move swiftly in response to an emergency or time-critical event, and having an appropriate level of oversight and accountability for the use of such powers.

Questions / views

- What are your views, in principle, around extending the Director of Land Transport's powers to respond to an emergency or other time-critical event?
- Should these powers only cover 'emergency' events, where there is a direct risk of injury or loss of life, or be widened to include 'time-critical' events where risks may be less direct?
- How important is it to you that we are able to move quickly to respond to emergency or time-critical safety events such as those discussed above?
- In your view, would it be appropriate for the Director of Land Transport to have powers similar to those of a Minister during emergency or time-critical events?

In your answer, you may wish to consider commenting on:

- Whether there are other emergency or time-critical safety events that these powers could be used to respond to that are not mentioned above.
- The level of oversight or supervision (if any) there should be on the Director exercising these powers.

Proposal 5.4: Increase the maximum level of fines and infringement fees

Section 167 of the Land Transport Act 1998 (the LTA) provides the Governor-General with powers to make regulations with respect to prescribing the level of infringement fees, and fines (on conviction before a court).

The legislation prescribes limits on both fines applied by a court (fines) and infringement fees (fees). In the case of fines, the Governor-General can prescribe the penalty for each offence in the rules, to the following limits:

- in the case of an individual, a fine not exceeding $10,000
- in the case of any other person (ie a body corporate), a fine not exceeding $50,000.

Similarly, for fees, the Governor-General can prescribe the penalty for each offence in the rules to the following limits:

- in the case of an individual, a fee not exceeding $2,000
- in the case of any other person (ie a body corporate), a fee not exceeding $12,000.

In 2021, following the development of the Effective Transport Financial Penalties Framework (the Framework), Te Manatū Waka developed the Financial Penalties Categorisation Tool (the Tool). The Tool helps apply the Framework to set transport-related infringement fees and fines applied by a court. It provides a step-by-step categorisation process for determining financial penalty levels in transport legislation, that are coherent and better aligned to severity and risk of harm.

The Framework and the Tool provide a more fit-for-purpose approach to prescribing transport-related financial penalties, ensuring they are consistent, fair and effective. For example, the Framework differentiates between individuals and 'special regulated individuals.' If an individual is acting in a professional capacity, they are a special regulated individual. Regulators usually have extra expectations of the conduct of special regulated individuals, so the Framework and Tool allow for a corresponding increase in penalty over individuals operating in a personal capacity.

The Tool outlines 12 categories of offence penalties on a continuum from minor to extremely serious offences (those likely to result in catastrophic harm). Each category contains penalty levels for three circumstances:

- in the case of an individual:[31]
  - when an offence can be committed by any individual
  - when an offence can only be committed by a special regulated individual (eg the holder of a transport service licence)
- in the case of any other person (ie a body corporate) when an offence can be committed by a business or undertaking.

The first seven categories are intended for the types of offences covered by secondary legislation, and the majority of these penalties fit within the limits already prescribed. However, in two categories the penalty levels for special regulated individuals in the Tool are higher than those limits set through the LTA. For example, the Tool (which is more modern than the legislation), sets the limit for a serious offence committed by a special regulated individual at $3,000 for an infringement fee, whereas the LTA sets this limit at $2,000. Similarly, the Tool sets the limit for a serious offence committed by a special regulated individual at $15,000 for a fine, whereas the LTA sets this limit at $10,000.

31 Special regulated individuals are not recognised in legislation currently. Responding to this, the Tool recommends that the penalty allocated to an 'individual' in legislation should only reflect the levels recommended for special regulated individuals when the design of the offence means that it can only be committed by people in this category.

OBJECTIVE 5

Figure 3: Categories of penalty levels against severity

Severity Scale:	Category Level:		Infringement Fees: Individual	Infringement Fees: Special Regulated Individual	Infringement Fees: Business or undertaking		Fines before a Court: Individual	Fines before a Court: Special Regulated Individual	Fines before a Court: Business or undertaking
Minor	1A	Infringement Fees	$50	$150	$500	Fines before a Court	$250	$750	$2,500
	1B		$150	$450	$1,500		$750	$2,250	$7,500
	2A		$250	$750	$2,500		$1,250	$3,750	$12,500
	2B		$350	$1,050	$3,500		$1,750	$5,250	$17,500
Moderate	3		$500	$1,500	$5,000		$2,500	$7,500	$25,000
	4		$700	$2,100	$7,000		$3,500	$10,500	$35,000
Serious	5		$1,000	$3,000	$10,000		$5,000	$15,000	$50,000
	6						$10,000	$30,000	$100,000
Very Serious	7						$20,000	$60,000	$200,000
	8						$30,000	$90,000	$300,000
Catastrophic	9						$50,000	$150,000	$1,500,000
	10						$60,000	$180,000	$3,000,000

The discrepancy between the LTA and the Framework is restricting application of the Framework and Tool to the rules made in regulations, by limiting the level of fees and fines applied. This makes it more difficult to achieve the fair and consistent penalty system that the Framework is intended to support.

Proposal

To bring the legislation into alignment with the Framework and Tool, we propose amending section 167 of the LTA. This means that the maximum penalties that can be applied will be:

- in the case of an individual, a fee (applicable to infringement notices) not exceeding $3,000 and a fine (applicable to prosecutions) not exceeding $15,000
- in the case of any other person (ie a body corporate), the penalty limits would remain unchanged.

This proposal does not automatically amend any penalties; penalties will be reviewed when and if needed.

Q

Questions / views

Do you agree with the proposal to recognise in legislation the increased level of penalties (fees and fines) that can be applied to special regulated individuals?

Why/why not?

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