

Departmental Disclosure Statement

Land Transport (NZTA) Legislation Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place, a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material
- some of the key quality assurance products and processes used to develop and test the content of the Bill
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 November 2019

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Part One: General Policy Statement

The Land Transport (NZTA) Legislation Amendment Bill (NZTA Bill) is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The policy objective of the NZTA Bill is to strengthen the regulatory leadership of the New Zealand Transport Agency (NZTA) by setting up a new regulatory structure, establishing the position of Director of Land Transport, and centralising regulatory authority. To support the policy objective, the Bill also strengthens NZTA's role in relation to key regulatory interventions including, speed management and enforcement.

The Bill contains three parts. Part 1 amends the Land Transport Management Act 2003 (LTMA), Part 2 amends the Land Transport Act 1998, and Part 3 amends the Railways Act 2005.

The NZTA Bill will give effect to this objective by:

Part 1

- setting expectations for the NZTA Board to develop a new strategy to strengthen the NZTA's regulatory delivery
- re-establishing a statutory Director of Land Transport to lead the regulatory function and regulatory decision-making in the NZTA
- refreshing the independent regulatory functions and powers in the LTMA to ensure they are fit-for-purpose
- refreshing the NZTA's regulatory objectives
- amending the LTMA to provide for a more balanced and equitable approach to funding the NZTA's regulatory function

Part 2

- making further related amendments to re-establish a statutory Director of Land Transport
- refreshing remaining functions and powers to provide greater focus on the NZTA's regulatory role, including the refresh of powers related to placing conditions on transport services licences and enforceable undertakings
- enabling rules to require the NZTA to establish committees (which could support the development or review of speed management plans)
- establishing of a register (where the NZTA is the Registrar) to give public notice of land transport records (for example speed limits) on New Zealand roads and to enable any person to obtain information about road transport records
- enabling the NZTA to issue infringement notices for a moving vehicle offence detected by approved vehicle surveillance equipment (for example detected by a safety camera)

Part 3

- making further related amendments to re-establish a statutory Director of Land Transport.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Review of the New Zealand Transport Agency's Regulatory Capability and Performance: Report to the Ministry of Transport. This was authored by Martin Jenkins on 26 June 2019. A copy can be found on the Ministry of Transport's website here: https://www.transport.govt.nz/assets/Import/Uploads/About/Documents/4.-Review-of-NZTA-Regulatory-Capability-and-Performance.pdf.</p> <p>Also note that the proposals for Tackling Unsafe Speeds were consulted on as part of the wider <i>Road to Zero</i> road safety strategy earlier this year. A report on feedback from this consultation will be released later this year.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Transport authored two Regulatory Impact Assessments (RIAs) which informed policy decisions for the NZTA Bill.</p> <p>The first RIA is titled "Strengthening NZTA's regulatory capacity and performance" dated September 2019 (the NZTA RIA).</p> <p>The second RIA is titled "Tackling Unsafe Speeds" dated 7 October 2019 (the Speed RIA).</p> <p>These RIAs will be publically released on the Ministry of Transport's website: https://www.transport.govt.nz/about/governance/ris-bccs/.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIAs did not meet the threshold for needing Treasury RIA Team assessment, but were reviewed by members of the Ministry of Transport Independent RIS Review Panel.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
<p>The NZTA RIA has been updated to reflect the additional policy approvals that were sought in the paper to the Cabinet Legislation Committee to introduce the NZTA Bill.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
The NZTA RIA has been updated to reflect the additional policy approvals that were sought in the paper to the Cabinet Legislation Committee to introduce the NZTA Bill.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The size of the potential costs and benefits for the policy are available in the RIAs mentioned above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>For 2.6(a) note that there are no potential costs or benefits likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards. However, as part of the proposal in the NZTA Bill, it will require the NZTA to create, publish and use a regulatory strategy. Therefore, the NZTA's use and level of compliance with the strategy could affect their regulatory outcomes and overall performance.</p> <p>Further information on the potential impacts of the policy in the NZTA Bill are available in the RIAs mentioned above.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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No specific issues were identified in the policy process that may have implications for New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific issues were identified in the policy process that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice is undertaking an assessment of whether the NZTA Bill is consistent with the New Zealand Bill of Rights Act 1990 and will provide advice to the Attorney-General.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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However, the NZTA Bill does enable the NZTA to operate the roading camera network effectively, including changes to the process for approving vehicle surveillance devices and issuing infringement notices associated with approved vehicle surveillance devices (powers that currently sit with the New Zealand Police (Police) only).
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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The Ministry of Justice was consulted on the draft NZTA Bill and the policy proposals. The Ministry of Justice were comfortable with the proposals.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>NZTA review policy changes</p> <p>In-depth consultation took place with NZTA and the State Services Commission. The Ministry was unable to undertake full consultation on the proposed recommendations due to the confidentiality of the review process.</p> <p>Speed management changes</p> <p>For Tackling Unsafe Speeds, a key part of the development of these proposals included hearing about and testing potential options for change on speed management with the Speed Reference Group. These workshops took place between September and November 2018 and included a diverse range of participants from central government, local government, advocacy groups and special interest groups.</p> <p>In April 2018, the Associate Minister of Transport held a Local Government Road Safety Summit and heard about the challenges local government is facing regarding speed management, and potential interventions that would effectively address these challenges.</p> <p>The Ministry of Transport undertook targeted consultation on the Tackling Unsafe Speeds proposals in March-May 2019. This was followed by high-level public consultation through the <i>Road to Zero</i> road safety strategy consultation process in July-August 2019.</p> <p>The following government departments were also consulted during the development of the Cabinet paper to support the policy for Tackling Unsafe Speeds: NZTA, Police, Treasury, Ministry of Social Development (and the Office for Disability Issues and the Office for Seniors), Ministry of Justice, WorkSafe, Local Government New Zealand, Accident Compensation Corporation, Ministry of Health, Department of Internal Affairs, Department of Conservation, Ministry of Education and Te Puni Kōkiri.</p> <p>NZTA Bill</p> <p>The following government departments were consulted on the draft NZTA Bill: Department of Internal Affairs, the Treasury, Ministry of Justice, WorkSafe, State Services Commission and Ministry for Business, Innovation and Employment. The Department of Prime Minister and Cabinet and Te Puni Kōkiri were informed.</p> <p>Ministerial cross-party consultation has also taken place with no feedback received on the NZTA Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The review of the NZTA involved an extensive assessment of documentation and correspondence provided by NZTA and interested persons, alongside interviews with industry stakeholders, regulated parties, NZTA Board members, senior leaders, and staff (both current and former). The NZTA Bill responds to the review.</p> <p>For Tackling Unsafe Speeds, the Police, NZTA and local government have been actively engaged during the development of these proposals as they are the enforcing and regulatory agencies, respectively, that will implement this regime.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The NZTA Bill establishes a Director of Land Transport role that will be responsible for the regulatory function and regulatory decision making in the NZTA. Director functions related to decision making about individuals, or groups of individuals (for example entry and exit from the land transport system, exemptions, and enforcement) will be identified as statutorily independent functions. This is consistent with the Director roles provided for in the maritime and aviation spaces.</p> <p>This will be embedded in the legislation for clarity, transparency and accountability purposes.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
<p>Section 166 of the Land Transport Act 1998 (LTA) enables the NZTA to grant a person, vehicle, rail vehicle, or land transport related service an exemption from a specified requirement in rules. Before granting an exemption the NZTA must be satisfied that requirements set out in section 166(2) of the LTA have been met. The NZTA Bill amends this provision to enable the Director of Land Transport to instead grant exemptions as this power is more closely connected with the functions of the Director.</p> <p>Further changes to section 166 of the LTA are also outlined in the Regulatory System (Transport) Amendment Bill (RSTA Bill) expected to be introduced at the same time as the NZTA Bill. These amendments will clarify the exemption powers and allow for class exemptions, and amendments and revocation of exemptions.</p> <p>The NZTA Bill also includes a power for the functions and powers of the Director of Land Transport to be delegated. This is consistent with other legislation (for example the Crown Entities Act 2004 and the State Sector Act 1988) that enables Ministers, members of Crown entity boards and chief executives to delegate functions and powers.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>For Tackling Unsafe Speeds, the NZTA Bill will enable an ordinary rule to require the NZTA to establish a committee and set out a variety of requirements regarding the committee (for example purpose, functions, powers)</p> <p>The NZTA Bill also establishes a register of land transport records and enables delegated legislation to determine a range of operational elements regarding the register (for example how the register is to be kept and maintained, the information to be contained in the register for each land transport record).</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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