

# Short-Form Supplementary Departmental Disclosure Statement

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Regulatory Systems (Transport) Amendment Bill
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A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Regulatory Systems (Transport) Amendment Bill, dated 3 December 2019, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2020/196/>

This supplementary 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.

1 March 2021.

## Significant Legislative Features

### Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Transport and Infrastructure Committee recommended amending section 106 of the Land Transport Act 1998 to specify that the right of appeal to the District Court in section 106(1) does not apply to any decision made in relation to a class exemption. The Bill reported back by the Committee on 3 August 2020 included this amendment.</p> <p>The Bill provides that class exemptions will be secondary legislation and as such, may be scrutinised by the Regulations Review Committee. Decisions about the creation of class exemptions are also subject to judicial review. As these review processes are already in place, the right of appeal to the District Court was not considered to be appropriate for class exemptions.</p> <p>The amendment to section 106 of the Land Transport Act 1998 will remove the appeal right in relation to class exemptions issued under the Land Transport Act. However under the Bill, class exemptions may also be issued under the Maritime Security Act 2004, the Maritime Transport Act 1994, and the Railways Act 2005 (the other Acts). The Supplementary Order Paper (SOP) includes amendments to the other Acts, based on the same rationale that class exemptions will be secondary legislation and subject to Regulations Review Committee scrutiny, and that judicial review will be available to challenge the decision. The amendments clarify that there is no right to appeal to the District Court, a decision in relation to a class exemption issued under the other Acts.</p> <p>The provisions being amended are:</p> <p>Clause 15A amends section 64 of the Maritime Security Act 2004</p> <p>Clause 27 inserts new section 395A into the Maritime Transport Act 1994</p> <p>Clause 38B amends section 68 of the Railways Act 2005.</p>	

<b>1.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
<p>The SOP amendments ensure a consistent approach is taken in the Bill to limiting the right to appeal against a decision in relation to a class exemption. Consultation with Justice was not considered necessary in this case.</p>	

### Privacy issues

<b>2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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### Compulsory acquisition of private property

<b>3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

4. Do the proposed amendments 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

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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## Significant decision-making powers

<b>8. Do the proposed amendments 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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>9. Do the proposed amendments 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?</b>	<b>YES</b>
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The SOP includes amendments that seek to clarify and modernise the powers of exemption in land and maritime. Exemptions can be granted from requirements in rules (including land, rail, maritime and marine protection rules) except where the rule specifies that there can be no exemptions (the 'opt out' approach).

Amendments in the SOP clarify that exemptions may be granted from requirements in regulations (land and rail) only where the regulation specifies that exemptions can be made. This means regulations must contain a provision allowing for exemptions from one or more of its requirements. This is an 'opt in' approach, rather than the 'opt out' approach that currently exists for rules. This is a safeguard to ensure that the power to grant exemptions from requirements in a regulation is considered by the Executive.

The relevant provisions are:

Clause 8, new section 168D(1A)(b)

Clause 38A, new section 60A(1A).

<b>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
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Minor and technical drafting changes have been made to the provisions in the Bill relating to transport instruments. Transport instruments are a new form of delegated legislation. Refer to the full disclosure statement on the Bill for more information on transport instruments.

## Any other unusual provisions or features

<b>11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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