

Regulatory Impact Statement

Land Transport Act 1998 – Proposed Miscellaneous Amendments

Agency Disclosure Statement

The Ministry of Transport has prepared this Regulatory Impact Statement.

The Land Transport Act 1998 (the Act) sets out the key safety obligations for operating in New Zealand’s land transport system and the driver, operator and vehicle licensing regimes that underpin these obligations.

A suite of amendments to the Act are proposed, covering a range of matters, such as small passenger vehicle services, sanctions for drink-driving, revenue protection on public transport, addressing fleeing drivers and updating heavy vehicle regulation. These amendments have been considered in separate Regulatory Impact Statements.

Alongside these more significant changes, there are a number of miscellaneous amendments. All but one of these amendments are the subject of this Regulatory Impact Statement. One minor amendment (allowing recovery of bank charges associated with payments by credit card) has a stand-alone Regulatory Impact Statement, due to the public interest it may attract.

These miscellaneous amendments aim to improve the Act’s operation and enforcement and to give better effect to Parliament’s intent. These amendments do not represent major policy changes, but rather small extensions to current powers, clarification of the legislation or modernising the regulatory system. As such, the analysis included in the Regulatory Impact Statement is limited to describing the policy problem and the solution, rather than multi-criteria or cost benefit analysis approach. For some changes, the option is to either amend as proposed or leave as is.

Each of the issues is analysed separately, and appropriate recommendations to amend the Act are made which are intended to

- remove inconsistencies
- clarify some interpretations in the Act or the intent of the legislation
- make minor technical adjustments
- improve the Act’s operation or to enable it to operate as originally intended.

None of the issues discussed or the recommendations proposed imposes additional costs on business, impairs property rights, market competition, the incentives on business to innovate and invest, or overrides fundamental common law principles.

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Executive Summary

1. The New Zealand Police (NZ Police), the New Zealand Transport Agency (NZTA) and the Ministry of Transport (Ministry) identified 50 potential minor amendments to the Land Transport Act 1998 (the Act). From this list, 12 issues have been identified to progress that will improve the effectiveness of the Act to support the Government's transport objectives.
2. We have clustered the amendments together according to the policy problem they will remedy. The following table outlines the 12 minor amendments. The amendment with a stand alone Regulatory Impact Statement is shaded.

Purpose		Amendment	Section of Act
Remove inconsistencies	1	Allowing a person or animal to assist with vehicle inspections concerning dangerous goods as is the case for dangerous goods inspections in railway lines or loading and unloading sites	129
Clarification of legislation	2	Clarifying that a stationary vehicle infringement notice is deemed to have been served on every person liable under the Act	139(3)
	3	Amending section 90 to clarify that notice of a demerit suspension can be created and served by either the NZTA or the NZ Police	90
	4	Reinstating low-powered three-wheeled mopeds as a class of motor vehicle that are allowed to operate on the road	2
Improve operations	5	Simplifying the requirement to provide a summary of the procedure to transfer liability on a stationary vehicle infringement notice	140(2)(c)
	6	Allowing a stationary vehicle infringement notice to be served by providing it to a person who is apparently in charge of the vehicle at that time	139(2)
	7	Resolving an error to allow vehicle seizure and impoundment warrants to be signed by issuing officers	119(5)
	8	Making electronic forms of vehicle licensing lawful	242 and 269
	9	Allowing recovery of bank charges associated with payments by credit card	Standalone RIS
Improve enforcement	10	Aligning the maximum fee for a bylaw offence provided for in the Act with infringement fees in provisions already in the Act or regulations	22AB(1)
	11	Enabling automated enforcement of specific traffic signs	2
	12	Clarifying certain Police enforcement powers to prevent driving in the interests of public safety	121(1)

Proposed miscellaneous amendments to the Land Transport Act 1998

Remove inconsistencies

3. There is one proposal that will remove inconsistencies within the legislation. This relates to allowing a person or animal to assist with vehicle inspections concerning dangerous goods.

Proposal 1 – Allowing a person or animal to assist with vehicle inspections concerning dangerous goods

Status quo and problem definition

4. Under section 129 of the Act, enforcement officers or dangerous goods enforcement officers can inspect vehicles where they have good cause to suspect a breach of rules relating to the carriage of dangerous goods. Sections 130 and 131 of the Act allow dangerous goods enforcement officers to inspect railway lines or premises used for loading and unloading dangerous goods to determine whether or not the requirements of the rules relating to dangerous goods are being complied with.
5. Under sections 130 and 131 of the Act, a dangerous goods enforcement officer can take a person or animal to assist with the inspection. This power does not exist for dangerous goods enforcement officers or enforcement officers in section 129. The NZ Police would like the powers under section 129 to be consistent with the powers under sections 130 and 131.
6. While dangerous goods enforcement officers and enforcement officers could undertake the inspection, it is unlikely that in all possible circumstances those officers will have:
 - adequate training and/or qualifications in the appropriate handling procedures and safety precautions required
 - specialist equipment, including suitable protective clothing or equipment, handling equipment, containment and storage devices, processing and storage facilities, testing facilities and disposal facilities.
7. When samples are required, other persons and agencies are better equipped and qualified than enforcement officers to take, handle, process, analyse, store and dispose of the samples.
8. Currently there is no ability under section 129 for an enforcement officer or dangerous goods enforcement officer who has good cause to suspect a breach of rules relating to the carriage of dangerous goods involving a vehicle to take a person or animal (who might be better qualified or trained) to assist in the inspection of such a vehicle. This is inconsistent with how this would be handled if the dangerous goods were on road or rail premises.
9. The legislation currently poses serious health and safety concerns for enforcement officers (and in some cases dangerous goods enforcement officers) who may be required to take samples without the appropriate training or resources. There are also risks to any persons who may be affected by the actions of those officers.

10. Employers also have considerable liability under the Health and Safety at Work Act 2015 relating to employee safety and the protection of others from harm resulting from actions or inactions of employees. There is considerable public liability for any unintended consequences of mishandling or mishap resulting from inadequately trained or resourced persons.

Objective

11. Amend section 129 of the Act to allow an enforcement officer or a dangerous goods enforcement officer to inspect a vehicle suspected of carrying dangerous goods with the aid of another person or an animal.

Proposal

12. It would assist the inspection of dangerous goods if enforcement officers or dangerous goods enforcement officers had the ability to take a person or animal to assist in the inspection, regardless of whether the dangerous goods were being transported by road or rail. This proposal would make vehicle inspections consistent with current statutory powers to inspect railway lines and road and rail premises in relation to dangerous goods.

Regulatory Impact Analysis

13. It is unlikely that this change could be seen as a breach of section 21 of the New Zealand Bill of Rights Act 1990 related to unreasonable search and seizure. A prerequisite for using a person or animal to assist with an inspection is that the enforcement officer needs to have good cause to suspect a breach of rules relating to the carriage of dangerous goods involving a vehicle.
14. There may be minor costs to the NZ Police associated with staff training or contracting work to third parties, but this would be minimal and met within existing budgets.
15. There may be minor implications for the transport industry as they would be the group to which this would apply.

Recommendation

16. It is recommended that section 129 be amended to allow an enforcement officer or a dangerous goods enforcement officer to use a person or an animal to assist with an inspection of a vehicle.

Clarification of legislation

17. There are three proposals that will clarify points within the legislation.
 - Clarifying that a stationary vehicle infringement notice is deemed to have been served on every person liable under the Act
 - Clarifying that notice of a demerit suspension can be created and served by either the NZTA or the NZ Police
 - Reinstating the definition for a three-wheeled moped.

Proposal 2 – Clarifying that a stationary vehicle infringement notice is deemed to have been served on every person liable under the Act

Status quo and problem definition

18. Section 133A of the Act allows for proceedings in relation to a stationary vehicle offence to be taken against any one of three categories of person:
 - the person who allegedly committed the offence
 - the vehicle's registered owner
 - the person lawfully entitled to possession of the vehicle at the time of the offence.
19. To simplify the infringement process, section 139(3) of the Act allows the serving of an infringement notice to occur by attaching of the infringement notice to the vehicle to be served.
20. Prior to its repeal in 2011¹ section 42A(6) of the Transport Act 1962 said:

"(6) For the purposes of the Summary Proceedings Act 1957—
*(a) where an infringement notice, or a copy thereof, is attached to the vehicle to which the notice relates pursuant to subsection (5)(a), the notice or copy shall be deemed to have been **served on every person liable** in respect of the alleged offence and to have been served when the notice or copy was attached to the vehicle"*
21. This provision was subsequently replaced on 1 July 2013². The current provision reads as follows:

"(3) An infringement notice that—
(a) is attached to a vehicle under subsection (2)(a) must be treated as having been served when it is attached to the vehicle:
(b) is sent to a person by post under subsection (2)(c) or (d) must be treated as having been served on the person when it would have been delivered in the ordinary course of post."
22. In the change from the Transport Act 1962 to the Act in 1998, the words *"on every person liable"* were omitted.
23. The current wording could be interpreted as meaning the notice had been served on the person who allegedly committed the offence, but not the vehicle's registered owner, or the person lawfully entitled to possession of the vehicle at the time of the offence.
24. The omission of the words *"on every person liable"* means an infringement notice would need to be posted to either or both of the other two categories of persons potentially liable in order to effect service on those persons. The omission of these words appears to have been an unintended oversight.

¹ Repealed on 10 May 2011, by section 98 of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

² Replaced on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Objective

25. To ensure that it is clear that when a stationary vehicle infringement notice is served it is deemed to have been served on every person liable.

Proposal

26. To amend section 139(3) of the Act to remedy an unintended oversight and enable the serving of a stationary vehicle infringement, such as a parking infringement notice, by attaching to a vehicle, whereby it being served on the person liable in respect to the alleged offence.

Regulatory Impact Analysis

27. The status quo may have fiscal implications for the NZ Police, territorial local authorities, and courts. The NZ Police and territorial authorities would incur additional costs in posting notices to any person not deemed to have been served.
28. Courts could incur additional costs with a possible increase in the number of defended hearings that could arise should this matter become widely known.

Recommendation

29. It is recommended that section 139(3) of the Act be amended to restore the wording and intent that was in the Transport Act 1962 that by attaching a stationary vehicle infringement notice to a vehicle, it has been served on every person liable in respect of the alleged offence.

Proposal 3 – Clarifying that notice of a demerit suspension can be created and served by either the NZTA or the NZ Police

Status quo and problem definition

30. Section 90 of the Act sets out the process by which a driver who has accumulated more than 100 demerit points in a two year period is to be served a notice, advising that person that their licence is suspended for a period of three months. A notice of suspension must be served “in person” – handed directly to the driver whose licence is to be suspended.
31. Section 90 originally specified that the NZTA was to prepare and serve the notices. Some persons managed to avoid service, for example by changing address. The NZTA asked the NZ Police to assist with the service process, initially acting under a delegation from the NZTA and approved by the responsible Minister.
32. In 2005, Parliament agreed that service by the NZ Police should be recognised in the legislation. The process set out was that the NZTA would attempt to serve the notice, and ask the NZ Police to assist if the NZTA was unsuccessful. Legal challenges were raised on several occasions to notices served by the NZ Police on the basis that the NZTA had not attempted service.
33. In May 2011, the requirement for the NZTA to have attempted service before the NZ Police could do so was removed from the Act. However, the reference to the Agency giving “*notice in writing*” in section 90(1) remained. Section 90(2) now provides that the NZTA, a person it appoints for that task, or the NZ Police can serve the notice.

34. Three court judgements have highlighted the discrepancy between subsection 90(1) and subsection (2) as currently drafted. There have been two district court appeals against service of a suspension notice by the NZ Police because the notice had not been drafted by the NZTA. One appeal found the notice was valid; the other found that it was invalid. A further appeal to the High Court concluded that the process was invalid.
35. There are currently an estimated 1,000 charges for driving while suspended on “hold” in District Courts, awaiting judgments on this matter by higher courts.
36. It is possible that further appeals, following the High Court finding, could be made. However, the suspension periods that could be challenged have already been served. The basis of appeal is more likely to be additional penalties imposed on a few persons who drove during a period in which they believed themselves to have been suspended.
37. An effective delegation to the NZ Police is now in place. There have been further challenges to the NZ Police service following the High Court decision. However, section 90 does not describe the process that is actually in place – that either the NZTA or the NZ Police can create the notice, and that either can serve it.

Objective

38. To give effect to Parliament’s 2005 decision to empower the NZ Police to create and serve notice to a driver who has accumulated more than 100 demerit points in a two year period, advising that person that their licence is suspended for a period of three months.

Proposal

39. That section 90 be amended to allow either the NZ Police or the NZTA to generate the notice of suspension which is to be served to a driver who has accumulated at least 100 demerit points in two years.

Regulatory Impact Analysis

40. This amendment is not a policy change, but clarifies the Act to effect the policy originally intended. There are no additional costs anticipated for either the NZTA or the NZ Police.
41. Clarifying the process may reduce further challenges to NZ Police service, and therefore the impact on NZ Police and court resources.

Recommendation

42. It is recommended that section 90 of the Act be amended to establish that:
 - the NZTA is responsible for recording, on the register, that the person has accumulated 100 demerits and is due to be served a suspension notice
 - the NZTA is to advise the NZ Police of that status (as already happens)
 - either the NZ Police or the NZTA may create a notice, which is to include the content currently listed in section 90(1)
 - any of the parties currently listed in section 90(2) may serve that notice.

Proposal 4 – Reinstating low-powered three-wheeled mopeds as a class of motor vehicle allowed to operate on the road

Status quo and problem definition

43. It is currently not possible to register three wheeled mopeds in New Zealand due to an amendment to the Land Transport Act 1998 made in 2009. The 2009 amendment had the effect of removing the option of ‘mopeds’³ (those vehicles having an engine size of less than 50 cc or equivalent electric power) from being registered if they had three wheels (i.e. LB class vehicles).
44. The LB class of vehicle is an internationally recognised class of vehicle that describes three-wheeled mopeds. The NZTA receives regular requests to register LB class vehicles, which they are forced to decline, but there is no obvious reason for this class not being allowed in New Zealand. The absence of the LB class is now affecting the testing and potential uptake of innovative, lightweight autonomous vehicles in New Zealand.

Objective

45. To enable the registration of LB class, three-wheeled mopeds for use on New Zealand roads.

Proposed Solution

46. To amend the definition of mopeds in the Land Transport Act 1998 to again include three-wheeled mopeds.

Regulatory Impact Analysis

47. There is little documentation around the reason the Act was amended in 2009 contained in the materials prepared for the amendment Bill.
48. The amendment appears to have been made in response to concerns that people were illegally registering unsafe, higher-powered three-wheeled vehicles as LB class mopeds. This was reported to have been done to avoid having a safety inspection when the vehicle was registered and possibly to reduce registration and ACC fees. The change to the Act ensured all high-powered three-wheeled mopeds were subject to an inspection before registration, but prevented registration of LB class mopeds. There is no evidence that the change addressed a specific concern with actual LB class mopeds.

³ **moped**—

(a) means a motor vehicle (other than a power-assisted pedal cycle) that has—

(i) 2 wheels; and

(ii) a maximum speed not exceeding 50 kilometres per hour; and

(iii) either—

(A) an engine cylinder capacity not exceeding 50 cc; or

(B) a power source other than a piston engine; and

(b) includes a motor vehicle running on 3 wheels if the vehicle—

(i) was registered before paragraph (a) came into force; and

(ii) falls within the definition of moped in section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

49. Since 2009, Land Transport Rule: Vehicle Standards Compliance 2002 has been amended to require all two-wheeled mopeds (i.e. LA class) to be inspected and have a vehicle identification number (VIN) fitted before being registered.
50. The concerns with three wheeled vehicles that the 2009 amendment was apparently intended to address are now addressed by the changes to the 2002 Compliance Rule. That change ensures that, if they are again recognised, LB class mopeds would be required to have a safety inspection and a VIN fitted before being registered. The changes also ensure larger vehicles are not incorrectly registered as LB class vehicles.
51. Because existing LB class vehicles remained in service, relevant Land Transport Rules have continued to include reference to this class. No rules have been identified that would require amendment to accommodate the reinstatement of class LB vehicles.
52. There are no Bill of Rights, fiscal, or industry implications for this proposal.

Recommendation

53. To amend the definition of 'moped' in the Land Transport Act 1998 to enable LB class, three-wheeled mopeds to be registered for use on New Zealand roads.
54. To make any consequential amendments to Land Transport Rules to include class LB mopeds if required

Improve operations

55. There are four proposed amendments that will improve how the Act will work.
 - Simplifying the requirement to provide a summary of the procedure to transfer liability on a stationary vehicle infringement notice
 - Correcting an error to allow vehicle seizure and impoundment warrants signed by justices of the peace or registrars
 - Making electronic forms of vehicle licensing lawful
 - Accounting for bank charges associated with payment of road user charges by credit card (this proposal is covered in a separate regulatory impact statement and does not appear in this paper)

Proposal 5 – Simplifying the requirement to provide a summary of the procedure to transfer liability on a stationary vehicle infringement notice

Status quo and problem definition

56. The Land Transport Amendment Act 2015 required stationary vehicle infringement notices to “include a summary of the provisions of section 133A” setting out the procedure for transferring liability to the appropriate person. This has significantly increased the length of the infringement notice that is left on parked vehicles.
57. Before the Land Transport Amendment Act 2015, no information about section 133A was provided with the infringement notice because the person who receives the infringement notice is very likely to have committed the offence. However, a reminder notice, including detailed information about the liability transfer procedure, is posted to the registered person if the infringement is neither paid nor challenged.

Objective

58. To reduce costs associated with producing and serving stationary vehicle infringement notices.

Proposal

59. Section 140(2)(d) should be amended to only require the inclusion of a very brief outline of the process for transferring the liability associated with a stationary vehicle infringement.

Regulatory Impact Analysis

60. Costs should reduce for organisations issuing stationary vehicle infringement notices, due to the significantly shorter length of the infringement notices.
61. There are unlikely to be problems from not including a full summary of the procedure for transferring liability, given that the reminder notice includes detailed information about the liability transfer procedure.

Recommendation

62. It is recommended that section 140(2)(d) be amended to require only a very brief outline of the process for transferring the liability associated with a stationary vehicle infringement.

Proposal 6 – Allowing a stationary vehicle infringement notice to be served by providing it to a person who is apparently in charge of the vehicle at that time

Status quo and problem definition

63. Section 139(2) of the Act sets out how a stationary vehicle infringement notice may be served. It may be done:
 - by attaching it, or a copy of it, to the vehicle to which the notice relates
 - by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence
 - by sending it, or a copy of it, by post addressed to him or her at his or her last known place of residence or business or postal address
 - if the person is a holder of a land transport document, by serving it, or a copy of it, by post on that person at his or her last address for service provided for the purposes of that document.
64. However, approximately one percent of stationary vehicle infringement notices are provided directly to a person who is apparently in charge of the vehicle at that time. Such a person may not meet the requirements of “the person who appears to have committed the infringement offence” as they may be a passenger or third party. As such, service conducted in this way may be invalid.

Objective

65. To enable a stationary vehicle infringement notice to be served by providing it to a person who is apparently in charge of the vehicle at that time.

Proposal

66. Section 139(2)(a) should be expanded to indicate that service on the alleged offender and the registered person for a stationary vehicle offence occurs when the notice is attached to the vehicle or when it is handed to a person who is apparently in charge of the vehicle at that time.

Regulatory Impact Analysis

67. Currently, enforcement officers are expected to ignore any person apparently in control of the vehicle, if that person did not appear to commit the offence, and attach the stationary vehicle infringement notice to the vehicle as per section 139(2)(a) of the Act. There may be health and safety risks for infringement officers due to the risk of antagonising the person apparently in control of the vehicle by ignoring them.
68. The risk that the person who is apparently in charge of the vehicle at that time is a third party, and not liable for the offence, is mitigated by the requirement to send out a reminder notice to the registered person.

Recommendation

69. It is recommended that section 139(2)(a) be expanded to allow service for a stationary vehicle infringement to be effected by providing a stationary vehicle infringement notice directly to a person who is apparently in charge of the vehicle at that time.

Proposal 7 – Resolving an error to allow vehicle seizure and impoundment warrants signed by issuing officers

Status quo and problem definition

70. Section 119(5) of the Act applies for the application of a search warrant in respect of matters relating to sections 96, 96A, or 123 of the Act. This subsection was amended on 1 October 2012, by section 268(4) of the Search and Surveillance Act 2012 (2012 No 24).
71. Unfortunately, when making the amendment, reference to "Judge" in the latter part of the subsection appears to have been overlooked and therefore such warrants are subject to a higher threshold than applications for most other warrants of a similar nature.
72. The NZ Police have queried why vehicle seizure and impoundment warrants must be signed by a Judge. In their view, these warrants should be able to be signed by a Justice of the Peace or Registrar, as is the case for other warrants.

Objective

73. To amend section 119(5) of the Act to allow vehicle seizure and impoundment warrants to be signed by Justices of the Peace and Registrars.

Proposal

74. For consistency, amend reference to "Judge" in section 119(5) to "issuing officer".

Regulatory Impact Analysis

75. This proposal amends an oversight from a previous legislative amendment. As such there are no Bill of Rights, fiscal, or industry implications.

Recommendation

76. It is recommended that section 119 (5) of the Act be amended to allow vehicle seizure and impoundment warrants to be signed by justices of the peace or registrars.

Proposal 8 – Making electronic forms of vehicle licensing lawful

Status quo and problem definition

77. Part 17 of the Act, and the accompanying Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011 requires that a vehicle licence label be in a physical form that has to be physically displayed.
78. Currently, this requirement does not allow for proof of motor vehicle licensing to be demonstrated electronically. On the other hand, section 18 of the Road User Charges Act 2012 allows for vehicles subject to the payment of road user charges to display proof of road user charges (RUC) licensing electronically.

Objective

79. To make electronic forms of vehicle licensing lawful.

Proposed Solution

80. To amend section 269(1) and 242(1) of the Act to allow for regulations to be made to provide for electronic licences and the electronic display of a motor vehicle licence.

Regulatory Impact Analysis

81. The move towards a greater use of electronic licensing is inevitable, however before this occurs in the area of motor vehicle licensing a number of matters need to be considered. Not the least of which is the impact a move to electronic display of proof of licensing would have on enforcement.
82. The electronic technology in use for RUC allows for a single device with a display screen on which a single licence or document can be displayed at any one time. If an enforcement officer needs to check other RUC licences or documents applicable to the vehicle, they need to electronically scroll through the forms until they find the appropriate one. The ability to do so depends on the enforcement officer's ability to access the scrolling function on the device.
83. A number of offences relating to motor vehicle registration and licensing are stationary vehicle offences, meaning parking wardens may enforce them. The majority of these offences are for operating an unlicensed motor vehicle (regulation 77(2)(a) Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011).

84. Regulation 91(2) of the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011 allows enforcement officers and parking wardens to presume a vehicle is unlicensed if it is not displaying a current licence label⁴.
85. If an electronic form of a licence label was approved and the vehicle had other forms of electronic licensing, then, unless the licence label was constantly displayed, an enforcement officer or parking warden could rely on the presumption in regulation 91(2) and issue a stationary vehicle infringement offence notice for operating an unlicensed motor vehicle.
86. To avoid paying the \$200 infringement fee for operating an unlicensed vehicle, an operator must send proof of the vehicle licence to the enforcement authority. If electronic licence displays became common, this would have the potential to assist both the operator and the enforcement authority.
87. It would seem prudent to at least include in the Act the ability to use an electronic form of motor vehicle licensing in the future once the operational issues have been addressed.
88. There are no Bill of Rights, fiscal, or industry implications for this proposal.

Recommendation

89. It is recommended that section 269(1) and 242(1) of the Act be amended to allow for regulations to be made in the future to allow for vehicle licences to be displayed electronically.
90. Make no change at this stage to the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011 to prescribe the form that any electronic motor vehicle licence label might take until the potential implications for ongoing enforcement (including the presumption a vehicle is unlicensed if it is not displaying a current licence label) are resolved.

Proposal 9 - Allowing recovery of bank charges associated with payments by credit card

91. This proposed amendment (allowing recovery of bank charges associated with payments by credit card) has a stand-alone Regulatory Impact Statement.

Improving enforcement

92. There are three amendments that will improve enforcement.
 - Aligning the maximum fine for a traffic offence provided for in the Act with infringement fees specified regulations made under the Act
 - Enabling Automated Enforcement of illuminated lane closure signs
 - Enabling multiple images for speed infringement cameras

⁴ Section 91(2) of the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011 reads: *"The fact that a motor vehicle is operated without having a valid licence affixed to and displayed on it in accordance with these regulations is, in the absence of evidence to the contrary, sufficient evidence that the motor vehicle is not licensed in accordance with Part 17 of the Act."*

- Clarifying certain Police enforcement powers

Proposal 10 – Aligning the maximum fine for breach of a bylaw offence provided for in the Act with infringement fees in provisions already in the Act

Status quo and problem definition

93. A number of bylaws were introduced by the former Transit New Zealand, made under the authority of the Transit New Zealand Act 1989. Under the Transit New Zealand Act 1989, the maximum penalty for a breach of those bylaws was a fine not exceeding \$500. The bylaws are now deemed to have been made under the Government Roadway Powers Act 1989, section 109(1) of which again sets the maximum penalty as a fine not exceeding \$500. Bylaws are also made under section 22AB of the Act, which also sets the maximum penalty for breach at \$500.
94. Schedule 1 to the Land Transport (Offences and Penalties) Regulations 1999 sets the infringement fee for a breach of a bylaw (other than for exceeding the speed limit, parking, or where an infringement fee has been set) at \$750 (or such lesser amount as may be set by bylaw). Many of the bylaws made have not set an infringement fee at less than \$750 producing a situation where the infringement fee is 50 percent greater than the maximum fine.
95. Therefore, there is an inconsistency between the maximum fine of \$500 for a breach of a bylaw made under section 109(1) of the Government Roadway Powers Act 1989 and section 22AB(1) of the Land Transport Act and the amount of the infringement fee payable for a breach of the bylaw.
96. There is a further inconsistency with the maximum penalty applicable to breaches of the Land Transport (Road User) Rule 2004 as prescribed in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999, which is set at \$1000.

Objective

97. To make the statutory fines consistent with the infringement fee for breaching a bylaw.

Proposal

98. Increase the maximum statutory fine to \$1,000.

Regulatory Impact Analysis

99. Increasing the maximum fine to \$1,000 would not only address the inconsistency, it would also bring the fine in line with the maximum penalty applicable to breaches of the Land Transport (Road User) Rule 2004 as prescribed in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999.
100. Lowering the infringement fee of \$750 (or such lesser amount as may be set by bylaw) for breaching any bylaw involving the use of vehicles, other than setting speed limits, or parking prohibition or restriction, or for any infringement fee otherwise specified in Schedule , may result in significant unintended consequences for other bylaws set by other road controlling authorities.
101. There are no Bill of Rights, fiscal, or industry implications for this proposal.

Recommendation

102. It is recommended that section 22AB(1)(b) of the Act and section 109(1) of the Government Rounding Powers Act, if within the scope of the Land Transport Amendment Bill, be amended by increasing the maximum fine to \$1,000.

Proposal 11 – Enabling automated enforcement of specific traffic signs

Status quo and problem definition

103. The NZTA is making increased use of active management systems for high volume roads to ensure safe traffic flows. These manage the roadway when an incident or road crash creates a hazard for any vehicles or persons involved, emergency responders, and any other vehicles arriving at the scene.
104. Variable message signs play a similar role, by directing vehicles that they are to pull in for inspection or leave the route because they are too large for the upcoming section of road.
105. The ability to signal lane closures, or other directions and have drivers comply, is a critical component of these systems.
106. Two “smart motorway” projects are currently under development. These projects will be actively managed roads and require effective legislation that enforces compliance with lane closures and route restrictions. The projects are:
- the Ngauranga to Aotea Quay section of State Highway 1 in Wellington
 - the Waterview tunnel connection of State Highway 20 in Auckland.
107. Traditional methods of managing high volume roads are not suitable for these projects. Neither has a suitable area for the NZ Police to station patrol cars; nor is a NZ Police presence seen as an efficient use of NZ Police resources. Automated enforcement is also favoured because it is able to respond more quickly to any incident that places road users in danger.

Objective

108. To ensure drivers on actively managed roads recognise and comply with any lane closure sign.

Proposal

109. Amend the definition of “moving vehicle offence” in section 2 of the Act to include illuminated lane closure signs and variable message signs that direct a vehicle – this enables automated enforcement.

Regulatory Impact Analysis

110. Most international compliance models agree that actual or perceived enforcement by the NZ Police encourages drivers to observe speed and lane sign requirements.
111. Lane closure signs and variable message signs are only installed along high volume routes. To be an effective mitigation measure, there must be immediate compliance, especially in the Waterview tunnel project, where lane closures and directive signs prevent additional vehicles entering a tunnel where a crash has occurred.

112. A structured public information campaign will also be provided so that drivers are informed of their responsibilities.
113. The proposal is limited to adding lane closure enforcement and directive messaging signs to the existing purposes of automated enforcement such as speed detection. This will provide an element of future proofing for the effective use of active management systems on intelligent highway systems.
114. There are no Bill of Rights or industry implications for this proposal.

Recommendation

115. It is recommended that the definition of “moving vehicle offence” in section 2 of the Act should be amended by adding a reference to illuminated lane closure signs and variable message signs that direct a vehicle.

Proposal 12 - Clarifying certain Police enforcement powers under section 121 of the Act

Status quo and problem definition

116. Section 121 of the Act allows the Police to exercise certain powers in the interests of public safety, such as forbidding drivers to drive and immobilising vehicles by removing ignition keys. These powers are extensively used by the Police to prevent drivers who have failed an alcohol or drug test from driving for several hours. There is a drafting issue with the current provisions that should be corrected to ensure that no issues arise with the exercise of these powers.
117. These powers are supposed to apply where:
 - the person is incapable of having proper control of the vehicle because of a mental or physical condition
 - the person’s performance on a Compulsory Impairment Test is unsatisfactory (under the current drug testing regime, a Compulsory Impairment Test is used to assess whether drivers are impaired)
 - the person failed or refused to undergo the Compulsory Impairment Test.
118. However, when section 121 was drafted, a mental or physical condition qualification was mistakenly applied to all three of the situations described above, not just the first situation. An unsatisfactory performance on the Compulsory Impairment Test or a failure or refusal to undergo the Compulsory Impairment Test should be enough in their own right to enable an enforcement officer to exercise the enforcement powers under section 121.

Objective

119. To ensure that Police powers under section 121 can be applied as intended.

Proposal

120. Clarify how Police powers are to be exercised under section 121 of the Act by restricting a mental or physical condition qualification to the case where a person in charge of the motor vehicle is incapable of having proper control of the vehicle.

Regulatory Impact Analysis

121. This proposed change will address a drafting issue and will not alter policy. There are no Bill of Rights, fiscal, or industry implications for this proposal.

Recommendation

122. It is recommended that section 121(1) be amended so that the mental or physical condition qualification is restricted to the case in which the person in charge of the motor vehicle is incapable of having proper control of the vehicle.

Consultation

123. The proposals in this paper were identified by the NZ Police, the NZTA, Ministry of Justice and the Ministry of Transport. The majority of these miscellaneous issues identified for amendment in this paper are of a minor nature and no prior sector or public consultation has occurred. These matters will be subject to full public consultation as part of the parliamentary Select Committee process.

124. The NZ Police, the NZTA and the Ministry of Justice were offered the opportunity to comment on the contents of this regulatory impact statement. Their feedback has been incorporated into the final document.

Implementation

125. Any changes agreed by Cabinet will require amendment to the Act. A Land Transport Amendment Bill is proposed for introduction in 2016, and would be a suitable vehicle for the proposed changes.

Monitoring, evaluation and review

126. The Ministry of Transport will monitor the effectiveness of the miscellaneous amendments proposed in this paper, as part of its wider stewardship of the legislation that it administers.