



Small passenger services supporting regulations

Consultation Document

2017



Ministry of **Transport**

TE MANATŪ WAKA

New Zealand Government

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Ministers' foreword

We are pleased to release this public consultation document on the small passenger services supporting regulations.

In order to implement the changes contained in the Land Transport Amendment Bill, currently being considered by Parliament:

- a cost-sharing rate for third party facilitated carpooling needs to be set; and
- the new offences and penalties regulations for the Land Transport Rules finalised.

This consultation document, therefore, addresses more technical issues around the implementation of the new system.

The Government is a strong supporter of innovations that enable all New Zealanders and businesses in New Zealand, traditional or otherwise, to enjoy the benefits of new technology. The changes being implemented through the Land Transport Amendment Bill and associated Land Transport Rules aim to ensure New Zealand's regulatory environment is both fit for purpose and flexible enough to accommodate new technologies.

This consultation document sets out the background of the small passenger services review. More specifically, it outlines three options for a cost-sharing rate, including the Ministry of Transport's preferred option and rationale for this. It also details the new offences and penalties regulations.

We are asking for feedback from the sector and the public on the three options under consideration for a cost-sharing rate for carpooling, and the three new offences and penalties. This is to inform Government's decisions on the regulations.

We invite you to submit your thoughts, and we look forward to hearing your views.

Hon Simon Bridges

Minister of Transport

Hon Craig Foss

Associate Minister of Transport

How to be involved in the consultation

We seek your views before deciding what the cost-sharing rate should be for facilitated carpooling and agreeing the offences and penalties regulations

This consultation document seeks your feedback on options for setting a cost-sharing rate for facilitated carpooling and offences and penalties regulations needed to support the proposed Land Transport Rule amendments.

The paper presents three options for the cost-sharing rate, and identifies three new offences and penalties. Before the Government makes decisions, we want your views. We would like to know which option you support for the cost-sharing rate, and whether you support the proposed offences and penalties regulations or have other views.

How to send us your feedback

There is a submission form separate to this consultation paper for you to use in providing your feedback. Please note that some sections do not have accompanying questions. To provide your view, you can:

- complete an online submission, or send us a written submission using the submission template, both available at: <http://www.transport.govt.nz/land/small-passenger-services-review/response-form-small-passenger-services>.

If you choose to provide a written submission, either email it to spssubmissions@transport.govt.nz with the word “submission” in the subject line, or post it to:

- Small Passenger Services Submissions, PO Box 3175, Wellington 6140.

The deadline for submissions is **5pm, Friday, 3 February 2017**.

How we will use your submission

We will consider your responses, along with other responses from the public, the

small passenger service sector, and other interested organisations, to develop recommendations for the Government’s consideration.

A summary of submissions will be published on the small passenger services page on:

<http://www.transport.govt.nz/land/small-passenger-services-review/response-form-small-passenger-services>. This summary may include the names of the organisations or individuals that make submissions. It will not include their contact details.

Your submission may be made public

Once you make your submission, anyone can ask for it under the Official Information Act 1982.

If you don’t want anything in your submission released, you should let us know what material you want withheld, and why, at the time you make your submission.

Under the Official Information Act, we decide whether to release or to withhold material and can only withhold information in accordance with the provisions set out in that Act. Further information is available at www.legislation.govt.nz.

How to contact the review team

You can contact the review team at spssubmissions@transport.govt.nz.

Next steps

We will receive feedback from you on behalf of the Minister of Transport and the Associate Minister of Transport.

We will take into consideration all views submitted on the consultation paper. We will then provide our advice to the Government on the best rate for cost-sharing and the appropriate offences and penalties regulations.

Section 1 – Background and overview

Background to the small passenger services review

The Government's review of the small passenger services system sought to determine how New Zealand's regulatory environment for the sector could continue to be fit for purpose and flexible enough to accommodate new technologies.

The review identified that a single class of small passenger services, where all services operate under the same rules, would provide free and fair competition and enable providers to respond to supply and demand.

The proposed system will:

- impose a lower level of cost on the small passenger services sector, while ensuring a strong level of safety and consumer protection
- create a single class of small passenger services to help the sector be responsive to supply and demand
- have the lowest level of cost to achieve the regulatory objective
- have transparent transport costs
- give people the ability to make the best choice for them
- enable improved customer services
- mitigate safety risks.

Overview

Government made decisions on the small passenger services review in April 2016. Following these decisions, the Land Transport Amendment Bill (the Bill) was introduced to Parliament on 12 September 2016. Proposed changes to the associated Land Transport Rules (the Rules) were consulted on in a parallel process by the New Zealand Transport Agency (NZTA).

However, in order to implement the changes contained in the the Bill a cost-sharing rate for third party facilitated carpooling needs to be set, and the new offences and penalties regulations for breaching the Rules finalised.

Three options for a cost-sharing rate for third party facilitated carpooling are provided below. The options have been assessed against the extent to which each option enables carpooling, and their compliance impacts. Each option enables carpooling and thereby reduces congestion and vehicle emissions. The options are:

- Option 1: A variable cost-sharing rate depending on the number of occupants in the car (the Ministry's preferred option)
- Option 2: Cost-sharing maximum rate set at the full Inland Revenue Department's mileage rate (the IRD rate) for reimbursing employees
- Option 3: Cost-sharing maximum rate set at half of the IRD rate for reimbursing employees.

This consultation document also proposes three new offences to support the relevant Land Transport Rules. The new offences are:

- a small passenger services operator must comply with duties in relation to drivers
- a person must not cause or permit a small passenger service driver to accept hire in a specified area unless it is covered by an exception and that exception complies with all the prescribed requirements
- a small passenger service driver must not accept hire in a specified area unless it is covered by an exception and that exception complies with all the prescribed requirements.

Section 2 – Setting of a cost-sharing rate for facilitated carpooling

Problem definition

The problem definition for the setting of the maximum rate per kilometre for third party facilitated carpooling is: what maximum rate will increase the uptake of third party facilitated carpooling the most. Achieving this will allow third party facilitated carpooling to fully contribute to the government’s objective for reduced congestion and vehicle emissions.

Current situation

The government has already made a policy decision to regulate, for the first time, third party facilitated carpooling. Third party facilitated carpooling is different from standard (traditional) carpooling.

Traditional carpooling is where a driver who is making a trip for their own purposes (as opposed to a taxi where the trip is made solely to meet the needs of the passenger) picks up one or more passengers (who are travelling to a similar destination). The driver is reimbursed on a cost-sharing basis, but the driver can not be reimbursed for the cost of their time.

Third party facilitated carpooling is an emerging part of the small passenger services industry in New Zealand. In the past, the ability to connect drivers and passengers has been a significant barrier to carpooling. However, modern technology can overcome this barrier and some organisations are entering the market as third party carpooling facilitators.

Third party facilitators can charge passengers a fee to connect with carpool drivers and provide drivers with a part of that fee to contribute to some of the driver’s costs.

The Bill, by amending the definition of “cost-sharing arrangement” in the Land Transport Act 1998, provides for the Minister of Transport to set a maximum rate per kilometre for third party facilitated cost-sharing arrangements. Third party facilitated carpooling services will need to work within this maximum rate, otherwise they will be subject to the same higher levels of regulation that apply to other small passenger service operators and drivers – such as requirements for drivers to hold a Passenger endorsement.

The maximum cost-sharing rate per kilometre will not apply to traditional carpooling, although traditional carpooling is limited to cost-recovery and will continue to be an exempt service.

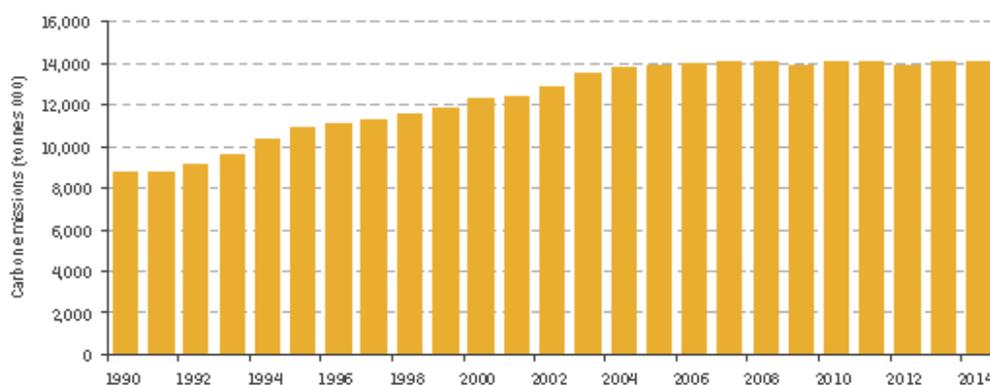
Government objectives

In deciding how it would regulate third party facilitated carpooling, the Government recognised the potential, in the longer term, for third party facilitated carpooling to contribute to a reduction in both congestion and vehicle emission levels. Carpooling in general, can contribute to the reduction in both by increasing the average number of people in each vehicle per trip.

Greenhouse gas emissions from the transport sector make up about 20 percent of New Zealand’s total greenhouse gas emissions each year. The potential for more people in less cars has the potential to reduce vehicle emissions.

The Government does not have a target for congestion levels; however, New Zealand is committed to reducing greenhouse gas emissions to 30 percent below 2005 levels by 2030.

Figure 6 – Carbon emissions from road transport 1990–2013 (tonnes 000)



Section 2 continued - Options for a cost-sharing rate for carpooling

Options and impact analysis

The status quo (no regulation for a maximum rate per kilometre for third party facilitated cost-sharing arrangements) is not an option in this instance as the Government has already taken a decision to regulate for a maximum rate.

Regulating for a maximum rate requires the establishment of the running costs for a vehicle. The IRD rate is used for tax calculations and covers the cost of operating a car. It is currently set at 72 cents per kilometre. The IRD rate is based off the Automobile Association's calculations associated with vehicle running costs.

Although the IRD rate was developed for taxation purposes, it provides an appropriate basis to establish vehicle running costs for third party facilitated carpooling.

Achieving the Government's objectives through increased use of third party facilitated carpooling will require significant behavioural shifts on the part of both drivers and passengers.

The three options below are compared in terms of the extent to which they will promote the achievement of the objectives (to enable carpooling and thereby reduce congestion and vehicle emissions). This includes an assessment of an option's impact on both drivers and passengers.

The various impacts of each option are rated on a 1 to 3 scale (where 1 has a low level of impact and 3 the highest level of impact) relative to the other options.

The three options for the maximum rate per kilometre for third party facilitated cost-sharing arrangements are:

- **Option 1:** Cost (IRD rate per kilometre) shared equally by driver and all passengers
- **Option 2:** Driver reimbursed for 50 percent of the IRD rate per kilometre
- **Option 3:** Driver reimbursed for full IRD rate per kilometre

Option 1: Cost shared equally by driver and all passengers

Under this option the vehicle operating costs (up to a maximum of 72 cents per kilometre) would be shared equally by the driver and passengers. So if there was one passenger, the driver would receive up to $\frac{1}{2}$ of the 72 cents per kilometre. If there were three passengers, the driver would receive up to $\frac{3}{4}$ of the 72 cents per kilometre.

Impact: This option most strongly enables drivers to take multiple passengers (as they receive a higher level of reimbursement for vehicle operating costs). At the same time, this option strongly enables multiple passengers to travel in a shared vehicle (as this reduces their individual reimbursement cost to the driver).

Compliance with this option would be relatively straightforward for operators, and for the NZTA which needs to be able to determine that a driver did not receive more than the maximum cost-sharing rate. Technology, such as operator apps, can be utilised to simplify this task.

Conclusion: Overall, for the three options, Option 1 most strongly enables drivers and passengers to carpool and thereby reduce congestion and vehicle emissions. This option shares the travel costs equally between the driver and passenger(s). The higher the number of passengers, the lower the cost for the driver and each passenger. This option would also produce

the highest level of benefits for other road users (through reduced congestion) and communities (through reduced vehicle emissions).

Option 2: Driver reimbursed for full IRD rate per kilometre

This option would enable a driver to be reimbursed up to the maximum of 72 cents per kilometre (the driver could recover the full vehicle operating costs as established under the IRD rate).

Impact: This option strongly enables drivers to participate in third party facilitated carpooling, but it only motivates them to take one passenger. Conversely, this option does not enable passengers to participate well, as they are likely to have to pay a high rate per kilometre. Overall, this option does not strongly enable carpooling.

Compliance with this option would be relatively straightforward for operators, and for the NZTA that needs to be able to determine that a driver did not receive more than the maximum cost-sharing rate. Technology, such as operator apps, can be utilised to simplify this task.

Conclusion: Overall, this option transfers the driver's costs to the passenger, and the passenger does not receive any net benefit (unless any other transport options available to the passenger are more expensive).

This option also produces a low level of benefit for other road users (through reduced congestion) and communities (through reduced vehicle emissions). Of the three options, this option is the least enabling for reducing congestion and vehicle emissions.

Option 3: Driver reimbursed for 50 percent of the IRD rate per kilometre

This option would enable a driver to be reimbursed up to a maximum of 36 cents per kilometre (the driver could recover 50 percent the full vehicle operating costs as established under the IRD rate). This option provides an arbitrary 50/50 split of the costs of the driver and passenger(s).

Impact: This option moderately enables drivers to participate in third party carpooling as they receive up to half of the highest possible rate per kilometre. However, similar to option 2, this option only motivates the driver to take one passenger. The lower rate per kilometre strongly enables passengers.

Compliance with this option would be relatively straightforward for operators, and for the NZTA that needs to be able to determine that a driver did not receive more than the maximum cost-sharing rate. Technology, such as operator apps, can be utilised to simplify this task.

Conclusion: Overall, this option transfers half of the driver's costs to a passenger(s), while the passenger benefits by being able to travel for half the cost of a vehicle trip. However, like option 2, this option only motivates the driver to take one passenger. This option also produces a medium level of benefits for other road users (through reduced congestion) and communities (through reduced vehicle emissions).

Of the three options, Option 3 is seen as moderately enabling the reduction of congestion and vehicle emissions.

Conclusions and recommendations

The table below summarises the results of the earlier options analysis. The projected impacts of each of the options were ranked relatively against the assessment criteria, with a higher score representing a better projected outcome.

	Congestion impact	Compliance impact	Environmental impact	Total
Option 1: Cost shared equally by driver and all passengers	3	2	3	8
Option 2: Driver reimbursed for full IRD rate per kilometre	1	2	1	4
Option 3: Driver reimbursed for 50 percent of the IRD rate per kilometre	2	2	2	6

Ministry preferred option

Overall, the Ministry of Transport considers that, Option 1: Cost shared equally by driver and all passengers, most strongly enables the Government to achieve the objectives of reduced congestion and vehicle emissions.

Option 1 allocates the driver's costs for the trip equally between the driver and the number of passengers in the vehicle.

This has the effect of enabling the driver to take more passengers (as they are reimbursed for a higher percentage of the vehicle's operating costs) and at the same time enabling passengers to share a trip with other passengers (as this reduces their trip costs).

Together, these create the conditions to increase the average number of people in

a vehicle per trip – thereby reducing congestion and vehicle emissions.

Next steps

The final decision on the preferred option will be taken by the Ministers of Transport following the completion of the public consultation process in early 2017. The Minister of Transport's decision will be notified in the Gazette.

The NZTA will be responsible for auditing and investigating third party cost-sharing operators to ensure that they are complying with the maximum cost-sharing rate. The Land Transport Amendment Bill provides the NZTA with the power to suspend an operator's licence where they are not complying with their regulatory requirements.

Section 3 – Offences and penalties

Problem definition

The government's small passenger services reforms, under new transport Rules, need to be supported by appropriate offences and penalties regulations.

Current situation

The government has made specific policy decisions that reform the small passenger services regulatory system. Many of these decisions are being implemented through changes to land transport Rules.

A consequence of the Government's policy decisions is that amendments are needed to the Land Transport (Offences and Penalties) Regulations 1999. Some redundant offences that relate to specific small passenger services (e.g. taxis and private hire) will need to be removed.

At the same time, there will be some new or amended regulatory requirements in the land transport Rules that do not currently have a corresponding offence and penalty in the Regulations.

Objective

The objective for the offences and penalties system is to ensure that regulatory agencies are able to take appropriate enforcement action, when necessary, to ensure compliance, and through that, maintain the overall integrity of the small passenger services system.

Criteria

The offences and penalties system is a tool to promote high levels of regulatory compliance within the small passenger services system. The system should:

- promote voluntary compliance by small passenger services
- enable the regulator to take appropriate enforcement action where there is non-compliance with the regulatory requirements, and through that maintain the integrity of the overall system.

Updated offences and penalties

Changes to update the offences and penalties for small passenger services, to reflect the new system, include amendments to existing offences and some new offences:

- twenty of the existing offences and penalties are retained, some with minor text changes, so they apply to the future single class of small passenger services and drivers
- three new offences and penalties relating to the draft Land Transport: Operator Licensing Rule 2017 are proposed
- other existing offences (many of which related to a specific type of small passenger service, such as taxis or shuttles) that are now redundant will be revoked.

The offences and penalties are listed in the attached table. (This is not an exhaustive list of offences and penalties, as many will be contained in the Land Transport Act 1998.)

The three new offences under the draft Land Transport: Operator Licensing Rule 2017 are set out below.

The three new offences

These three new offences are necessary, as they complement corresponding duties, which have been added into the Rules. If these offences are not adopted, the NZTA would have to go straight to a penalty disproportionate for the offence (such as suspension or revocation of a licence).

The three new offences are:

- small passenger services operator must comply with duties in relation to drivers [under 3.2(1)]. The duties being:
 - a) drivers have a current passenger endorsement on their licence:
 - b) drivers comply with work time requirements:
 - c) drivers have a current driver identification card:
 - d) evidential records are kept of the matters in paragraphs (a) to (d):
 - e) the Agency is advised of any serious improper behaviour by a driver driving for, on behalf, or in connection with the small passenger service:
 - f) if requested, assistance is given to the NZTA and the New Zealand Police in relation to any audits or investigations.
- a person must not cause or permit a small passenger service driver to accept hire in a specified area unless it is covered by an exception and that exception complies with all the prescribed requirements
- a small passenger service driver must not accept hire in a specified area unless it has been covered by an exception and that exception complies with all the prescribed requirements.

In relation to the second and third new offences above, under the draft Rule there is an obligation on operators and drivers to comply with one of two requirements – or that a specified exception criteria, which excludes the need for a vehicle to be fitted with an in-vehicle camera, applies.

The Rule also lists several specialist pre-booked services that do not have to meet the above requirements.

The offences and penalties for the rest of the services under the proposed Operator Licensing Rule remain the same. However, due to redrafting of the rule some offence provisions will be combined into one offence, and some references to the new Rules will be updated.

The level of penalties for the new offences are consistent with the level of penalties generally for existing offences in the Rule.

Table: Offences under the new small passenger services system

Offence	Maximum penalty on conviction for an individual	Maximum penalty on conviction for body corporate	Infringement fee for individual	Infringement fee for body corporate
Land Transport Rule: Operator Licensing 2017				
2.4 Holder of transport service licence must notify the Agency of specified changes, and within specified time	\$1000	\$5000	\$200	\$1000
2.5(2) Failure to display current transport service licence card	\$2000	\$10,000	\$400	\$2000
2.7(3) Licensee must return recovered original licence or other document for which a duplicate has been issued	\$1000	\$5000	\$200	\$1000
2.8(1) Licensee must return amended, revoked, or surrendered licence and any associated transport service licence card within 7 days of a request by the Agency	\$2000	\$10,000	\$400	\$2000
2.8(2) Failure to surrender a transport service licence card on demand to an enforcement officer	\$2000	\$10,000	\$400	\$2000
2.10 Use special interest vehicle in a transport service	\$2000	\$10,000	\$400	\$2000
3.2(1) Small passenger services operator must comply with duties in relation to drivers	\$4000	\$20,000	\$750	\$3750
3.3 (1) Small passenger service licence holder must keep a record of complaints	\$4000	\$20,000	\$750	\$3750
3.3(2) Entry in the record of complaints must be kept for 2 years	\$2000	\$10,000	\$400	\$2000
3.3(3) Record of complaints must be available for inspection by any enforcement officer for any audit or investigation	\$2000	\$10,000	\$400	\$2000
3.4(1) Person must not drive a vehicle used in a small passenger service, except for an ambulance operated by an ambulance service, unless holding and displaying a current driver identification card	\$2000	\$10,000	\$400	\$2000
3.4(6) Small passenger service licence holder, and every driver driving under that licence must ensure that the driver's identification card is compliant and is displayed in the vehicle	\$1000	\$5000	\$200	\$1000
3.5(1) Driver of a small passenger service vehicle may only take up position at an area designated for small passenger service vehicles if the vehicle is available for hire	\$1000	\$5000	\$200	\$1000
3.5(2) Small passenger service driver must accept first hire offered unless lawful reason to refuse the hire or the small passenger service that the driver	\$2000	\$10,000	\$400	\$2000

is driving for, on behalf of, or in connection with is a small passenger service that only provides services for registered passengers				
3.5(4) Small passenger service driver must use most advantageous route to hirer's destination, unless hirer requests otherwise	\$2000	\$10,000	\$400	\$2000
3.5(5)(a)(b)(c) Driver of a small passenger service vehicle must agree the basis or scale of the fare Driver of a small passenger service vehicle fails to inform correct basis or scale of fare when requested	\$2000	\$10,000	\$400	\$2000
3.5(6) Small passenger service driver must, at end of hire, demand no more than exact fare and other charges, less any prepayment	\$2000	\$10,000	\$400	\$2000
3.6(6) Small passenger service driver must, on request by a hirer, issue an itemised receipt that indicates specified particulars	\$2000	\$10,000	\$400	\$2000
Person must not cause or permit a small passenger service driver to accept hire in specified area unless covered by the exception in 3.7 and all the prescribed requirements are complied with Small passenger service driver must not accept hire in specified area unless covered by the exception in 3.7 and all the prescribed requirements are complied with	\$2000 \$2000	\$10,000	\$400 \$400	\$2000
3.8(2) Person must not cause or permit small passenger service driver to accept hire in specified area unless small passenger service is fitted with an in-vehicle security camera system that complies with prescribed requirements 3.8(3) Small passenger service driver must not accept hire in specified area unless the small passenger service is fitted with an in-vehicle security camera system that complies with prescribed requirements	\$2000 \$2000	\$10,000	\$400 \$400	\$2000
3.10(2) Person must not access material in an in-vehicle security camera system unless they are a person described in 3.10(2)(a) or 3.10(2)(b)	\$10,000	\$10,000	\$2000	\$2000
Land Transport (Worktime and Logbooks) Rule 1999				
2.1(1) Small passenger service driver must not drive during rest break	\$2000	\$10,000	\$400	\$2000

Section 4 – Response Form

RESPONSE FORM: *Small passenger services supporting regulations cabinet paper*

You do not need to fill out every section.

How we will use your submission

We will consider your responses, along with other responses from the public, the small passenger service sector, and other interested organisations, to develop recommendations for the Government's consideration.

A summary of submissions will be published on the small passenger services page on <http://www.transport.govt.nz/land/small-passenger-services-review/response-form-small-passenger-services>. This summary may include the names of the organisations or individuals that made submissions. It will not include their contact details.

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Setting the cost-sharing rate

Question 1 – Which of the three options for a cost-sharing rate for carpooling do you think will be best for New Zealand’s small passenger services system?

The Ministry of Transport’s review team concluded that option 1 would be best for New Zealand’s small passenger services sector in the future. Do you agree?

Yes – Option 1 –

No – If you do not agree, tick the option below that you think would be best

Option 2 –

Option 3 –

Why do you prefer this option over Option 1?

Offences and penalties regulations

Question 2 – Do you agree with the identified three new offences and penalties for breaching Land Transport Rules that will apply to the small passenger services sector in the future?

- a small passenger services operator must comply with duties in relation to drivers

Maximum penalty on conviction for an individual	Maximum penalty on conviction for body corporate	Infringement fee for individual	Infringement fee for body corporate
\$4000	\$20,000	\$750	\$3750

Yes

No – if you disagree with this new offence and its corresponding penalty please explain why

- a person must not cause or permit a small passenger service driver to accept hire in specified area unless it has been granted an exception and that exception complies with all the prescribed requirements

Maximum penalty on conviction for an individual	Maximum penalty on conviction for body corporate	Infringement fee for individual	Infringement fee for body corporate
\$2000	\$10,000	\$400	\$2000

Yes

No – if you disagree with this new offence and its corresponding penalty please explain why

- a small passenger service driver must not accept hire in specified area unless it has been granted an exception and that exception complies with all the prescribed requirements

Maximum penalty on conviction for an individual	Maximum penalty on conviction for body corporate	Infringement fee for individual	Infringement fee for body corporate
\$2000	–	\$400	–

Yes

No – if you disagree with this new offence and its corresponding penalty please explain why

Offences and penalties regulations

Question 3 – *Do you agree with the offences and penalties that only have minor changes (listed in Table 1, pages 10-11 of the consultation document) for breaching Land Transport Rules that will apply to the small passenger services sector in the future?*

Yes

No – if you disagree please say which offences and penalties you do not agree with explain why below

Question 4 – *Do you have any general comments on the proposals in the Small passenger services supporting regulations – Cabinet paper?*

Comments