

In Confidence

Office of the Minister of Transport  
Chair, Cabinet Legislation Committee

## **LAND TRANSPORT (NZTA) LEGISLATION AMENDMENT BILL: APPROVAL FOR INTRODUCTION**

### **Proposal**

1. I propose that the Cabinet Legislation Committee (LEG) approve the introduction of the Land Transport (NZTA) Legislation Amendment Bill (NZTA Bill).

### **Executive Summary**

2. 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 and Director of Land Transport (the Director), and centralising regulatory authority. To support the policy objective, the NZTA Bill also strengthens NZTA's role in relation to key regulatory interventions including speed management and enforcement.
3. The NZTA Bill gives effect to the Cabinet Economic Development Committee's (DEV) decisions relating to the:
  - 3.1. review of the NZTA outlined at paragraphs 11 and 12 below that were confirmed by Cabinet on 30 September 2019 [CAB-19-MIN-0500 refers]
  - 3.2. new framework for speed management outlined at paragraphs 29 and 30 below that were confirmed by Cabinet on 11 November 2019 [CAB-19-MIN-0575 refers].
4. To support the refresh of the NZTA's independent regulatory functions and powers in the Land Transport Management Act 2003 (LTMA), I seek additional policy approval to enable the Director to:
  - 4.1. impose temporary conditions on holders of transport services licences
  - 4.2. accept enforceable undertakings made by participants in the land transport system.
5. I seek approval for these matters to be included in the NZTA Bill.
6. The NZTA Bill does not hold priority on the 2019 Legislation Programme.
7. Therefore, I seek LEG approval for the NZTA Bill to be given a priority of category 4 (to be referred to select committee in the year) on the 2019 Legislation Programme.

### **Policy: NZTA Review**

8. The NZTA exercises regulatory functions to promote a safe, efficient, and effective land transport system. These functions include the issuing of driver licences, overseeing the vehicle inspection and certification regime, registration and licensing of transport services, issuing heavy vehicle permits, speed management, rail safety, and a range of other land transport regulatory functions.
9. In October 2018, the NZTA Board announced that the NZTA had not been performing its regulatory function effectively, and in particular that it was too focused on education and self regulation.
10. In response to this, I commissioned a review (the NZTA Review) into the regulatory capability and performance of the NZTA. The NZTA Review found significant deficiencies in the NZTA's regulatory capability that, over a number of years, resulted in regulatory failure.

#### Policy approval

11. On 25 September 2019, in response to the NZTA Review, DEV amongst other things [DEV-19-MIN-0261 refers]:
  - 11.1. **noted** that the Minister of Transport intends to set expectations for the NZTA Board to:
    - 11.1.1. develop a new strategy to strengthen the NZTA's regulatory delivery (by March 2020)
    - 11.1.2. establish a new regulatory operating model that defines the capability, processes, and systems to implement the NZTA's regulatory strategy (by March 2020)
  - 11.2. **agreed** to the establishment of a statutory Director of Land Transport to lead the regulatory function and regulatory decision-making in the NZTA, and that this be included in the Regulatory Stewardship (Transport) Amendment Bill
  - 11.3. **agreed** that the Director of Land Transport will be accountable for the delivery of the independent regulatory functions and powers currently held by the NZTA Board under the LTMA
  - 11.4. **authorised** the Minister of Transport to refresh the independent regulatory functions and powers in the LTMA to ensure they are fit-for-purpose and consistent with the overall policy intent of the paper under DEV-19-SUB-0261 without further reference to Cabinet
  - 11.5. **authorised** the Minister of Transport to refresh the NZTA's regulatory objectives and remaining functions and powers in the LTMA to provide greater focus on the NZTA's regulatory role and to ensure that its existing land transport planning, investment, and delivery functions are adequately described and that this be included in the Regulatory Stewardship (Transport) Amendment Bill

- 11.6. **agreed** to amend the LTMA to provide for a more balanced and equitable approach to funding the NZTA's regulatory function by providing that:
- 11.6.1. the Crown may, without further appropriation, fund the NZTA regulatory activities and the Ministry of Transport's associated monitoring activity up to an amount agreed by the Minister of Transport and the Minister of Finance from land transport revenue
  - 11.6.2. the amount of NZTA regulatory activities funded is paid from land transport revenue inflows prior to inclusion in the NLTF
- 11.7. **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions
- 11.8. **authorised** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details that arise during the drafting of the Regulatory Stewardship (Transport) Amendment Bill without further reference to Cabinet.
12. The decisions of DEV above were confirmed by Cabinet on 30 September 2019 [CAB-19-MIN-0500 refers]. The NZTA Bill implements Cabinet's decisions.
13. You may note that there is reference to a Regulatory Stewardship (Transport) Amendment Bill in the approvals above. Instead of including these policy proposals in that Bill, I propose to instead have a stand alone NZTA Bill with an overall policy objective to strengthen the regulatory leadership of the NZTA.
14. The reason for this is to ensure compliance with standing orders 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 (see standing order 263).

Additional policy approval required

15. As referenced at paragraph 11.4 above, Cabinet has authorised me to refresh the NZTA's independent regulatory functions and powers in the LTMA to ensure they are fit-for-purpose and consistent with the overall policy intent of the paper under DEV-19-SUB-0261 without further reference to Cabinet.
16. In the accompanying Cabinet paper [DEV-19-MIN-0261 refers], I proposed to direct the Ministry of Transport to progress work to review and strengthen the NZTA's regulatory objectives, functions, and powers. This work would also consider whether the NZTA has all of the legislative powers and tools it requires to carry out the role of an effective regulator. I noted that these changes could be progressed alongside the establishment of the Director of Land Transport role.
17. The Ministry has commenced this work with NZTA and has recommended that two regulatory powers are refreshed alongside the establishment of the Director of Land Transport. These powers are included in the NZTA Bill and are described below.

*Enabling temporary conditions on transport services licences holder*

18. The NZTA Bill amends the transport services licence provisions in the LTA to provide for the Director of Land Transport to impose temporary conditions as an alternative to suspending a licence. A power to add temporary conditions will establish a fairer and more graduated set of interventions in the case of non-compliant licensees, allowing the operator to continue to operate subject to the conditions. The decision to impose temporary conditions would be subject to the same safeguards as a decision to suspend a licence, including a right of appeal. It also more closely aligns the Director of Land Transport's powers with those under civil aviation and maritime transport. In essence, temporary conditions are a form of limited suspension.
19. I seek approval for the NZTA Bill to amend the LTA to give effect to paragraph 18.

#### *Enabling enforceable undertakings*

20. I propose that the NZTA Bill provide for the Director of Land Transport to be enabled to accept enforceable undertakings<sup>1</sup> made by participants in the land transport system. It has always been a common practice for regulators to informally choose not to take enforcement or compliance action based on promises made by a regulated participant, and this is often desirable as an efficient and effective means of resolving non-compliance.
21. Statutory provision for enforceable undertakings solves problems with the informal process and are a modern, straightforward, commonly used regulatory tool. First, they provide for a means of enforcing the promise made in the undertaking (otherwise enforcement relies on civil action for contract or estoppel). Second, they provide clarity to regulated participants of the Director of Land Transport's powers to take action if there is a breach. Enforceable undertakings also provide visibility to the public over the content of and use of undertakings (to ensure they are not overused or used inappropriately).
22. The provisions providing for enforceable undertakings in the NZTA Bill are closely modelled on the equivalent provisions in the Health and Safety at Work Act 2015, which have been used successfully by WorkSafe New Zealand as part of its compliance and enforcement strategy.
23. There are likely to be other powers that should be refreshed, particularly relating to the role and scope of the Director of Land Transport's powers in relation to transport services licences and other participants in the land transport system, and powers to require information and carry out inspections and investigations. However, these powers are more complex and require careful analysis and regulatory design to get them right.
24. I seek approval for the NZTA Bill to amend the LTA to give effect to paragraph 20.

#### Matters of possible contention

<sup>1</sup> Enforceable undertakings are an alternative to prosecution whereby the applicant agrees to do certain things in exchange for (usually) the regulator not filing charges. If the applicant does not fulfil their agreed actions, then they may be prosecuted for a breach of the undertaking.

25. There are likely to be matters in the NZTA Bill that will be of public interest due to the nature of the amendments proposed. I believe the select committee process will provide sufficient opportunity for the public to engage and adequately express their views on the Bill.

**Policy: New framework for speed management (Tackling Unsafe Speeds Programme)**

26. Tackling unsafe speeds is a critical part of improving road safety. There is strong evidence that a decrease in the mean travel speed on a road is associated with a decrease in the number of crashes, as well as the severity of crashes when they do occur. The Associate Minister of Transport has heard from local government and other stakeholders that a better approach is needed to remove barriers to implementing safer speeds, while continuing to work closely with affected communities.
27. On 1 July 2019, the Associate Minister of Transport provided Cabinet with a high-level summary of the Tackling Unsafe Speeds proposals. Cabinet invited the Associate Minister of Transport to report back in October 2019 seeking approval to the Tackling Unsafe Speeds Programme [DEV-19-MIN-0175]. Tackling Unsafe Speeds is one of the proposed immediate actions in the Road to Zero strategy.
28. The Tackling Unsafe Speeds Programme includes:
- 28.1. implementing a more effective regulatory framework for speed management, which includes requiring road controlling authorities<sup>2</sup> to work with regional transport committees to develop, consult on and implement speed management plans
  - 28.2. transitioning to lower speed limits around schools to improve safety and enable more children and young persons to walk or cycle to school safely
  - 28.3. adopting a new 'highly visible, no surprises' approach to safety cameras.

Policy approval

29. On 23 October 2019, upon the recommendation of the Associate Minister of Transport, DEV amongst other things [DEV-19-MIN-0282]:
- 29.1. **agreed** to implement a new regulatory framework for speed management
    - 29.1.1. road controlling authorities retain responsibility for setting speed limits for roads they control, including out of cycle changes and temporary limits
    - 29.1.2. the NZTA develops a National Speed Management Plan containing proposed speed management reviews and speed limit changes across the entire State highway network
    - 29.1.3. establish a Speed Management Committee to review the draft National Speed Management Plan against process criteria and provide independent advice to the NZTA

<sup>2</sup> A road controlling authority, as defined in the Land Transport Act 1998, is the authority, body, or person having control of a road. In most cases, these are territorial authorities.

- 29.1.4. the NZTA provides guidance to all road controlling authorities and regional transport committees on recommended safe and appropriate speeds and how to prepare, consult on and implement Regional Speed Management Plans
  - 29.1.5. road controlling authorities determine their input to their Regional Speed Management Plan, which will include proposed speed management reviews and speed limit changes for local roads
  - 29.1.6. regional transport committees collate the inputs of individual road controlling authorities to develop Regional Speed Management Plans and consult on those Plans (similar to the land transport planning process)
  - 29.1.7. the NZTA reviews Regional Speed Management Plans prior to their finalisation
  - 29.1.8. road controlling authorities must implement speed limit changes as set out in the finalised speed management plans
  - 29.1.9. speed management plans are required to support Government priorities outlined in the Road to Zero Strategy and the Government Policy Statement on Land Transport
  - 29.1.10. establish a publicly available Register of Road Instruments which will be a single source of, and legal instrument for, all speed limits in the country
  - 29.1.11. the NZTA, in its role as the Registrar of the register, is responsible for updating speed limits in the register, which will give legal effect to a speed limit change
- 29.2. **agreed** to make such changes as may be required to enable the NZTA to operate the camera network effectively, including changes to the process for approving vehicle surveillance devices and issuing infringement notices associated with approved vehicle surveillance devices
- 29.3. **noted** that the above decisions will principally be given effect to through a new setting of speed limits rule and other rules made under the LTA, with supporting changes to the LTA and the LTMA which will be included in the Regulatory Systems (Transport) Amendment Bill
- 29.4. **invited** the Associate Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the changes to primary legislation required to give effect to these decisions, and to arrange for the relevant land transport rules to be drafted and consulted on.
30. The decisions of DEV above were confirmed by Cabinet on 11 November 2019 [CAB-19-MIN-0575 refers]. The NZTA Bill gives effect to Cabinet's decisions.

Matter of possible contention

31. The majority of the amendments included in the NZTA Bill to support the implementation of the Tackling Unsafe Speeds Programme are unlikely to be contentious.
32. However, I wish to draw your attention to an amendment in the NZTA Bill, which will allow the NZTA to issue infringement notices for offences detected by approved surveillance equipment (for example, by a safety camera). Currently, this function sits with the New Zealand Police.
33. The amendments are intended to allow the NZTA to incorporate investment and placement of new safety cameras into its broader planning to support speed management. The NZTA is also better placed as an asset manager, which is expected to lead to operational efficiencies over time. The approach will also provide a signal to the public that safety cameras are intended primarily to be speed management tools to improve safety outcomes, rather than enforcement tools to issue infringements.
34. Ministry of Transport officials advise that agencies and key stakeholders are supportive of transferring the ownership of safety cameras to the NZTA over time.<sup>3</sup>

#### **Need for legislation**

35. The NZTA Bill is required to give effect to the policy decisions outlined above because they require changes to primary legislation.

#### **Impact Analysis**

36. Regulatory Impact Assessments (RIA) were prepared by the Ministry of Transport and submitted at the same time the approvals for the policies were sought for the following:
  - 36.1. NZTA Review: RIA dated September 2019; Cabinet consideration on 30 September 2019 [CAB-19-MIN-0500 refers]
  - 36.2. Tackling Unsafe Speeds Programme: RIA dated 7 October 2019; Cabinet consideration on 11 November 2019 [CAB-19-MIN-0575 refers].
37. The RIA for the NZTA Review has been updated and is attached to reflect matters with additional policy approval required as outlined in this paper.

#### **Compliance**

38. The NZTA Bill complies with each of the following:
  - 38.1. principles of the Treaty of Waitangi
  - 38.2. rights and freedoms contained in the Human Rights Act 1993
  - 38.3. disclosure statement requirements (disclosure statement has been prepared and is attached to the paper)

<sup>3</sup> Including the New Zealand Police, the New Zealand Automobile Association and local government.

- 38.4. principles and guidelines set out in the Privacy Act 1993
  - 38.5. relevant international standards and obligations
  - 38.6. Legislation Guidelines (2018 edition).
39. 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.

### **Consultation**

40. The following Government departments and agencies and organisations have been consulted on the policy for the relevant parts of the NZTA Bill:
- 40.1. NZTA Review:
    - 40.1.1. The State Services Commission, the Treasury, the New Zealand Police, the NZTA, and the Ministry of Business, Innovation and Employment. The Department of the Prime Minister and Cabinet has been informed.
  - 40.2. Tackling Unsafe Speeds Programme:
    - 40.2.1. The NZTA, New Zealand Police, the Treasury, Ministry of Social Development (and the Office for Disability Issues), Ministry of Justice, WorkSafe New Zealand, Local Government NZ, Accident Compensation Corporation, Ministry of Health, Department of Internal Affairs, Department of Conservation, Ministry of Education and Te Puni Kōkiri. The Department of the Prime Minister and Cabinet has been informed.
    - 40.2.2. A key part of the development of the policy for Tackling Unsafe Speeds Programme 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. A diverse range of participants from central government, local government, advocacy groups and special interest groups contributed to these workshops and the ideas from those workshops have been further developed and tested to inform the policy.
    - 40.2.3. The Ministry of Transport also undertook targeted consultation on the Tackling Unsafe Speeds Programme policy proposals in March-May 2019. This was followed by high-level public consultation through the *Road to Zero* Strategy consultation process that took place in July-August 2019.

### **Binding on the Crown**

- 41. The NZTA Bill amends the LTMA, the LTA, and RA which binds the Crown.
- 42. The NZTA Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.



### **Allocation of decision making powers**

43. The NZTA Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

### **Associated regulations**

44. Other than consequential amendments, no other regulations are likely to be required.

### **Other instruments**

45. Not applicable.

### **Definition of Minister/department**

46. Not applicable.

### **Commencement of legislation**

47. The NZTA Bill is expected to come into force on 1 July 2020.

### **Parliamentary stages**

48. The NZTA Bill does not hold priority on the legislation programme. I therefore propose that the NZTA Bill be given a priority of category 4 (to be referred to select committee in the year) on the 2019 Legislation Programme.
49. Subject to Cabinet approval, I intend to introduce the NZTA Bill in December 2019 with the intention that it is passed, if possible, before 1 July 2020.
50. To achieve this timeline, I will seek the House of Representative's approval for the NZTA Bill to be considered by the Transport and Infrastructure Select Committee, and be reported back in a period less than the usual 6 months.

### **Proactive Release**

51. This paper will be proactively released on the Ministry of Transport's website following the NZTA Bill's introduction into the House of Representative's, with any redactions in line with the Official Information Act 1982.

### **Recommendations**

52. I recommend that LEG:

#### *New Zealand Transport Agency Review*

1. **note** that on 30 September 2019, Cabinet agreed to a number of policy decisions in response to the New Zealand Transport Agency (NZTA) review [CAB-19-MIN-0500 refers]
2. **note** that one of the decisions referred to in recommendation 1 included a refresh of the NZTA's independent regulatory functions and powers in the Land Transport Management

Act 2003 to ensure they are fit-for-purpose and consistent with the overall policy intent of the paper under DEV-19-SUB-0261 without further reference to Cabinet [DEV-19-MIN-0261 refers]

3. **note** that to support the refresh, I wish to amend the Land Transport Act 1998 to enable the Director of Land Transport to:

- 3.1. impose temporary conditions on holders of transport services licences

- 3.2. accept enforceable undertakings made by participants in the land transport system

4. **agree** that the matters referred to in recommendation 1 and 3 be included in the Land Transport (NZTA) Legislation Amendment Bill (NZTA Bill)

*New framework for speed management (Tackling Unsafe Speeds Programme)*

5. **note** that on 11 November 2019, Cabinet agreed to a number of policy decisions relating to the Tackling Unsafe Speeds Programme [CAB-19-min-0575 refers]

6. **agree** that the matters referred to in recommendation 5 be included in the NZTA Bill

*NZTA Bill*

7. **note** that the NZTA Bill gives effect to recommendations 4 and 6

8. **note** that the NZTA Bill does not hold a priority on the legislation programme

9. **agree** that the NZTA Bill be given a priority of category 4 (to be referred to select committee in the year) on the 2019 Legislation Programme

10. **approve** the NZTA Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives

11. **agree** that the NZTA Bill be introduced in December 2019

12. **agree** that the government propose that the NZTA Bill be:

- 12.1. referred to the Transport and Infrastructure Select Committee for consideration

- 12.2. enacted before 1 July 2020.

Hon Phil Twyford  
**Minister of Transport**

Authorised for lodgement

