

Departmental Disclosure Statement

Land Transport (Speed Limits Validation and Other Matters) Bill

The Land Transport (Speed Limits Validation and other Matters) Bill (the Bill) responds to an urgent requirement to address questions about the possible invalidity of a number of speed limits.

Every public road in New Zealand has a responsible Road Controlling Authority (RCA). The law sets a maximum legal default speed limit for rural roads of 100 km/h, and 50 km/h within urban traffic areas designated as such by the RCA, which can also set other speed limits. The law also applies lower maximum speed limits for certain vehicles, for example 90 km/h for heavy vehicles or vehicles towing trailers

Territorial authorities, the New Zealand Transport Agency (NZTA) and Airport Authorities are RCAs that use bylaws when substituting a lower speed limit for the default limit, or designating an urban traffic area. A Territorial authority has advised that it may not have fully complied with local government bylaw-making requirements for its speed limits. This creates uncertainty as to whether its speed limits remain valid. Other RCAs' speed limit bylaws have been looked at. It is probable that the validity of a number of these speed limit bylaws could also be uncertain. This is from either omissions in complying with full local government legislation bylaw-making requirements, or confusion around which legal provisions could be used to make speed limit bylaws.

Government policy was that all traffic-related bylaw powers (including speed limits) should be consolidated under the Land Transport Act 1998.

It is uncertain how many bylaws may be affected and certainty cannot be confirmed without the issue becoming publicly known. This risks public safety and added costs for New Zealand Police or courts in terms of determining which speed limits are valid and addressing the consequences of those that may be found not to be. Accordingly, it is appropriate to remove any potential confusion by having this Bill validate non-compliant speed limit bylaws made by RCAs. To ensure clarity, this validation will apply retrospectively to bylaws made since 2004, when the current bylaw-making process was first introduced.

Consultation on issues and solutions has been restricted to central government officials, departments and the NZTA. This is due to potential public safety risks from motorists deliberately disregarding speed limits on the basis they may be invalid, should the issue become widely known. If urgent Parliamentary action was not taken on the matter, it could take months for a RCA to correct speed limit bylaws. This would be due to the need to advertise and consult on any new bylaws using Local Government Act 2002 consultative requirements.

Officials have extensively discussed the issue and considered a number of legal opinions in assessing the potential extent of the issue. Officials also considered the most appropriate means of addressing the issue and various iterations of draft legislation to test whether the legislation provides a full and comprehensive solution.

The legislation is retrospective: it is proposing to remove any question about the validity of any presently in-use speed limit bylaw made since 2004. However, road users understand the need to comply with posted speed limits, and the consequences of when they do not. Removing any uncertainty from the validity of speed limit bylaws would reinforce the obligation on New Zealand motorists to comply with posted speed limits.

This disclosure statement was prepared by the Ministry of Transport.

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

15 July 2015

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Part One: General Policy Statement

The main purpose of the Bill is to promote road safety by urgently addressing the possible invalidity of a number of speed limits.

This will be achieved by validating speed limits made by various road controlling authorities in relation to roads for which they are responsible. Recent information has suggested that some road controlling authorities may have made speed limit bylaws under powers that may not have been available to them, or have omitted to comply fully with their bylaw-making powers. In the interests of removing doubt and providing clarity, this Bill validates all speed limit bylaws and confirms that they were made correctly under land transport legislation.

The Bill will also amend the Land Transport Act 1998 and clarify road controlling authorities' powers to make speed limit bylaws under that Act.

The Bill proposes to:

- Validate speed limits created since 2004, regardless of whether they may have been set under potentially invalid bylaws;
- Validate enforcement action in relation to speed limits set by bylaws since 2004;
- Ensure there is a clear power for territorial authorities to make a speed limit bylaw; and
- Clarify the procedural requirements for territorial authorities to make a speed limit bylaw.

Speed limits have an important road safety role. In order to maintain public safety, from drivers or riders who may take advantage of the speed limit validity question and actions taken in reliance on the validity of a speed limit, the Bill will be passed under urgency, without being referred to a select committee, and come into force when the Bill receives assent.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
A Regulatory Impact Statement was prepared by the Department of Internal Affairs and is available on the Department's and the Treasury's websites.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>14 July 2015</p> <p>The Treasury RIAT considers that the information and analysis summarised in the RIS <i>partially meets</i> the quality assurance criteria. The RIS identifies a problem that needs to be addressed immediately to preserve public safety and certainty of traffic enforcement. However, the RIS does not clearly explain what caused the problem and does not articulate the objectives of the Local Government Act 2002 (LGA02) requirements for review or revocation of bylaws. As a result, the impact of overriding the original intent of the LGA02 review provisions is not analysed.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The limited analysis undertaken due to the urgency of the legislation suggests that any loss would be limited to the financial consequences of breaching a posted speed limit that has already occurred following enforcement action.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
If the Bill is not passed, further investigation as to the validity of specific bylaws, and the surrounding publicity, may result both in lower compliance with speed limits, and in the NZ Police being unable to enforce some speed limits that are required to be created by bylaw, until the bylaw is remedied.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

In so far as the Bill is consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993, it is consistent with the international human rights conventions implemented in New Zealand through those statutes.

Consistency with the government's Treaty of Waitangi obligations

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

It is considered that there is no potential for this Bill to affect Māori rights and interests protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

The Bill will not limit the jurisdiction of a court to determine speeding offences, although it will impact on the potential for a court to determine that an offence did not occur due to a defect in an underlying bylaw.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

A NZ Bill of Rights Act vet was undertaken through consultation with Courts and Tribunals Policy at the Ministry of Justice.

Advice was sought on the passage and enactment of urgent validating legislation.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
As the Bill is not considered to have any privacy considerations the Privacy Commissioner was not consulted about these provisions.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
The Bill was designed in consultation with the Department of Internal Affairs (to reflect local Government's interest), the Ministry of Transport, the NZ Transport Agency and the New Zealand Police (to capture operational implications)	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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

Charges in the nature of a tax

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The legislation is designed to have retrospective effect. Clause 6 of the Bill validates bylaws setting speed limits to the extent that they <i>may</i> be found to be invalid <i>if</i> subject to legal challenge. Clause 8 of the Bill validates enforcement action in reliance on the validity of such bylaws. In terms of section 26 of the New Zealand Bill of Rights Act 1990, while 26(1) of the New Zealand Bill of Rights Act 1990 seems to be engaged, this can be justified by section 5 in terms of the Bill's objective to maintain public safety and public confidence, and the fact the Bill is concerned with making the law conform to what it was generally understood by the public to be. If the legislation is not applied retrospectively, potential risks, exist from a lack of certainty around posted speed limits. This could be from road users seeking to challenge the validity of enforcement action made using those posted speed limits, and a public safety risk while any bylaws found to be made invalidly are corrected.</p>	

Strict liability or reversal of the usual burden of proof for offences

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
The Bill constitutes urgent validating legislation with retrospective effect to remove any uncertainty about the validity of posted speed limits. This will maintain public safety, the effectiveness of existing posted speed limits, and avoid technical challenges to offending resulting from failure to comply with a posted speed limit.	