

Regulatory Impact Statement: Impact Summary

Land Transport: Regulatory Systems Transport Amendment Bill No. 2 proposals

Coversheet

Purpose	
Decision Sought:	Approval to release consultation document
Advising Agencies:	Ministry of Transport
Proposing Ministers:	Minister of Transport
Date:	21 December 2021
Problem Definition	
<p>As part of the Ministry of Transport's regular regulatory stewardship activities, there is an opportunity to address a series of issues with moderate impact within the <i>Land Transport Act 1998</i> and the <i>Government Roading Powers Act 1989</i>. The proposals will form part of the Regulatory Systems (Transport) Amendment Bill No. 2 (RSTA Bill). This RSTA Bill will make minor but crucial improvements to the transport legislative framework to ensure the framework is effective, fit-for-purpose, and up-to-date.</p>	
Executive Summary	
<p>The proposals covered in this document are:</p> <ol style="list-style-type: none">1. Strengthening and clarifying the regulatory system of Limited Access Roads2. Introducing proactive road closure powers for Waka Kotahi over State highways3. Modernising and improving the enforcement of Transport Service Licences <p>The nature of a RSTA Bill means the analysis is constrained to an impact summary. For each issue, there are two options considered: retain the status quo or implement a legislative amendment (recommended). The proposed legislative amendments will enable the transport regulatory system to be fit-for-purpose and more effective.</p> <p>Each proposal is analysed separately. The recommended amendments are intended to provide overall system improvements, particularly relating to the effectiveness, safety, responsiveness, and proportionality of the land transport system.</p> <p>No targeted or public consultation has yet been conducted on these proposals. We will be seeking Cabinet agreement to undertake consultation on these proposals in early 2022.</p>	

Limitations or Constraints on Analysis

The identification/scoping of issues and development of options identified as part of the RSTA Bill were constrained by two structural factors:

- (1) the nature of a regulatory systems Bill, which is limited in scope to improvements that aid the effectiveness and efficiency of the regulatory system, without introducing significant new policy changes.
- (2) the gaps in evidence and data in relation to transport service licences.

The issues covered in this document are constrained by the scope of a RSTA Bill. By nature, RSTA Bills usually contain minor and/or technical proposals that support stewardship activities. The issues were scoped, and the options developed to ensure their suitability for a RSTA Bill. The resulting regulatory changes reflect the nature of a regulatory systems Bill which responds to the need for regulatory stewardship, without making foundational policy changes.

The evidence is currently limited to operational evidence and data held by Waka Kotahi New Zealand Transport Agency (Waka Kotahi), NZ Police, and local road controlling authorities (RCAs). Views and further evidence will be sought from the public, industry and wider transport sector, following Cabinet agreement to progress with consultation.

Responsible Manager(s) (completed by relevant manager)

s 9(2)(a)

Manager
Regulatory Policy
Ministry of Transport
21 December 2021

Quality Assurance (completed by QA panel)

Reviewing Agency/Agencies:	Ministry of Transport and Maritime New Zealand (mixed panel)
Panel Assessment & Comment:	The RIA was reviewed by the Ministry's RIA Panel given a 'meets' rating under the quality assurance criteria as an interim RIA for the purpose of seeking approval to consult. Any gaps will likely be mitigated by public consultation.

Section 1: Outlining the problem

Context/Background Information

Regulatory stewardship forms the basis of this work

Regulatory stewardship is the responsibility of monitoring and caring for regulatory systems. Among other things, this involves continual review of the legislative system's performance and the need to anticipate or respond to necessary changes. This regular maintenance and renewal of our legislation supports the Government to deliver on outcomes important to New Zealanders.

The legislative framework for the transport sector is significant: there are 26 transport-related Acts, 15 Regulations, and 151 Rules across the three modes of transport (land transport, aviation and maritime).

To ensure we have an effectively functioning regulatory system, we regularly identify and progress changes and proposals across the transport system that will ensure our regulatory system is consistent, fit-for-purpose, and up-to-date.

This document will support Cabinet's decision to release the consultation document titled "Regulatory Systems (Transport) Amendment Bill No. 2" (RSTA B II). The proposals in this document seek regulatory changes that reflect our ongoing commitment to regulatory stewardship, which the Ministry and Treasury deemed appropriate for an Impact Summary. The remaining proposals being consulted on were exempted from the requirements by Treasury.

This document includes three proposals to make moderate but crucial improvements to the transport legislative framework, by:

- equipping the transport regulatory agencies with effective and responsive powers to improve public safety
- minimising the unnecessary compliance burden on industry and the public

What is the policy problem or opportunity?

This document analyses three distinct policy problems, identifies two options for each problem, and assesses those options against a set of criteria. The three problems relate to:

1. Limited access roads
2. Waka Kotahi State highway road closure powers, and
3. Transport Service Licences.

1 Strengthening and clarifying the system of limited access roads

What are limited access roads?

Limited access roads (LARs) are sections of the State highway, usually bordered by residential or commercial properties, that can only be accessed from authorised crossing points, which are commonly used as driveways to properties. About 3,850 kilometres, or 37%, of the entire state highway network are LARs. Each parcel of land that has legal access to a LAR and that does not have reasonably practicable alternative legal access to a local road, is entitled to one crossing place. Upon application, Waka Kotahi will specify the location of crossing place in relation to the title boundary.



Example of an authorised crossing vs an unauthorised crossing on State highway 3

There are two principal purposes of LARs. The first is to reduce and control access to and from the State highway network. The second is to influence development along the State highway network to maximise the efficiency and safety of the road. In influencing development, as part of the resource consent process, Waka Kotahi would be notified as an 'affected party' and have the ability to provide feedback on the proposed crossing place location to a potential developer.

There are three issues relating to limited access roads

The regime of LARs requires a series of regulatory stewardship style changes to ensure that it remains fit-for-purpose and delivers clarity over the status and requirements on these roads and associated crossings. The principal purpose of LARs is to control, and where required limit, access to and from the State highway network, in order to reduce detrimental safety impacts of unconstrained development of property along the margins of the State highway network.

The last significant legislative changes were made in 2008. Since then, we have identified five issues relating to LAR provisions in the *Government Roadway Powers Act 1989* (GRPA). These are that:

- it is not mandatory to register crossing place notices on property titles:
 - councils may inadvertently not refer relevant subdivision or change in land use applications to Waka Kotahi under (existing) *Resource Management Act 1991* processes
 - Land Information New Zealand (LINZ) issue property titles once a plan of subdivision is deposited, even if there is no road frontage or road access, which could inadvertently cause a property owner to commit an offence, as the property owner may be unaware of the need to apply for a crossing place notice
- enforcement powers and penalties are insufficient where unauthorised crossing places are created, or where persons do not comply with conditions of any crossing place notice
- the administration of crossing place notices is unclear. Where a State highway LAR transitions into a local LAR (via revocation of a road's State highway status), it is

unclear whether the crossing place notices created by Waka Kotahi remain legally valid or can otherwise be enforced by the council. It is also unclear which entity has the legal authority to remove the registered crossing place notice.

The key issue is the inability of Waka Kotahi to step in and stop private landowners from misusing crossing places on LARs, without going to the District Court. Waka Kotahi has had a number of issues with landowners/land occupiers over the use of LARs and have been unable to step in if the issue can only be resolved by making changes to the landowner's/occupier's private property, rather than on the LAR itself.

For example, since s 9(2)(b)(ii), a crossing place on a LAR near s 9(2)(b)(ii) has been consistently used by a business to access their quarry site in a way that breaches the conditions on that crossing place notice. This area is not safe for the number of trucks using the access, and the quarry business did not seek approval from Waka Kotahi to use the LAR for their purposes.

In addition to safety concerns with the number of truck movements on a dangerous stretch of the State highway, the high number of trucks has resulted in the deterioration of the pavement, and Waka Kotahi has had to intervene on multiple occasions to fill in potholes. Quarry trucks will also often drive around potholes/damaged pavement, which results in them driving on the opposite side of the road to get around them. As this is on a State highway, this is also a high risk for other road users. In addition to the enforcement challenges with LARs, Waka Kotahi also has challenges in recovering costs for damage to the State highway network (under section 51 of GRPA) as it also requires going to the District Court.

The legal cost of taking a landowner, land occupier or other offending party to District Court can cost anywhere between \$20,000 - \$30,000. Furthermore, the time it takes to prosecute means safety concerns cannot be remedied in a timely manner. As a result, Waka Kotahi has not taken someone to the District Court over a LAR issue in recent years.

The status quo poses some economic, safety and system coherence risks

There are economic risks. Landowners may intend to develop a property in a specific way but be unaware of existing crossing place notices that apply to the property. They also may be unaware of the requirement to consult with Waka Kotahi about their plans. This could have a detrimental effect, particularly if the landowners have already invested money and time into obtaining resource consent for a subdivision or change in land. Waka Kotahi also faces economic risks where a landowner does not comply with the requirements of a LAR or crossing place notice (including where the landowner is unaware of these matters). This may cause costs to be incurred to ensure compliance or lead to regulatory action being taken against a landowner.

There are safety risks. The purpose of LARs is to increase safety and efficiency. Where the LAR process is unworkable or inconsistent (including where council do not consult with Waka Kotahi about subdivision or change in land use applications), this could create safety risks for road users. For example, an unauthorised access point on a LAR may result in vehicles entering a State highway with insufficient visibility of oncoming traffic, or ability to get up to the travelling speed of other vehicles. From 1987 to 1991, there were 685 crashes resulting in injuries on State highways in rural areas where there was poor visibility at crossing places¹. Most recently, in 2021, there have been two fatal crashes from drivers turning out of crossing places (driveways) onto a State highway.

¹ [Road traffic standards 06 guidelines for visibility at driveways \(nzta.govt.nz\)](https://www.nzta.govt.nz/road-traffic-standards/06-guidelines-for-visibility-at-driveways/)

Finally, there are some risks to overall system coherence. The current inconsistency between the requirement to register LAR status and crossing place notices on title (the former being mandatory and latter being discretionary) creates a lack of clarity for landowners which could have consequences for Waka Kotahi, landowners and councils. There is uncertainty around the ongoing application and administration of crossing place notices created by either Waka Kotahi or a council where the relevant State highway or road is changed (i.e., becomes a local road or State highway). Crossing place notices created along LARs that have State highway status revoked may no longer be valid and enforceable by local government road controlling authorities (RCAs).

There are various stakeholders who are interested in or impacted by LAR

The key stakeholders are property owners and property developers along limited access roads, local government RCAs, Iwi, and government agencies (Waka Kotahi and LINZ).

2 Introducing proactive road closure powers for Waka Kotahi over State highways

Waka Kotahi does not have powers to close State highways for safety reasons

Currently, Waka Kotahi does not have legislative powers to close State highways to address safety risks to the public. Under section 319(h) of the *Local Government Act 1974*, councils have broader temporary road closure powers relating to local roads² than Waka Kotahi has for State highways. Broadening Waka Kotahi road closure powers will align its powers with other RCAs, contributing to overall system coherence.

What is the status quo?

Waka Kotahi road closure powers under the *Government Roading Powers Act 1989* (GRPA) are generally limited to maintaining the operational condition of State highways and motorways.³ Waka Kotahi may also close State highways for planned events such as parades or sports events.⁴

In safety or traffic management situations where proactive road closure is required (e.g. potential risk of landslides, avalanche, bushfire, or other severe weather events or disasters) or for proactive traffic management, (e.g. to address known congestion points at peak times) Waka Kotahi generally relies on consulting with and obtaining agreement from the Police to exercise their broader road closure powers under the *Policing Act 2008* (Policing Act). This process is cumbersome and relies on powers that the primary (State highway) road safety regulator does not exercise directly. This can also mean that if a road closure is required overnight, that approval is having to be sought retrospectively. As such, Waka Kotahi does not have appropriate temporary road closure powers to deliver its State highway management function in emergency situations, even though this power would fit naturally to fulfil its functions under the *Land Transport Management Act 2003*.⁵

² Councils have a specific broad power to stop or close any road 'for any reason it considers desirable'.

³ Section 61(4) *Government Roading Powers Act 1989*: Waka Kotahi can temporarily close roads to conduct any work or investigation being undertaken, for the structural protection of a State highway, or execute repairs or remove obstructions from the State highway.

⁴ Regulation 3 *Transport (Vehicular Traffic Road Closure) Regulations 1965*.

⁵ Section 95(1)(a) *Land Transport Management Act 2003* states that Waka Kotahi has the function to contribute to a "[...] safe land transport system in the public interest".

The status quo poses some legal, safety and system coherence risks

There are legal risks. Insufficient road closure powers make it ineffective and difficult for Waka Kotahi to meet its function to contribute to an effective, efficient, and safe land transport system in the public interest as set out under section 95(1)(a) of the *Land Transport Management Act 2003*. Waka Kotahi are heavily reliant on Police to exercise their road closure powers in an emergency. If Waka Kotahi do not consult with Police when closing a State highway in an emergency, Waka Kotahi takes on the risk of future legal challenge and potential reputational impacts.

There are safety risks. Without the power to proactively close roads, Waka Kotahi can only react after an incident has occurred. There is an increased risk to the public before the affected road is closed. Enabling Waka Kotahi to close roads proactively where there is a known safety, environmental, or traffic management risk will result in a safer roading network for all road users.

There are risks to overall system coherence. As the RCA of the State highway network, Waka Kotahi has responsibility for the entirety of the network. However, Waka Kotahi does not currently have all the tools to effectively manage the network and instead rely on Police. Waka Kotahi is unable to meet its function efficiently and safely while this split of powers exists.

There are three key stakeholders interested in and impacted by this issue

The key stakeholders are Waka Kotahi, individual road users, and NZ Police. Early engagement with NZ Police has indicated broad support for these changes. The changes proposed here do not limit NZ Police's ability under the *Policing Act 2008* or other legislative provisions. The proposal here would add similar powers for Waka Kotahi.

3 Modernising and improving the enforcement of Transport Service Licences

The legislative provisions for monitoring compliance and intervening in safety-critical cases are ineffective

The regulation of transport service operators is important to help encourage safe management practices for drivers, passengers, goods and the wider road using public. Because of the significant safety implications of operating transport services, a comprehensive regime of regulatory oversight, coupled with meaningful interventions is crucial.

Waka Kotahi currently lack responsive regulatory powers to monitor the compliance of licence holders with their regulatory requirements and cannot quickly intervene when safety-critical non-compliance has been determined. The current legislative settings do not allow a safety regulator to ensure the licence requirements are adhered to, which could prevent safety incidents that can potentially affect the wider public.

The intent is that the proposed measures would be used in the interim, until a full review of the transport service licence (TSL) takes place. This is currently included on the Ministry's regulatory work programme as a future piece of work.

Status quo

Drivers and operators of freight, passenger and vehicle recovery services are required to hold an appropriate transport service licence (TSL), amongst other requirements, before these businesses can legally operate. It is an offence under the *Land Transport Act 1998*

(LTA) to operate a service or vehicle without holding a TSL.⁶ TSLs are required for the following service types:

- Goods service – delivery or carriage of goods using a motor vehicle with a gross vehicle mass of 6000kg or more. A TSL is needed, even if not carrying goods for hire or reward. This also includes ‘hire’ vehicles.
- Large passenger service – carrying more than 12 passengers, regardless of whether operating for hire or reward
- Rental service – hiring out vehicles of any size? to carry goods or passengers
- Small passenger service – carrying 12 or fewer passengers for hire or reward and includes taxi, app-based services, shuttle services and private hire services.
- Vehicle recovery service – for all vehicle recovery vehicles bar those exempt under the LTA.

Currently, there are 160,237 TSLs on record, of which around 40,000 are estimated to be in regular use. There is no general requirement to renew TSLs, so the number of individual TSLs in active use can only be estimated. The figure of 40,000 TSL is an estimate arrived by matching data through the operator framework and reflects TSLs that have had Certificates of Fitness (CoFs) issued over the past two years. Of the remainder, there are instances where a business may have been inadvertently issued several TSLs.

Problem definition 1: insufficient regulatory oversight over use of TSLs

Currently, the only grounds for intervention or suspension are road safety related. The current system prevents Waka Kotahi from responding to instances of non-compliance where an operator has unlawfully ‘shared’ their TSL with other operators in numerous circumstances, such as:

- when vehicles are being inspected for a Certificate of Fitness⁷,
- to allow an unlicensed service to operate in instances where the TSL has been revoked,
- where the receiver of a loaned TSL believes their individual TSL application would not be successful.

There are also cases where operators use a TSL for the incorrect entity (e.g. using their individual TSL for a company). Additionally, Waka Kotahi has limited powers to monitor or audit an unlicensed operator purporting to provide a transport service to public.

Under section 30U(1)(b) of the LTA, Waka Kotahi can only suspend a TSL for road safety concerns i.e., not fraudulent or criminal behaviour. The terms (“transferring, assigning, or leasing”) are not defined in the LTA, and there is no corresponding offence for transferring, assigning or leasing a TSL. The lack of definition and offences has created an ambiguous situation that has been exploited by operators to loan out TSLs.

Section 30N of the LTA prohibits an operator from transferring, assigning or leasing a TSL, but there is no corresponding offence or penalty in the *Land Transport (Offences and*

⁶ Sections 79A and 79AB Land Transport Act 1998 make it an offence punishable by a fine not exceeding \$10,000 to carry on a transport service without a licence or to drive a vehicle used in a transport service without a licence.

⁷ Under clause 9.3(3)(b) of the Land Transport: Vehicle Safety Compliance Rule, if the vehicle is a service vehicle, the licence number must be provided to the vehicle inspector.

Penalties) Regulations 1999. As a result, Waka Kotahi has insufficient oversight of operators in the commercial sector and few regulatory levers to encourage compliance in order to mitigate safety risks.

Waka Kotahi does not have the ability to immediately intervene and suspend a TSL under current legislation. There is a 28-day delay before any decision to suspend a TSL takes effect, amongst other requirements.⁸ This delay creates a situation where the operator continues performing transport services while the steps in the process are followed. An overview of the length of time and the steps taken when suspending and revoking a TSL can be found in **Annex One**.

Recent examples of this behaviour relate to a company that was already operating as a house mover, where the TSL application was declined due to safety grounds and a history of damaging infrastructure. In this instance, the company operated under a loaned TSL to gain over dimension permits and during a subsequent house move, damaged a majority of road signs between **s 9(2)(b)(iii)** and **s 9(2)(b)(iii)**.

Problem definition 2: Extension of fit-and-proper test to added person in control

TSLs are not person specific documents and additional drivers can be added to an existing TSL, as long as the person to be added meets the regulatory requirements. This supports the nature of a transport service with multiple drivers and multiple vehicles. When a new person-in-control (PIC) is added to an existing TSL, because that person will have some level of oversight of the management of the transport service, Waka Kotahi run fit and proper person checks on the applicant. However, if that person does not meet the fit and proper person criteria, Waka Kotahi are unable to prevent the person from being added to the TSL. Waka Kotahi is merely notified that a person has been added to an existing TSL.

Instead of declining the TSL in the first instance, Waka Kotahi must instead attempt to exit the person from the system. This is done by writing a 'Notice of Proposal' to revoke a TSL.⁹ The PIC may continue to operate for 28 days before this decision takes effect. There is a safety risk in allowing unfit and improper persons to operate for this amount of time.

If Waka Kotahi was able to decline the addition of a new PIC a TSL where that person is found to be unfit or improper, there would be enhanced regulatory and safety oversight of those operating in the TSL system. These amendments would improve system coherency by providing the regulator the ability to monitor all operators in the TSL system.

Waka Kotahi has provided evidence that shows how these issues have previously occurred, which is outlined and explained in **Annex One**.

The status quo poses some safety risks

Not intervening to address the known issues in regulatory oversight with TSLs will have impacts on road safety. Given that TSL holders operate in a commercial capacity, the system requires a higher level of responsibility and care. The inability to decline or immediately suspend TSL could create safety risks for public who operate or utilise services by TSL holders, particularly in relation to passenger service operators.

⁸ Section 30W(1)(d) Land Transport Act 1998.

⁹ Under section 30W of the LTA, Waka Kotahi is required to write a Notice of Proposal, as this is an adverse decision. This requires the operator to be notified of the proposed decision and allows up to 21 days for a submission to be made to Waka Kotahi in respect of that decision.

The current system exposes legal and system risks

If the system remains unchanged, the TSL regime will be exposed to legal and reputational system-wide risks, through enabling a known loophole and undermining the integrity of the system.

There is a reputational and legal risk for Waka Kotahi if operators that may not be able to otherwise enter the system, are able to continue operating. This will perpetuate a perception that there is an uneven commercial playing field and could encourage operators to cut corners to ensure that they are in a position to bid for contracts.

There are various stakeholders interested in or impacted by TSL

The key industry stakeholders are Automobile Association, Bus and Coach Association, Heavy Haulage, Ia Ara Aotearoa Transporting New Zealand, National Road Carriers and the Rental Vehicle Association. Interested cross-government agencies include the Commerce Commission, New Zealand Police and WorkSafe.

What objectives are you seeking in relation to this policy problem or opportunity?

The problems and options are analysed against the background of regulatory stewardship. Regulatory stewardship means treating the regulatory system like a core asset requiring assessment, maintenance and where appropriate replacement. This provides for a regulatory system that is integrated, safe, responsive and sustainable. These are the objectives set out for the transport system.¹⁰

The three issues assessed in this impact summary RIS, along with a package of other stewardship proposals will form part of the RSTA Bill. This Bill will include moderate-impact improvements to primary transport legislation to:

- clarify regulatory roles, responsibilities and requirements in the regulatory system
- maintain safety through responsive regulatory action
- address inconsistencies improving system efficiencies and removing duplication.

These objectives have also influenced and guided the criteria that the options to treat the policy problems were assessed against. The criteria have been specifically developed to assess the options proposed below.

¹⁰ [Transport regulatory stewardship | Ministry of Transport](#)

Section 2: Option identification and impact analysis

What criteria will be used to evaluate options against the status quo?

We have identified four criteria to assess the options against. These criteria support the overall objectives of the Bill, but provide a more specific framework to measure individual options against. This will ensure that the options strike the right balance and optimally achieve the objectives individually.

In identifying the options and assessing the impacts, each policy issue is distinct and the considered in isolation. While the criteria are general statements of what the option should meet, the specific application of the criteria will have a specific content for each option. This specific content is provided in the assessment for each option.

Criteria	What this means
Effectiveness	This is the degree to which a policy intervention is successful in achieving the desired outcome/s sought by the intervention.
Safety	This is the level of improvement and protection from harm for people, infrastructure and other protected interests. Safety is a core outcome/component of the transport system.
Responsiveness	This is the degree to which the regulator has the appropriate intervention to achieve the regulators' functions and responsibilities. This criterion aims to assess the flexibility and appropriateness of regulatory powers (including enforcement) and responsibilities. ¹¹
Proportionality	This is the assessment of the impact/intensity of the intervention power and the size and scale of the policy problem. This criterion aims to assess the impact of a regulator power in terms of its necessity and reasonableness when responding to an action, and whether it is either excessive, inadequate or 'just right'.

The criteria are generally complementary. A proposed solution can be considered as being successful when it is assessed positively against the cumulative criteria.

What scope are you considering options within?

The RSTA Bill (and underlying policy process) is limited in scope to proposals offering continuous improvement of, and repairs and maintenance to, the transport regulatory system. The issues were scoped, and the options developed to ensure their suitability for a RSTA Bill. The issues were considered to be suitable for inclusion in a RSTA Bill and this means that while the analysis of the issues and options is not constrained or limited by external factors, only moderate-impact issues are analysed. The resulting regulatory

¹¹ Generally, a regulator will help guide compliance through non-regulatory interventions (information and education, non-statutory warnings) but also needs to be equipped to take regulatory interventions (statutory warnings, license suspensions, prosecutions) when deemed necessary.

changes reflect the nature of a regulatory systems Bill which responds to the need for regulatory stewardship without making foundational policy changes.

This Regulatory Impact Statement serves as a preliminary analysis of the options to support Cabinet's decision to approve public consultation. Through public consultation and engagement with the proposals, the evidence base can be strengthened and broadened, the proposals can be refined to decrease the risk of unintended consequences, and the practice and aims of regulatory stewardship embedded more fully through the transport sector. The release of the consultation document will invite feedback on the proposals to consider the real-world implications, and lead to better outcomes for the transport sector.

A revised and updated Regulatory Impact Statement will be provided when Cabinet is invited to make final policy decisions, which will include the outcome and stakeholder views on the options.

Describe and analyse the options

1 Strengthening and clarifying the system of Limited Access Roads (LAR)

Option 1 - Status quo

The status quo would make no regulatory changes. The current regulatory framework would be retained and the available operational workarounds and policies remain. This means that the identified uncertainty remains, and LARs retain the risks to economic interests, safety, and overall system coherence.

Overall, the objectives of improving the clarifying regulatory roles, responsibilities and requirements in the system will not be met, while the ability to take responsive regulatory actions to improve the LAR regime will not be promoted.

Waka Kotahi, as the key stakeholder does not believe the status quo will adequately address the risks. Retaining the status quo will not adequately address the problems identified. Without a regulatory intervention, the only responses to mitigate the risks identified are operational and administrative. These have not proved sufficient to improve the situation.

The impacts of retaining the status quo will be negligible (both positive and negative) towards individuals and government departments. However, there are also no benefits.

Option 2 – amending LAR regime with package of regulatory powers

This option would see a package of three regulatory changes made to the LAR regime: (1) crossing place notices created by Waka Kotahi should be registered on property titles, (2) better provision for and enforcement of offences relating to LAR and crossing places, and (3) administration of crossing place notices

1 Crossing place notices created by Waka Kotahi should be registered on property titles

Under the current provisions, it is not mandatory for a notice by Waka Kotahi authorising a crossing place to be registered with the Registrar-General of Land (under the *Land Transfer Act 2017*). We propose making this a mandatory requirement, by changing the provisions from “may” to “must”. By making this a mandatory requirement, landowners will be:

- made aware through a notification if an existing crossing place/s applies to their property including the conditions of that notice
- able to consider the potential implications of the crossing place/s for any future development on their property

- aware of what they need to comply with in relation to the crossing place/s as they have been aware of the crossing place via a notification outlining the requirements related to crossing places.

This should not impact on property values, as every parcel of land that has legal access to a limited access road is entitled to one crossing place. Administratively, the application and notification process would occur as part of the resource consent process, as Waka Kotahi is notified as an 'affected party'.

2 Better provision for and enforcement of offences relating to LAR and crossing places

There are three offences under section 97 of the GRPA relating to LARs and we propose making these infringement offences. The three offences are where a person:¹²

- (a) acts in contravention of or fails to comply in any respect with any provision of section 92; or*
- (b) fails to comply with any condition specified in any authorisation granted under section 91 or section 92; or*
- (c) uses or makes any unauthorised crossing place on to a limited access road.*

For all three offences, a person is liable on conviction for a fine of up to \$500. There is no continuing offence provision: for each offence Waka Kotahi must commence proceedings by filing a charging document in the District Court and prove a provision of section 97 of the GRPA was breached (e.g., the crossing place notice – or its conditions – was breached). Therefore, every breach of a notice gives rise to a 'new' offence. It is a strict liability offence; in that it does not matter if the person intended to commit the offence (or ought to have reasonably known).

We propose to introduce infringement offences for breaches of section 97 of the GRPA, which will be enforced by Waka Kotahi. Introducing a power to issue infringement notices would decrease the administrative burden and cost associated with filing a charging document. As there is no continuing offence provision and it is a strict liability offence, in that the defendant can escape liability if there is an ability to demonstrate the absence of fault, there is little to no benefit filing these offences in the District Court over issuing an infringement notice.

Introducing the ability to issue an infringement notice would provide Waka Kotahi with greater flexibility and speed in enforcing offences, which would in turn assist with the safe and efficient functioning of State highway LARs.

We propose increasing enforcement powers and penalties where unauthorised crossing places are created or where persons do not comply with conditions of any crossing place notice.

Amending and introducing infringement fees and penalties

Current state

There are three offences under section 97 of the GRPA relating to limited access roads:

- (a) acts in contravention of or fails to comply in any respect with any provision of section 92; or*

¹² Sections 97(a) - (c) Government Roadway Powers Act 1989.

(b) fails to comply with any condition specified in any authorisation granted under section 91 or section 92; or

(c) uses or makes any unauthorised crossing place on to a limited access road.

Section 51 of the GRPA also outlines how Waka Kotahi can recover repair costs, when use of a crossing place on a LAR causes damages to the state highway network.



Example of a misuse of a crossing place on State highway 3 which caused flooding concerns, where a letter under section 51 was issued.

These powers are only enforceable if Waka Kotahi takes the offending party to the District Court. For offences under section 97 of the GRPA, a person is liable upon conviction for a fine up to \$500. For offences under section 51 of the GRPA, a person is liable upon conviction for a fine up to \$1,000 and to a further fine not exceeding \$50 for each day or part of a day during which the offence is continued. However, the legal cost of taking a landowner, land occupier or other offending party to District Court can cost anywhere between \$20,000 - \$30,000. Furthermore, the time it takes to prosecute means safety concerns cannot be remedied in a timely manner. As a result, Waka Kotahi has not taken someone to the District Court over a LAR issue in recent years.

There is also currently no option for Waka Kotahi to give infringement notices to low level offending parties, or to deter landowners/occupiers or others from misusing crossing points as a first step.

This shows that the current process to enforce the misuse of limited access roads is not cost effective, when compared to the safety risks these offences create for other road users, and the overall cost of getting a conviction for the offence.

Proposed changes

1. Introduce powers for Waka Kotahi to impose infringement fees for offences under section 97 of the GRPA

We propose to introduce infringement fees of:

- up to \$1,000 for individuals (expected \$750)

- up to \$10,000 for businesses or undertakings¹³

The proposed fees align with provisions in the *Resource Management (Infringement Offences) Regulations 1999* which currently allows for infringement fees between \$300 and \$1,000.¹⁴

2. Increase fines for offences under section 51 and section 97 of the GRPA relating to limited access roads.

We propose to increase fines to:

- up to \$10,000 for individuals
- up to \$100,000 for businesses or undertakings¹⁵

The proposed fines align with offences under the *Electricity (Hazards from Trees) Regulations 2003*. The 2003 Regulations manages the risks related to trees [on private properties] that are growing through, or too close to, power lines. It enables landowners to be liable (upon conviction) for an offence up to \$10,000 and if the offence is a continuing one, a further fine not exceeding \$500 for every day or part of a during which the offence has continued.¹⁶

As businesses tend to have a higher number of vehicles or users accessing their property (meaning that a higher number of vehicles have the potential to misuse crossing places and increase safety risks for other road users) the fine is significantly higher than what is proposed for individuals, or special regulated individuals.

How infringement fee and fine amounts were assessed

The Ministry of Transport financial penalties tool was used to assess infringement fee and fine amounts for individuals, special regulated individuals, and businesses. An explanation on the tool can be found in **Annex Two**.

Potential harm	Rating and assessment
System harm	High - By breaching requirements, the systems put in place to ensure a safe, secure and efficient transport system are undermined. Current processes also set an unwanted precedent for others to misuse crossing places because they have seen others do it without penalties.
Safety harm	High - Serious misuse of crossing place on a limited access road has the potential to cause death or serious injury between one and 10 people. There is a greater risk for state highway users (in high-speed zones), particularly when there is limited visibility.

¹³ This is based on harm category 5 of the penalty scale for harm and types of offenders in the Ministry of Transport financial penalties categorisation tool.

¹⁴ Resource Management (Infringement Offences) Regulations 1999, Schedule 1, *Infringement offences and fees*.

¹⁵ This is based on harm category 6 of the Penalty scale for harm and types of offenders in the Ministry of Transport financial penalties categorisation tool.

¹⁶ Electricity (Hazards from Trees) Regulations 2003, s 26(2), *Offences committed by tree owners*.

Environmental and property harm	Medium - The misuse of crossing places – particularly by larger vehicles causes damage to the state highway. As a result, Waka Kotahi has used funding originally allocated for maintenance on other parts of the state highway network to repair this damage. These costs are expected to continue under current settings.
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The financial penalties tool references a ‘special regulated individual’, which is defined as an individual in a position of responsibility, usually acting in a professional capacity e.g. commercial passenger service drivers or holders of dangerous goods endorsements.

At this stage, where an individual member of the public could be liable for an infringement offence, the lower of the ‘individual’ and ‘special regulated individual’ has been applied for the purposes of the infringement fine and offence. In carrying out enforcement activities, individuals would be provided a warning letter prior to an infringement notice being issued. This will mean that in instances where there is a genuine misuse of a crossing place, the individual will have the opportunity to remedy the situation in the first instance.

3. Administration of crossing place notices

There is a lack of clarity about the administration of crossing place notices when a State highway has its status revoked and is instead administered as a local LAR. We propose amending section 96 GRPA to clarify that administration of crossing place notices passes to the territorial authority responsible. The administration of the notice would fall to the territorial authority as if it had been created under the LGA 74 (and vice versa to Waka Kotahi where a road becomes a State highway).

Analysis

The system of LAR is designed to control roadside development along the State highway network to ensure the safety and efficiency of the network overall. The proposed changes support the effectiveness of how Waka Kotahi can regulate this by making the regulatory requirements more specific, clarifying the regulatory roles and responsibilities between property owners, Waka Kotahi, road users, and LINZ.

The proposed changes also achieve the objective of increasing safety. By reducing the risk of unregistered and unregulated crossing places, through specifying the regulatory requirements, road users are more protected from heavy vehicles entering the State highway network from access points that have not been properly assessed and approved. This will also deter non-compliance from land owners.

Through increasing the clarity of the requirements for property owners developing land along the State highway network, with clearer notifications when land is transferred, property owners will have greater clarity of compliance requirements. If there are continued instances of non-compliance, the increased penalty levels and oversight will allow for better enforcement of the regulatory requirements.

Because of the objective of overall safety, the proposed changes to provide clarity for landowners and effective regulatory powers for issues of non-compliance are proportional to the risk of the harm in comparison to other regulatory interventions.

Multi-Criteria Analysis

Key:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

Strengthening and clarifying the system of Limited Access roads		
	Option One – Status Quo / Counterfactual	Option Two – Amending LAR regime with package of regulatory powers
Effectiveness	0	Clarifies the regulatory roles, responsibilities and requirements in the regime of LAR
Safety	0	Reduces likelihood of unregistered crossing places improving safety to people and property
Responsiveness	0	Improves the ability for Waka Kotahi to respond to breaches
Proportionality	0	Limited intervention aimed at appropriate impact and intensity to achieve the policy aim of increasing safety through deterring inappropriate use of crossing places.
Overall assessment	0	

Summarise the costs and benefits of your preferred option

LARs	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact
Affected groups (<i>identify</i>)		<i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>

Additional costs of the preferred option compared to taking no action		
Regulated groups	There may be costs for landowners if they are required to comply with a crossing place notice that they were unaware of. Property values are not expected to be impacted as each parcel of land is entitled to a crossing place.	Medium
Regulators	It is not expected that any additional costs will be incurred by Waka Kotahi where there is a requirement to record all crossing place notices on title (as it already has introduced an internal practice of recording crossing place notices against property titles).	Low
Other groups (e.g. wider government, consumers etc.)	There is uncertainty around the number of existing LARs and crossing place notices that may be unregistered on titles and the potential cost of retrospectively remedying this (Waka Kotahi, LINZ).	Low – Medium
Total monetised costs	<i>N/A</i>	<i>N/A</i>
Non-monetised costs	<i>N/A</i>	<i>Low-Medium</i>
Additional benefits of the preferred option compared to taking no action		
Regulated groups	Regulated groups are more likely to be aware of the requirements that they need to comply with.	Low
Regulators	Waka Kotahi would be advised via a notification of all subdivision or change in land use applications that impact any LAR. This would ensure Waka Kotahi forms the view whether or not the application impacts the intention of the LAR.	Medium

Other groups (e.g. wider government, consumers etc.)	There will be clarity for local government around the administration of crossing place notices where status of the underlying road changes.	Medium
Total monetised benefits	N/A	N/A
Non-monetised benefits	N/A	<i>Medium</i>

Conclusion

The preferred option is option 2. Making regulatory change to the LAR regime will increase effectiveness, safety, responsiveness and proportionality as compared to the status quo. Introducing this change will ensure that landowners know what interests are attached to their land and how those interests will affect the use of their land.

2 Introducing proactive road closure powers for Waka Kotahi over State highways

Option 1 – status quo

This option would make no regulatory changes. Under the status quo, Waka Kotahi road closure powers under the GRPA are generally limited to maintaining the operational condition of State highways and motorways.¹⁷ NZ Police would continue to be relied on for safety or traffic management situations where proactive road closure is required.

This would not meet the objective of aligning the safety regulators power to its responsibility under the land transport system, as Waka Kotahi would continue relying on NZ Police for intervention powers. This would not meet the criteria of ensuring responsive and effective intervention powers aimed at improving overall safety and protecting road users from harm. This would also continue the current inconsistent a location of powers between local government and Waka Kotahi.

With an increase in uncertain weather events due to climate change (such as wildfires, storms, high winds and floods), the inability to proactively manage the State highway network could exacerbate existing risks over time.

Option 2 – introduce road closure powers

This option would align Waka Kotahi road closure powers with those local RCAs have over roads that they administer. Under clause 11, Schedule 10 of the *Local Government Act 1974*, RCAs have powers to close any road or part of a road to all traffic or any specified type of traffic, specifically:

- while the road, or any drain, water race, pipe, or apparatus under, upon, or over the road is being constructed or repaired; or

¹⁷ Section 61(4) Government Roading Powers Act 1989: Waka Kotahi can temporarily close roads to conduct any work or investigation being undertaken, for the structural protection of a State highway, or execute repairs or remove obstructions from the State highway.

- where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or
- during a period when public disorder exists or is anticipated; or
- when for any reason it is considered desirable that traffic should be temporarily diverted to other roads, (this is the specific power that Waka Kotahi does not currently hold); or
- for a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show, market, concert, filmmaking, race or other sporting event, or public function.

Introducing proactive road closure powers will result in a safer and more effective land transport system, through allowing Waka Kotahi to proactively manage the State highway network, rather than relying on a good-faith relationship with Police. As asset owner, regulator and RCA of the State highway network, it is important that Waka Kotahi has the necessary regulatory tools to deliver a safe, efficient and effective network. Further, it is not efficient to rely on Police who have competing priorities and limited resourcing. Early engagement with NZ Police has indicated broad support for these changes.

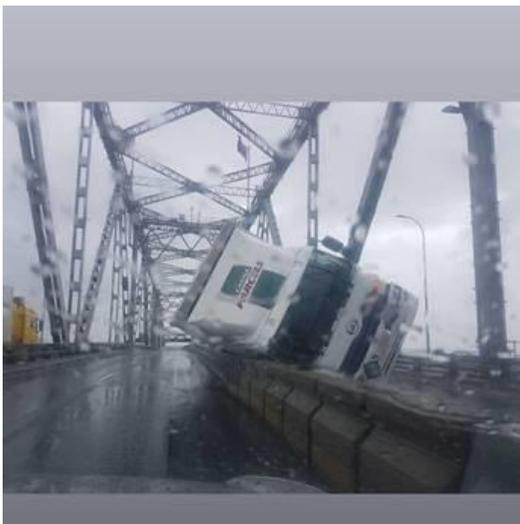
Analysis

Waka Kotahi has a responsibility and function to contribute to a safe transport system under the *Land Transport Management Act 2003*. The ability to proactively close State highways before accidents and incidents occur supports Waka Kotahi in fulfilling this function. The proposed changes are more effective as there is a direct impact on the safety of road users. The proposed changes ensure a consistency between the powers that RCAs can exercise over roads under their control, and those powers that Waka Kotahi can exercise over the State highway network.

Overall these powers will increase safety and provide responsive interventions for Waka Kotahi over the State highway network. Rather than waiting for an accident or incident in order to coordinate with NZ Police about closing lanes or roads, Waka Kotahi could, in limited and restricted circumstances, close roads proactively. The direct exercise of these powers is a responsive power to exercise traffic management powers.

With an increase in uncertain weather events due to climate change (such as wildfires, storms, high winds and floods) the proposed powers strike an appropriate and proportional balance between restrictive powers and a response that improves the safety of road users.

If option 2 were to proceed, Waka Kotahi would be able to proactively close road in the examples provided below.



Example 1: Auckland Harbour Bridge following high wind events



Example 2: State highway 94 (Otago) following flooding events



Example 3: State highway 1 (Mangamuka Gorge) following landsl

Multi-Criteria Analysis

Key:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

Introducing proactive road closure powers for Waka Kotahi over State highways		
	Option One – Status Quo / Counterfactual	Option Two – Introduce proactive road closure powers
Effectiveness	0	++ Has a direct and measurable impact on regulatory change and effective improvement of safety
Safety	0	++ Intervention as a direct causal effect on preventing accidents and harm from adverse events on the State highway network
Responsiveness	0	++ Equips the State highway safety regulator with direct powers of safety intervention to prevent foreseeable harm
Proportionality	0	+ Is a reasonable and proportional intervention to improve safety through limiting capacity on the State highway and preventing potentially significant harm
Overall assessment	0	++

Summarise the costs and benefits of your preferred option

Road closure powers Affected groups (<i>identify</i>)	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>

Additional costs of the preferred option compared to taking no action		
Regulated groups	Potential costs where roads are closed that result in time delays e.g. for the delivery of goods. This is not expected to be significantly different from where Waka Kotahi identifies risks and works with Police to close the road.	Low
Regulators	Potential costs in closing the road (e.g. communications, diversions) although this may not differ much from the status quo	Low
Other groups (e.g. wider government, consumers etc.)	There will be little to no costs for other groups.	Low
Total monetised costs	N/A	N/A
Non-monetised costs	N/A	Low
Additional benefits of the preferred option compared to taking no action		
Regulated groups	Increase in road safety outcomes.	Medium
Regulators	Better management of the State highway network. Better allocation of Waka Kotahi and Police resources, reduced risk of legal challenge.	Medium
Other groups (e.g. wider government, consumers etc.)	Clarity of responsibility for decision-making	Medium
Total monetised benefits	N/A	N/A
Non-monetised benefits	N/A	Medium

Conclusion

The preferred option is option 2. Introducing road closure powers will increase effectiveness, safety, responsiveness and proportionality as compared to the status quo. As asset owner, regulator and road controlling authority of the State highway network, it is important that Waka Kotahi has the necessary regulatory tools to deliver a safe, efficient and effective network. Further, it is inefficient to rely on NZ Police who have competing priorities and limited resourcing.

3 Modernising and improving the enforcement of Transport Service Licences

Option 1 – status quo

The status quo would make no regulatory changes and would retain the current legislative framework. While operational changes can be made to determine compliance with the existing legislative provisions, these will divert resource and do not address the problem issues identified. The impacts of retaining the status quo will be negligible (both positive and negative) towards individuals and other enforcement agencies. However, there are also no benefits.

Option 2 – introduce regulatory changes

We are proposing four measures to modernise the enforcement regime around the TSL licensing system.

For the problem definitions of there being insufficient regulatory oversight over the use of TSLs and the extension of the fit-and-proper test to added persons-in-charge (PIC), we propose the four following regulatory changes: (1) the creation of an offence for transferring, assigning or leasing a TSL, (2) introducing the ability to audit someone purporting to operate a land transport service, (3) to extend the power to suspend a TSL for health and safety concerns, and (4) to require a fit and proper check when a new PIC is added.

1 Creation of an offence for transferring, assigning or leasing a TSL and ability to audit someone purporting to operate a transport service

There is currently a prohibition on transferring, assigning or leasing a transport service licence in section 30N of the LTA. However, the terms (“transferring, assigning, or leasing”) are not defined in the LTA, and there is no corresponding offence for transferring, assigning or leasing a TSL. We are proposing to create these corresponding offences.

We propose to introduce fines for offences under section 30N for transferring, assigning or leasing a TSL:

- up to \$30 000 for individuals
- up to \$100,000 for businesses or undertakings¹⁸

The lack of definition and offences has created an ambiguous situation that has been exploited by operators to loan out TSLs. We have evidence demonstrating that some of those operators using a loaned TSL do not meet the regulatory requirements for operation or TSL system entry set out in the LTA. This poses several risks to the public and other operators, including the potential for a detrimental impact on public safety.

Waka Kotahi have a number of sources, complaints, discussions with other operators, permit applications and roadside enforcement. Once identified, there is an ability to revoke permits, forbid to operate (for the person operating without a licence). There are few tools to use against the person lending the TSL. Creating an offence for assigning, leasing, transferring a licence is an important tool to help stop this non-compliant behaviour

How infringement fee and fine amounts were assessed

¹⁸ This is based on harm category 6 of the Penalty scale for harm and types of offenders in the Ministry of Transport financial penalties categorisation tool.

The Ministry of Transport financial penalties tool was used to assess infringement fee and fine amounts for individuals, special regulated individuals, and businesses.

Potential harm	Rating and assessment
System harm	Very high - By breaching requirements, the systems put in place to ensure a safe, secure and efficient transport system are undermined. These offenders are making a conscious decision to not comply with licensing requirements.
Safety harm	High - There is a safety risk to the general public is operators that may have otherwise not been issued a TSL due to not being considered fit and proper, carrying out the activities which a TSL allows e.g., providing school bus services
Environmental and property harm	Low - This acknowledges that unless a safety event takes place, there is little risk to the road network and there is little in the way of environmental harm that could occur.

The financial penalties tool references a 'special regulated individual', which is defined as an individual in a position of responsibility, usually acting in a professional capacity e.g., commercial passenger service drivers or holders of dangerous goods endorsements.

At this stage, a TSL holder would be considered a 'special regulated individual' as these individuals have gone through an application process in order to be granted this licence type. There is little to no risk of members of the public carrying out this offence, hence using the financial penalties tool, the offence has been targeted towards the appropriate level for a 'special regulated individual'.

Ability to audit someone purporting to operate a transport service

We are proposing to expand the ability of Waka Kotahi to audit someone purporting to operate a transport service but doing so without a licence. A TSL is a land transport document allowing regulatory oversight of commercial road transport operations by Waka Kotahi. For those in the regime, Waka Kotahi has powers to audit and inspect operators holding a document (section 198 of the LTA). It is an offence for these parties not to display a current TSL or provide information to Waka Kotahi when required. However, Waka Kotahi has limited oversight over operators purporting to offer a transport service without holding a TSL.

Problem definition 2: extension of fit-and-proper test to added PIC

2 Extend the power to suspend a TSL for health and safety concerns

We are proposing to amend section 30U(1) of the LTA to enable Waka Kotahi to suspend a TSL immediately when significant concerns surrounding health and safety are identified or reported. There is a comparable power under section 87D of the LTA which allows Waka Kotahi to immediately suspend a transport service driver on safety grounds.

For example, Waka Kotahi could be notified by NZ Police, through roadside inspections, that an operator's fleet was being used with significant vehicle maintenance issues, or that an operator was knowingly encouraging employees to flout worktime requirements. Waka Kotahi often becomes aware of a TSL holder's health and safety shortcomings through the auditing process. The tools currently available in this situation are limited to further inspecting the company and vehicles in question. However, the relevant operators are still able to operate during the audit and investigation process.

Audits can take anywhere from 6 weeks to 6 months. As such, a final decision can take months due to extensive decision-making processes involved in suspending a TSL following an investigation.

Risks that could be addressed through this power include:

- providing unsafe vehicles and equipment;
- scheduling work which often results in worktime breaches;
- ignoring driver speed or complaints;
- inadequate practices around securing loads; or
- compliance with permits.

Suspending a TSL will be the result of systemic issues where the TSL holder is driving the poor behaviour. Anecdotally, Waka Kotahi have experienced that unsafe drivers can improve substantially once operating under a different TSL, where best practice policies and processes are in place.

3 Ability to decline a PIC applicant who does not meet criteria

We are proposing to amend section 30C of the LTA to allow Waka Kotahi to decline any person who applies to be a PIC to a TSL who does not meet the criteria of a fit and proper check. Both the *Maritime Transport Act 1994* and *Civil Aviation Act 1990* have similar requirements that can be drawn on to create this amendment.

Currently a PIC subsequently added to a TSL is not subject to the requirement of passing the fit-and-proper test. This undermines the integrity of the system and allows for unchecked persons to nominally fulfil the regulatory requirements of holding a TSL. This proposal seeks to remedy this gap in the system.

This acknowledges that there is a direct split between TSL obligations (systems and processes required to be safe) and drivers displaying correct behaviour. Ultimately, the TSL holder is responsible for ensuring that the transport service, which includes all the drivers operating under the licence, are safe.

Currently, if Waka Kotahi had evidence of a 'P' endorsement holder having sexually assaulted a customer, there is an ability to suspend the driver. In contrast, with a TSL, Waka Kotahi would need to ensure that the PIC had a complaints system in place, that the required notification to Waka Kotahi had occurred as required and that any ongoing issues had been dealt with appropriately.

As an example, Waka Kotahi have previously revoked a personal TSL due to the operation of unsafe freight vehicles. The individual has purchased an existing company with a TSL and then operated the same vehicles in the same manner. This operator is now lawfully running a transport service, despite previously demonstrating that they are no longer fit and proper. If a new application had been made, this would have been declined.

Analysis

The licensing regime for transport service providers is a critical component in ensuring road safety for the general public, through creating a barrier to entry and placing ongoing compliance requirements on operators. TSL holders should reasonably be expected to have policies and processes in place to ensure that their business is being conducted safely, with the drivers holding the relevant licences and endorsements to demonstrate their technical ability.

Regulators (in this case Waka Kotahi) need to be able to intervene to exit unsafe and non-compliant operators to safeguard the system for passengers, other road users and goods. The monitoring and intervention powers of the regulator play a critical part in fulfilling this purpose of the TSL regime.

By introducing the proposed regulatory changes (e.g., strengthening the offence regime, extending the suspension powers, auditing purported TSL operators and providing the ability to decline a new PIC) the effectiveness of Waka Kotahi's regulatory function is improved. By providing clearer regulatory requirements, and improving Waka Kotahi's oversight over operators, the interventions (investigations, audit, and licensing actions such as suspensions and revocations) can be exercised more purposively to achieve the outcomes of the licensing system.

The overarching purpose of the TSL system is to maintain safety through a licensing regime. This means protecting the public, infrastructure, and other protected interests from harm. Being able to monitor TSL holders more effectively and take regulatory action improves the level of safety. The table in **Annex One** provides an overview of the actions and the length of time for the regulatory process. By introducing the proposed changes, the length of time taken to intervene can be decreased. This means that the public will not be exposed to non-compliant operators for the same extended period, either as a client, passenger or other road user.

The proposed changes also make the Waka Kotahi powers more responsive. Rather than simply increasing existing penalty levels, the proposed regulatory changes are more nuanced and flexible to allow a risk-based assessment of which intervention is most appropriate. By enabling Waka Kotahi to monitor purported operators, decline extension of TSL to further persons-in-charge, and suspend TSL on health and safety grounds, more flexible regulatory action can be taken because better information is available and there is a wider range of potential interventions to choose from. These changes allow Waka Kotahi to undertake a better assessment of whether to provide guidance or take regulatory action.

Multi-Criteria Analysis

Key:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

Modernising and improving the enforcement of Transport Service Licences		
	Option One – Status Quo / Counterfactual	Option Two – introduce regulatory changes
Effectiveness	0	++ Provides clearer and more direct regulatory oversight and interventions to improve safety and compliance outcomes
Safety	0	++ Makes improvements to safety monitoring and ability for more timely decisions in safety critical decisions

Responsiveness	0	++ Retains ability for voluntary compliance while strengthening enforcement powers if these fail
Proportionality	0	++ Provides a range of interventions allowing a response that is proportional to the non-compliance
Overall assessment	0	++

Summarise the costs and benefits of your preferred option

TSLs Affected groups (identify)	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts
Additional costs of the preferred option compared to taking no action		
Regulated groups	There will potentially be a fee when applying for TSL and some inconvenience when appointing a new PIC	Low
Regulators	Ongoing costs in terms of carrying out the work and ensuring compliance issues are addressed. This is estimated at \$140k per annum for 2 FTEs.	Low/Medium
Other groups (e.g. wider government, consumers etc)	There will be little to no costs for other groups.	Low
Total monetised costs		\$140k
Non-monetised costs		Low/Medium
Additional benefits of the preferred option compared to taking no action		
Regulated groups	Regulated groups will be operating under the same rules. There will be clarity and certainty in the system for regulated groups.	Medium

Regulators	System strength and coherence	Medium
Other groups (e.g. wider government, consumers etc.)	Safety benefits as commercial operators will be held to a higher standard.	Medium
Total monetised benefits	N/A	N/A
Non-monetised benefits	N/A	Medium

Conclusion

The preferred option is option 2. Making regulatory changes to the TSL regime will provide Waka Kotahi with effective regulatory tools to better respond to instances of non-compliance, leading to better road safety outcomes. The current process allows for unauthorised entry into the TSL system, but not for adequate monitoring or ability to exit TSL holders in an efficient manner. These changes will lead to all TSL holders operating under the same conditions.

Section 3: Implementing the preferred option

How will it be implemented?

As a preliminary Regulatory Impact Statement, at this stage of the analysis no detailed implementation plans have been developed. Following further policy development based on the outcome of public consultation, more detailed implementation plans will be developed and subject to a final Regulatory Impact Statement when final policy decisions are sought.

Strengthening and clarifying the system of Limited Access roads

These proposals will require an update to, or development of operational policies on how the regime is administered and updated communications materials will be sent to the sector.

Introducing proactive road closure powers for Waka Kotahi over State highways

These proposals will require an update to, or development of operational policies on how the regime is administered and updated communications materials will be sent to the sector.

Modernising and improving the enforcement of Transport Service Licences

It is anticipated that fit and proper person checks will require an estimated 2 FTE employees (at \$140k per annum). The fee is set by, and payable to Police for any checks. Additionally, these proposals will require an update to operational policies and communications to the sector.

Monitoring, Evaluation, and Review

The proposed regulatory changes build and refine existing regulatory powers and systems, as a result, there is no need to design a specific monitoring and evaluation programme around the specific changes proposed. Further the moderate impact of the proposed amendments means a specific and detailed programme may not adequately measure the success.

We therefore consider it appropriate to include specific markers to assess the effectiveness of the changes within the existing monitoring, evaluation and review programme administered by Waka Kotahi. The changes and improvements to the systems and regimes administered by Waka Kotahi will form part of the review of the regulatory Strategy Tū Ake - Tū Māia. The Ministry of Transport monitors the implementation and effect of the proposed changes as part of its wider stewardship of the legislation it administers.

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Annex One: timeline for review process for Transport Service Licence

This example outlines how operators currently work outside of the LTA and how long it can take to go through the review process. This example involves the same company – ‘Company A’ – operating across multiple regions and involving multiple Waka Kotahi compliance teams.

Table 1 - Example A, Company A in Auckland Region:

Date	Event
25/03/2019	Company A meets with WorkSafe regarding damaging infrastructure. Information was provided to Waka Kotahi about non-compliance, dimensional permits and confusion about operating entities. Company A’s permits are being used by other entities.
29/04/2019	Waka Kotahi met with WorkSafe managers; further information provided. Case opened but Waka Kotahi resources allocated to other priority work.
05/08/2019	Waka Kotahi met with Company A manager. Permit issues were addressed, and agreement was reached for infrastructure damage.
05/08/2019	Outcome letter sent to Company A.
29/08/2019	File complete, police vetting and Ministry of Justice fines and debt report requested.
06/09/2019	Letter returned to Waka Kotahi - incorrect address. Letter sent to new address, Waka Kotahi still waiting for explanation from Company A on incorrect TSL use.
11/10/2019- 16/12/2019	No response from Company A, deadlines extended, follow-up emails also sent to Company A.
17/12/2019	Email response from Company A notifying Waka Kotahi that the borrowing entities were being sold.
17/12/2019	Borrowing entities operation moved under Company A, granted a TSL - Case file closed.

Table 2 - Example B, Company A now operating in the Hamilton region:

Date	Event
24/01/2020	Waka Kotahi receives further notification of non-compliance with permits, historical issues of infrastructure damage. TSL/Permits issued to Company A being used by vehicles owned by Company B - Case file opened.
February 2020	Person in control (PIC) of Company A becomes known to Waka Kotahi for personal offending, to be included in wider investigation.
25/03/2020	TSL application for Company B put on hold pending investigation.

Date	Event
April 2020	Case on hold during COVID-19 lockdown
26/06/2020	<p>Initial meeting held between Waka Kotahi and PIC of Company A and B, section 198 notice served.</p> <p>Became clear Company B was using Company A's TSL pending the approval of their own application. Planned Fleet audit cancelled due to significant fleet changes. Records deadline 10 July 2020</p>
14/07/2020	Waka Kotahi yet to receive records, Company A PIC contacted and made aware of consequences of non-compliance and given 24 hours to provide records
15/07/2020	Waka Kotahi received notice records were ready for collection from the office of Company B. These were not available to collect. Arrangements made to collect following day
16/07/2020 – 23/07/2020	Records collected but are incomplete. Fuel and repairs and maintenance records not provided. Later examination of records identified further logbook and timesheet records were missing. Chasing up Company B for further complete records.
05/08/2020	Further s198 records demand notice to be issued for missing timesheets and drug test reports. Drive Licence Investigation to be commenced for PIC of Company A and B due to extensive personal offending.
20/08/2020 – 26/08/2020	Reports finalised, triage panel decision to issue Notice of Proposal (NOP) to revoke TSL and recommend declining TSL application by Company B. Decision to be discussed by the Safer Commercial Transport Leadership Team (SCTLT)
31/08/2020	SCTLT confirmation to issue NOP to revoke TSL. Warning for PIC for Company A on personal offending (no evidence of driving in a transport service) and NOP to revoke PIC for Company B class 2-5 licence
15/09/2020	Permit, licence and TSL application notice served together
28/10/2020	Company B lawyer requested submission period extended till 4 November 2020
30/10/2020	Company B involved in an incident, damage to large goods and other vehicles, police issued a "Forbid to Operate" notice
25/11/2020	Notice of decline served to Company B, following close of submission period
09/12/2020	Company B involved in a fatality while operating, police issued a "Forbid to Operate" notice
21/12/2020	Notice of appeal received. Currently still under appeal

Date	Event
Current as of 24/09/2021	Still under appeal however, obvious from public social media posts that Company B is still operating.

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MINISTRY OF TRANSPORT

Annex Two: Summary of the Effective Financial Penalties Policy Framework and Categorisation Tool

The Effective Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool) has been developed by the Ministry to ensure that financial penalties (infringement fees and maximum fines before a Court) are proportionate to the level and risk of harm, and to ensure consistency across the transport system.

The Framework has four principles for determining effective financial penalties. The financial penalty needs to:

- respond to the offence's severity
- act as a deterrent to undesirable behaviour
- be proportionate
- consider the responsibilities and financial capacity of the person or entity in the system

The Framework assesses offences' severity by considering three types of possible harm:

- *System* – harm to the transport regulatory system itself from breaching any transport requirements or rules.
- *Safety* – actual harm, or risk of harm, to people.
- *Environmental and property* - actual harm, or risk of harm, to the environment or property

The Framework identifies two new categories of potential offenders that penalties can apply to:

- *Special regulated individuals (SRIs)* – commonly individuals with professional responsibilities in the transport system
- *Businesses or undertakings (BUs)* – commercial operators or not-for-profit organisations

The Tool outlines a stepped process in implementing the Framework:

- categorise financial penalties according to the Framework principles
- assign penalty levels by points

The Tool's categorisation process links recommended penalty amounts to:

- severity of harm
- likelihood of harm occurring should the offence occur
- types of potential offenders (individuals, SRIs, BUs)

The Tool guides users through a staged process to propose penalty levels that respond to an offence's severity, are a deterrent, are proportionate, and applicable to either 'regular' individuals, SRIs, or BUs. Following that process, the Framework and Tool propose that any broader public policy contextual factors, where relevant, are considered to inform the final proposed penalty levels.