

Chair
Cabinet Economic Development Committee

THE 2018/19 TRANSPORT RULES PROGRAMME

Proposal

1. This paper asks Cabinet to note the proposed 2018/19 Transport Rules Programme. This paper also seeks Cabinet agreement to Transport Ministers consulting on, and making, certain rules under the rules programme without further reference to Cabinet.

Executive summary

2. This paper asks Cabinet to note the 2018/19 Transport Rules Programme. The 2018/19 Programme comprises 20 rule projects and 11 policy investigations. A copy of the 2018/19 Programme is provided as an Appendix.
3. The transport rules programme is a rolling programme of new principal rules, revocations and amendments, managed by the Ministry of Transport (the Ministry). In each financial year, there will be rules progressing through different stages of the policy development and rule-making process. New rules may be undergoing initial development, while other rules may be at the public consultation stage.
4. The programme also includes a number of policy projects. These are areas where the Ministry and the transport agencies are currently working, or plan to undertake work, which may lead to proposed rule changes. Transport Ministers may move policy investigations onto the 2018/19 Transport Rules Programme as a rule project, and will notify Cabinet of any significant policy issues associated with those rules.
5. The transport rules programme provides a mechanism to give effect to this Government's priorities across the land, maritime and aviation sectors. In particular, this programme assists in improving road safety, protecting our marine environment, and maintaining a safe aviation system that allows for testing and development of new aviation technology.
6. Transport Ministers will consult further with Cabinet colleagues where transport rules are likely to have significant impacts on other portfolios, generate public or industry interest, or impose new costs. A number of the projects in the proposed 2018/19 programme will require further Cabinet consideration prior to consultation on a proposal and, if Cabinet requires, prior to making of the rule. These projects are indicated in the attached table.

Context

Transport Ministers have authority to make rules

7. The Minister of Transport is empowered¹ to make ordinary rules on matters covering land transport, civil aviation, maritime safety, and marine protection. Rules are the most common form of delegated legislation for transport and must be consistent with empowering provisions, as set out in primary legislation. Transport rules typically contain detailed technical standards, requirements and procedures governing the construction, maintenance, licensing and operation of transport modes. However, any associated offences, penalties, fees and charges are specified through supporting regulation.
8. Transport Ministers may also instruct the Parliamentary Counsel Office to draft rules that are legislative instruments and consequential amendments to offences and/or fees regulations where, for timing reasons, it is desirable to issue drafting instructions in advance of Cabinet policy decisions. This is in order to deliver the 2018/19 Transport Rules Programme.
9. Under my delegation as Associate Minister of Transport, I am responsible for the majority of matters that fall inside the transport rules programme. This includes land transport, aviation safety, maritime safety, and marine protection rules. The Minister of Transport is responsible for all other civil aviation matters.

The Transport Rules Programme

10. The transport rules programme is a rolling programme of new principal rules, revocations and amendments that is managed by the Ministry of Transport (the Ministry). The rules programme also includes policy projects that may, or may not, lead to new or amended rules. Most of the policy development, consultation and drafting of rules within the programme is carried out by the relevant transport agencies (which hold the technical expertise), with coordination and input from the Ministry, to ensure that a robust process is followed and broader Government objectives are taken into account. There are also rule changes where the Ministry plays a more significant policy development and leadership role.
11. Rule projects are driven in different ways, depending on mode. In the aviation and maritime sectors, a number of rule projects are driven by New Zealand's international obligations arising from treaties and agreements to which we are a party. In the land sector (road and rail), rules are predominantly driven by domestic policy considerations.
12. The rules programme principally comprises proposals for rule changes that have been through the policy development stage and are near to, or are progressing through, the public and sector consultation stage, and completion.

¹ Ministers are empowered to make rules by the Land Transport Act 1998, Railways Act 2005, Civil Aviation Act 1990 and Maritime Transport Act 1994.

13. The rules programme also includes a number of policy projects that may (or may not) lead to rule changes. I have included policy projects in the programme to signal to Cabinet these may be changed to rule projects and go out for public consultation during the year. Policy projects listed in the programme do not indicate the full breadth of policy work that might lead to changes to rules.
14. As required by clause 5.11 of the Cabinet Manual, Ministers are required to put before their colleagues the types of issues on which they themselves would wish to be consulted. For this reason, I am providing the 2018/19 Programme under my delegation as the Associate Minister of Transport, and bringing the policy content of transport rules to Cabinet for noting.

The 2018/19 Rules Programme

15. The proposed 2018/19 Rules Programme is attached.
16. There are 20 rule projects on the 2018/19 Programme: five civil aviation rule projects (including one omnibus rule), five land transport rule projects (including one omnibus rule), and 10 maritime, and marine protection rule projects (including two omnibus rules). Omnibus rules will now be referred to as Regulatory Stewardship Rules.
17. Alongside the rule projects, there are 11 policy projects. These are areas where the Ministry and the transport agencies are currently working, or plan to undertake work, which may lead to proposed rule changes. If a policy project recommends rule changes, Transport Ministers may move these into the rules project part of the programme and commence rule development.
18. The programme identifies a number of projects that will be brought to Cabinet prior to consultation or before being made. In addition to these, should there be significant issues relating to individual policy projects or rule projects, these will be referred to Cabinet prior to rule development, and potentially again before proposed rules are signed.
19. I propose to finalise and publish the programme following Cabinet's consideration.

Government priorities

20. The Transport Rules Programme provides a mechanism to give effect to this Government's priorities across the land, maritime and aviation sectors. Four of the projects in the proposed 2018/19 programme contribute significantly to these priorities. These changes all involve consideration by Cabinet prior to consultation on a proposal and, if Cabinet requires, prior to making of the rule.

Road safety

21. Improving road safety is a priority for the Government. In April 2018, Cabinet agreed that the Ministry of Transport will lead an inter-agency project to develop a new road safety strategy for New Zealand, and to deliver the strategy and action plan by September 2019 (CAB-18-MIN-0103). Cabinet also agreed that short-term work would be undertaken to tackle road safety issues alongside the strategy development.

22. The rules programme includes a key short term rule project to improve road safety by supporting road controlling authorities (principally local authorities, NZ Transport Agency and Auckland Transport) to accelerate implementation of speed management initiatives in their districts. The project involves reviewing the process for road controlling authorities to set speed limits. It will consider changes to the requirement to set speed limits through bylaws and support meaningful engagement on proposed changes to speed limits with communities. A stakeholder working group, including road controlling authorities, will input into any proposed changes to the process. This project will help to reduce some of the administrative burden currently imposed on councils from the bylaw making process.
23. However, more substantive policy work is required as part of the development of the new road safety strategy to consider whether more comprehensive changes to the current approach to speed management is warranted. I will report back to Cabinet in the future on this work.
24. Another rule project related to the road safety strategy relates to improving access for people walking, cycling and using public transport. This rule project clarifies the rules around what type of vehicles are allowed on footpaths and under what conditions. The current rules that regulate who can use pathways are complex, prescriptive and inconsistent. I am preparing a separate Cabinet paper seeking approval to consult on draft rules relating to this rule project.
25. In addition to these projects, I am also looking to introduce a rule mandating antilock braking systems (ABS) for motorcycles entering the vehicle fleet. ABS for motorcycles have been mandated in several European countries, and in Australia last year. It is a low-cost safety technology that prevents motorcycles from skidding under breaking. A rule change to mandate the technology in New Zealand is supported by motorcycle safety advocacy groups.

Marine environment

26. Protecting the marine environment is also a priority for this Government. Under the Maritime Transport Act 1994, offshore oil and gas installation operators have unlimited liability, should a spill occur. [REDACTED]

Omitted

27. [REDACTED]

Omitted

Unmanned aircraft

28. Ensuring the efficacy of the regulatory framework for unmanned aircraft, or drones, is consistent with our priorities, both in terms of ensuring New Zealand is well-positioned to benefit from new technologies while ensuring a safe aviation system. The sector needs to be proactive and adapt, so that all aircraft can operate and integrate seamlessly while minimising risk to people and the environment.

29. There have been a number of media reports and calls for greater regulation as a result of well-publicised incidents of private drones near airports. While making new laws to respond to contravention of existing ones is a poor approach to regulatory design, it is important that we ensure the current rules are fit for purpose, represent international best practice, and are capable of being understood and enforced. The proposed 2018/19 rules programme therefore includes a project that will consider whether the existing rules are effective.
30. In the short term, officials will review the current rules and consider what changes could be made to them to ensure that the regulatory framework introduced in August 2015 is appropriately updated.
31. Officials will also commence work on looking at changes being introduced by some of our international partners as there are likely to be benefits from harmonising our regime to reflect international best practice.

Regulatory stewardship

32. The rest of the rule and policy projects on the rules programme are associated with regulatory stewardship of the transport regulatory system.
33. Active management of a regulatory system, or regulatory stewardship, ensures the regulatory system remains up to date with domestic and international conditions, changes in technology, and is fit for purpose. Transport rules need to be constantly monitored and periodically adjusted to keep pace with changes. Over time, we are making rules, where appropriate, to be more flexible and performance-based. Without regulatory stewardship, regulatory failure can result, leading to significant economic and social costs.
34. The Ministry has lead stewardship responsibility for the transport regulatory system under section 32 of the State Sector Act 1988. However, the Ministry can only effectively perform its role by working in close partnership with the transport agencies.
35. Rules generally deal with specific ongoing subject areas such as entry into, and exit from the transport systems safety standards, and use of the transport network. The requirement for legislative amendment in each subject area is ongoing. Rules are amended or revised as required to reflect changes in the operating environment, which may involve revoking or adding components.

Significant regulatory stewardship rules

36. I would like to highlight two rule projects that may be of interest to Ministers that fall within the regulatory stewardship category.
37. *Maritime – rule project: Review the rules that set the standards for the design, construction and equipment of ships (the 40 series of maritime rules)* – These rules have been in place for many years and reflect the importance of vessel and equipment integrity to safety at sea. However, the rules are highly technical and over time as the industry has changed, the rules have become cumbersome to administer and amend. The structure of the rules imposes unnecessary regulatory burden and

cost on the industry and is potentially hampering innovation in the sector. This project would be a significant review of the structure and ongoing maintenance of the rules.

38. *Maritime – rule project: Minor and technical changes to the rule to allow New Zealand to become a party to the Cape Town Agreement 2012* – This project improves safety standards on board foreign fishing vessels, giving New Zealand jurisdiction to enforce minimum safety standards. This will decrease Crown costs associated with fishing vessel incidents, and reduce compliance costs for New Zealand vessels operating internationally, as they will only have to meet a single set of standards.

Consultation

39. The Civil Aviation Authority, the New Zealand Transport Agency and Maritime New Zealand have been consulted on this paper and their views are incorporated. The Ministry of Transport has also consulted with the Ministry of Justice, the Ministry for the Environment, New Zealand Police, the Treasury, and the Ministry of Business, Innovation and Employment. The Department of Prime Minister and Cabinet has been informed. The Minister of Transport has also been consulted and is satisfied with this paper.

Financial implications

40. There are no financial implications resulting from this paper. Any financial implications resulting from a specific rule will be identified as part of the development of that rule.

Legislative implications

41. Consequential amendments to offences and/or fees regulations may be required to support implementation of rules. This paper proposes that Cabinet invites Transport Ministers to instruct the Parliamentary Counsel Office to draft consequential amendments to regulations where, for timing reasons, it is desirable to issue drafting instructions pending Cabinet policy decisions.

Regulatory Impact Analysis

42. A Regulatory Impact Statement is not required for this paper. Regulatory impact analysis is undertaken for each rule project and a Regulatory Impact Statement developed where necessary. The Regulatory Impact Analysis Team at the Treasury will be consulted on these rule projects as appropriate.

Human rights, gender and disability implications

43. There are no human rights, gender or disability implications arising from this paper.

Publicity

44. I intend to publish this paper and the 2018/19 Rules Programme on the Ministry of Transport's website, with appropriate redactions, following Cabinet consideration. I consider publishing these papers to be of low risk because many of the rule proposals

and policy projects have been discussed with industry and other relevant stakeholders.

45. Regulatory Impact Statements and final rules will be publicised as required by the relevant legislative provisions and will be available via the Ministry's website. This will be managed by the Ministry or the relevant transport agency.

Recommendations

I recommend the Committee:

1. **note** Transport Ministers are empowered to make rules on matters covering land transport, civil aviation, maritime safety, and marine protection
2. **agree** to Transport Ministers progressing the proposed 2018/19 Transport Rules Programme, as set out in the Appendix to this paper
3. **note** the proposed 2018/19 Transport Rules Programme contributes to the Government's priorities in the land, maritime and aviation sector
4. **note** all transport rules undergo public consultation, and Cabinet will be informed of any significant risks before public consultation
5. **agree** that Transport Ministers make rules arising from the rules programme without further reference to Cabinet, unless indicated otherwise or in the course of their development a significant policy issue or risk emerges
6. **note** that Transport Ministers may move policy projects onto the 2018/19 Transport Rules Programme as a rule project and will notify Cabinet of any significant policy issues associated with those rules
7. **note** this paper, including the Ministry of Transport's proposed 2018/19 Transport Rules Programme, will be published on the Ministry of Transport's website with appropriate redactions in the third quarter of 2018.

Hon Julie Anne Genter
Associate Minister of Transport

Dated: