

# Impact Summary: Transport Instruments

## Section 1: General information

### Purpose

The Ministry of Transport (the Ministry) is solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

### Key Limitations or Constraints on Analysis

This proposal on Transport Instruments is a minor part of the *Regulatory Systems (Transport) Amendments Bill* (the Bill), proposed for introduction in December 2019.

The proposal includes a provision to empower the future use of Transport Instruments in the land (road and rail) and maritime legislative frameworks. However, it does not empower any actual Transport Instruments. For this reason, along with a limited timeline to complete the work prior to the Bill's proposed introduction, we have not undertaken public consultation on this proposed regulatory change.

Each individual Transport Instrument will require a consultation process when the Rule that empowers it is drafted.

The exposure draft of the Civil Aviation Bill, released for public consultation between May and July 2019, includes a similar Transport Instrument proposal. This impact summary considers the relevant feedback on the proposal in the Civil Aviation Bill.

Due to time and resource constraints, we have not undertaken a full analysis of all transport Rules and Regulations where the use of Transport Instruments may be appropriate. However, this Impact Summary identifies a range of examples where Transport Instruments could be used.

### Responsible Manager (signature and date):

Bev Driscoll  
Manager, Regulatory Policy  
**Ministry of Transport**

Date: 6 August 2019

## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

Maintenance of the transport Rules framework is not functioning as effectively as it should. Minor technical changes are either not being made or consuming a disproportionate amount of government resources.

#### **What are Rules?**

New Zealand's legislative framework provides for a range of different types of legislation, with different requirements and purposes (see table one below).

*Table One: Types of legislation*

Type of Legislation	Level	What is it for?	Who makes the decision?	Time required <sup>1</sup>
Acts	Primary legislation	Set out the substantive policy of a law	Parliament	About 2 years
Regulations	Legislative Instrument	Sets out specific matters in-line with empowering provision in an Act	Goes through Executive Council and signed by the Governor General	More than 6 months
(Transport) Rules	Other Instruments	Sets out requirements or standards in-line with empowering provision in an Act	Minister of Transport – but Cabinet notes Minister's decision and may approve policy	Between 3 to 6 months
Tertiary Instruments <i>(Not currently available in Transport)</i>	Other Instruments	Prescribes technical detail of how to comply with a rule or regulation	Agency/Director – but Minister empowered by Act to enable their creation in Rules	Weeks – months

Transport Rules (Rules) are a form of delegated legislation similar to Regulations. Rules are known as 'Other Instruments'. Most Rules<sup>2</sup> are signed into law by the Minister of Transport, or their delegate who is a Minister of the Crown, under the relevant Act. The Act sets out the objectives, duties and powers that provide the framework within which particular matters, including transport Rules, may be regulated. Rules contain detailed requirements, including approved standards and processes, for putting those principles and policies into operation.

<sup>1</sup> Estimated based on usual practice as there can be significant variation.

<sup>2</sup> Directors can make emergency rules and legislation provides for the Governor General to make rules in certain circumstances.

The intent of Rules is to enable detailed requirements to be implemented or updated faster than Acts and Regulations. Rules are comparatively more flexible and do not require Cabinet consideration (for the most part). However, that objective is proving harder to achieve in a rapidly evolving technical climate.

Tertiary Instruments could contain technical, detailed requirements relating to Rules or Regulations and enable these to be updated by the relevant agency or Director. However transport Acts do not currently allow the use of Tertiary Instruments.

For example, in land, provisions for vehicle standards are listed in the relevant Act, Regulation and Rule.

- The Act<sup>3</sup> empowers the Rule to set out standards and requirements concerning driver licencing.
- The Regulation<sup>4</sup> says that if a person does not comply with the Rule, then they may face an infringement fee and/or a maximum fine on conviction.
- The Rule<sup>5</sup> explains requirements applying and not applying to overseas drivers.
- A Tertiary Instrument could detail drivers from which countries are exempt from the relevant requirements in the Rule.

#### *How are Rules made?*

The Minister is empowered to make transport Rules under transport-related legislation. Before making a Rule, the Minister may consult with relevant stakeholders and consider their views before making the Rule. If it is a significant issue or of wide interest, the Minister will consult Cabinet before signing the Rule. The Rule will be gazetted and published, for example, on the relevant transport agency website.

#### *When are Rules changed?*

Through this programme, transport agencies identify Rule changes that could benefit the system. A prioritisation framework is then applied by transport agencies and the Ministry to identify those changes that need to be made urgently or have the greatest impact. Each change requires policy work, consultation, and Ministerial time.

Advice is provided to the Associate Minister of Transport about proposed Rule changes. Some of this advice is provided as part of distinct and specific projects, but most Rule changes are signalled through the annual transport rule programme (co-ordinated by the Ministry).

#### *What powers reside in transport agencies at present?*

The Maritime Transport Act 1994 and the Land Transport Act 1998 set out the functions and powers of the NZ Transport Agency (NZTA) Board and the Director of Maritime New Zealand (Maritime).

<sup>3</sup> Land Transport Act 1998 section 154

<sup>4</sup> Land Transport (Offences and Penalties) Regulations 1999

<sup>5</sup> Land Transport (Driver Licensing) Rule 1999

These powers are often of administrative in nature and generally relate to the issuing, acceptance, imposing of requirements or conditions, suspension, revocation or exemption of a licence or maritime document. The Maritime Transport Act provides that a rule may empower the Director or agency/authority to impose requirements or conditions. However, this is limited as this power generally only extends to administrative functions which cannot be enforced in situations of non-compliance with the detail outlined by the director.

The primary legislation does not provide for the Director or the Board to amend or update the content of Rules.

### ***What is the problem?***

When international standards change, technology improves or specific details need to be amended, these changes must be made by the Minister or Associate Minister of Transport (the Minister). This can be a time-consuming process, and some identified minor changes do not get made as resource is not available to support the legislative change process.

Some Rules contain details that require relatively frequent adjustment or that are highly technical in nature, resulting in Rules becoming out of date and the regulatory system having to play catch-up.

As an example of very detailed Rules, Maritime Rule 40C.17 includes 15 detailed provisions that implement crew accommodation requirements under an international convention (e.g. (j) the clearance above any bunk must not be less than 600 mm. The lowest bunk must not be less than 300 mm above the deck).

### ***What are the impacts?***

Rules contain technical detail that changes. There is a need for frequent small rule changes. Either:

- The technical Rule change has a reasonably substantial impact on transport users and a substantial resource allocated to making the change.

#### *Impact:*

- Other rule changes resulting from policy decisions progress at a slower pace.
- The Minister does not have the technical expertise to make the decision.

### **OR**

- The technical rule change has a minor or limited impact on transport system users and resource is not allocated to making the change.

*Impact:* over time this results in persistent small regulatory failures that result in unnecessary costs and delays to regulators and regulated parties.

### ***How does this relate to regulatory stewardship?***

We have identified this problem as a regulatory stewardship issue. Regulatory stewardship involves adopting a whole-of-system, lifecycle view of regulation, and taking a proactive, collaborative approach, to the monitoring and care of the regulatory system.

The transport Rules framework is not functioning as efficiently and effectively as it could. This is not a one-off situation, but rather an ongoing process issue. As stewards of the transport regulatory system we need to ensure that we are using the processes and tools available as effectively as possible.

Appropriate mechanisms enabling the regulatory system to anticipate and respond to changing circumstances, while providing certainty and ease of access to requirements for users are desirable.

If changes relating to technical detail could be contained in a Tertiary Instrument and made by another specified individual (i.e. the relevant regulator), this would reduce the burden on the rules programme and allow flexibility to respond quickly to changing circumstances.

If no action is taken, the transport agencies and transport users will continue to experience delays and inefficiencies resulting from the time required to alter and amend Rules. The relevant Rule can become out-dated as a result of lengthy legislative processes and the pace of innovation or changes in the sector.

## **2.2 Who is affected and how?**

Currently the need for frequent Rule changes and out-of-date Rules affect various parties in different ways:

- The Minister's time is valuable and spending it attending to and signing off on various small technical Rule changes reduces the time available to consider more significant policy matters.
- The Ministry and the relevant agency is required to resource the progression of these Rule changes when a more simple process could produce the same outcome.
- The transport agencies face inefficiencies as a key type of rules (those which contain significant detail and where technology or systems change frequently) are seldom up to date, constraining their regulatory and operational abilities. NZTA has advised the Ministry about the increasing administrative burden on it to process exemptions for vehicle standards that are not yet reflected in the legislation.
- Some transport users face unnecessary barriers or compliance costs such as needing to get a vehicle exemption, simply because the legislation is not updated.

In some circumstance this may have a negative impact on productivity and New Zealand's economic performance.

### 2.3 Are there any constraints on the scope for decision making?

The exposure draft of the Civil Aviation Bill (CA Bill) also addresses the question of how best to allocate authority to make and modify technical requirements.

The CA Bill does so by creating an additional power for the Director of Civil Aviation to make "Transport Instruments" pursuant to rules.

Our intent is that the solution implemented to respond to this problem is consistent across the transport sector. Therefore, the proposal outlined in the exposure draft of the CA Bill is our preferred option for change across all modes.

The exposure draft of the CA Bill was consulted on during May-July 2019 and feedback from that consultation is considered in this paper.

## Section 3: Options identification

### 3.1 What options have been considered?

We have identified two options, and used the criteria below to assess the various options proposed. The criteria reflect the issues outlined above. All four criteria are weighted equally in this assessment.

**Enable quick response to change** – as technical standards are updated or new technology is available, our regulatory framework is able to adapt to or accommodate changes in response.

**Appropriate decision-making power** – decision-making power is held by the person with the appropriate level of authority and expertise. For example,

- the imposition of rights and responsibilities on transport sector actors should be a function of Parliament (the Minister); but
- the technical detail and standards that underpin rights and responsibilities could be left to a specified individual with appropriate subject matter expertise (i.e. the relevant regulator).

**Efficient use of resources** – Crown funds are used in the most efficient and effective manner.

**Accountability** – ensuring that the legislation is publicly available, clear and transparent, disallowable, and that the Minister is able to ensure accountability.

We have identified two options. Due to the constraint of being consistent with the provision in the draft CA Bill, we have only considered an enhanced status quo and the Transport Instrument proposal as included in the CA Bill.

The pros and cons of each option is discussed and summarised below.

Option one – The enhanced status quo where the Minister continues to update or amend legislation. To ensure the Rules are maintained more effectively, further Agency, Ministry, and Minister resource will be required.

The resource required to administer a significantly expanded Rules programme would detract from the ability of the transport agencies, the Ministry, and the Minister to progress other work.

This option means that responding to technical changes is time consuming and resource heavy. Increasing the resources utilised for the Rule change process would result in legislation that is more up to date, but the length of the Rule change process may still create inefficiencies.

For the 2019-20 rules programme, the NZTA has identified 43 Rules that it would ideally like to change, update or amend. However, due to capacity, time and resource only 12 Rules could be prioritised onto the rules programme. Maritime face a similar situation in terms of prioritisation and capacity.

The legislation remains enforceable and transparent. The Minister retains full control of the content of the Rule or Regulation.

Option two – The legislation empowers the specified individual (such as the relevant regulator) to make an Instrument, but it has legal effect only if a Rule made by the Minister, or a regulation, refers to the Instrument.

The Instrument is then treated as part of the Rule or Regulation. These Instruments would be expressly legislative in nature and modelled on similar provisions in other legislation (for example, the Civil Aviation Bill and the Health and Safety at Work Act 2015).

Their use would not be appropriate for all rules, but could address issues that require relatively frequent adjustment or that are very detailed. The Instruments would be subject to the overriding caveat that they would not alter the primary obligations imposed or rights afforded by a rule.

This option will provide a mechanism for a quick response to changes within the system. This will support some Rules (those that require relatively frequent adjustment or that are highly technical in nature) to be up to date, usable and effective. Resource will also be freed-up to support more substantive policy changes. Transport users and the regulators will benefit from the updated and more usable transport legislative framework (reducing the need to apply for exemptions for example).

The option reduces some of the burden on the Minister and the Ministry, as the specified matters would be tended to by the agency. As agencies already draft and consult on Rule changes, the resources required by agencies are likely to be similar to those currently required.

The Minister would determine the scope of the Transport Instrument in the Rule. This provides the specified official and everyone concerned with clarity as the boundaries of that scope. The specified individual, and any decision made by the specified individual, would be held accountable by the Minister.

Transport Instruments will be gazetted and published on Parliamentary Counsel Office's (PCO) website as second tier, disallowable legislation.<sup>6</sup>

In summary:

	<b>Enable quick response to change</b>	<b>Appropriate decision-making power</b>	<b>Efficient use of resources</b>	<b>Accountability</b>
Enhanced status quo	⊘	⊘	⊘	✓
Transport Instruments	✓	✓	✓	✓

Below is an example about a recent problem faced by Lyttelton Port that required a Rule change. This will be assessed against the criteria and two options.

<b>Context &amp; Situation</b>	<p>The Maritime Rules Part 90 specifies compulsory pilotage areas and thresholds for pilotage (the maximum gross tonnage or length of a vessel that may enter a pilotage area without a pilot or exemption). Appendix 1 of Part 90 currently specifies the geographic location of pilotage areas and the maximum tonnage or length limits of vessels that can operate in that area without a pilot.</p> <p>This is regulated as the narrowness and depth of some ports and harbours make it dangerous to navigate without a pilot (a trained and licenced person who takes control of a vessel while they are in a pilotage area).</p> <p>The Lyttelton Port Company (LPC) recently completed a large and complex dredging operation for the port of Lyttelton to accommodate larger and deeper ships. An extension of the existing pilotage limit in the Rule is needed to ensure ongoing navigation safety and enable ships to enter the extended channels without a pilot on-board.</p>
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<sup>6</sup> Disallowable legislation means that Parliament has the ability to scrutinise that legislation through the Regulations Review Committee, and could reject or repeal the legislation.

	<p>The extension of limits would also enable LPC and ship operators to pursue larger and more efficient operations, which would see cumulative benefits to the operators and local economy.</p>
<p><b>Enhanced status quo</b></p>	<p>Extending the Port's pilotage limits requires an amendment to the Lyttelton pilotage areas and limits set out in Appendix 1 of Maritime Rule Part 90.</p> <p>Currently, this requires a full rules amendment process with associated resourcing and timeframe implications. From policy development through the legislative process to implementation would usually take months and would require resourcing from both Maritime and the Ministry to progress this piece of work.</p> <p>In this situation, the decision-making power does not sit at the right level. As it is unreasonable for the Minister to have or need to know detailed knowledge about the pilotage limits for each area/region.</p> <p>The legislation would be clear and accessible, and the Minister would retain oversight of the parameters of the Transport Instrument.</p>
<p><b>Transport Instruments</b></p>	<p>Pilotage limits are very technical and through a Transport Instrument, the delegated official for Maritime would be able to easily and quickly amend the limit. As a result, LPC can maximise its operational efficiency on its investment in expanding the width and depth of their port channel.</p> <p>The decision-making power sits at the right level as the specified individual will have the technical knowledge to understand the necessary changes and potential implications.</p> <p>Resource to administer the change would only be required from Maritime, and for a more limited time.</p> <p>The legislation would remain clear and accessible. And the Minister would retain the ability to remove the Transport Instrument if the power, Instrument or amendment was not in accordance with the Minister's direction.</p>

### 3.2 Which of these options is the proposed approach?

We recommend option two as it provides the best balance between the Minister's oversight on the Rules but without taking up the Minister's time with many small, technical and/or frequent rule changes (allowing the Minister's time to be spent on more substantive matters). Through this option the Minister empowers the specified individual to make and manage Transport Instruments but the scope and use would be narrow and determined by the Minister.

Option two reflects the principles of regulatory stewardship, in the form of the Treasury's expectations for the design of regulatory systems.<sup>7</sup> Regulatory systems should be an asset for New Zealanders, not a liability. For this reason, we are proposing to introduce a new tool (Transport Instruments) to our current system in order to produce a more predictable, consistent, efficient and up to date regulatory system.

This proposal has clear objectives: enable a quick response to change, ensure decision-making sits at the right level in terms of authority and expertise, ensure efficiently, and support accountability. Option two will allow us to achieve those objectives, while ensuring consistency through out the transport legislative framework.

### ***How would this work?***

Changes would be made to the Land Transport Act 1998, the Railways Act 2005<sup>8</sup>, and the Maritime Transport Act 1994.

This proposal would see the Minister of Transport allocating the power to make Transport Instruments to a specified individual such as the relevant regulator. The Transport Instrument would then be made and kept updated by the relevant specified individual.

The Minister will have the ability to leave matters that require relatively frequent adjustment or are highly technical for the specified individual to determine. The aim of this proposal is not to reduce the rule-making power of the Minister, but rather is an opportunity for the Minister to allocate some of that power to a lower level.

### ***How would accountability be upheld?***

The key control on Transport Instruments is that their scope and use would be determined by the Minister – they would have no effect except to the extent that a Rule or a regulation refers to them. For example, the Minister could make a Rule that provides for a Transport Instrument to set alternative means of compliance to cater for new technologies, or to set additional requirements to meet a Rule. The Minister could subsequently change the Rule to remove or limit the use of Transport Instruments.

The following additional safeguards would also apply:

- Transport Instruments are disallowable Instruments – so Parliament can scrutinise them through the Regulations Review Committee
- the Director must consult before issuing a Transport Instrument
- Transport Instruments must be published in the Gazette, and be made available online and in hard copy.<sup>9</sup>

<sup>7</sup> <https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

<sup>8</sup> The Railways Act 2005 currently includes an empowering provision for Rules, but none exist currently. We intend to include an empowering provision for Transport Instruments in the Railways Act to ensure consistency, but this will not be used until a Rule is created.

<sup>9</sup> Once the Legislation Bill is enacted, they would be made by being notified on the Legislation.govt.nz website

### ***When would a Transport Instrument be used?***

The types of matters that could be dealt with by a Transport Instrument include minor, technical and procedural matters. The changes made by the specified individual should not be a political decision, impose significant new costs on, or modify the obligations or rights of any person under the relevant Rule or Regulation. The specified individual will need to consider whether the proposed changes fall outside of the conditions of the Transport Instrument, and should therefore be dealt with by the Minister.

The types of Rules that have provisions that could be dealt with through a Transport Instrument (and have already been identified by NZTA or Maritime) could include:

- Land Transport (Driver Licensing) Rule 1999
- Land Transport Rule: Heavy Vehicle Brakes 2006
- Land Transport Rule: Traffic Control Devices 2004
- Maritime Rule Part 40C.17 Requirements for Crew Accommodation
- Maritime Rule Part 90 Pilotage Limits.

In these cases, the Rule would still remain in place to set the high level requirements like “crew accommodation must be sufficient for the number of crew on board”. But the Transport Instrument could be used to describe the more detailed requirements like “the minimum inside dimensions of the bunkbed must be 1.9 metres by 0.68 metres”. As noted earlier, the instrument will be treated legally as part of the Rule that refers to it.

## **Section 4: Impact Analysis (Proposed approach)**

### **4.1 Summary of costs and benefits**

Each Transport Instrument will have its own costs and benefits. However, general costs and benefits are explained below.

#### *Additional costs of proposed approach, compared to taking no action*

We would anticipate that the respective regulators would have an increased cost to resource and progress the Transport Instruments that will be required for the initial stage of implementation. For example:

- i. creating internal and external process and procedures around Transport Instruments (to support those outlined in the legislation);
- ii. designing the Transport Instruments; and
- iii. considering what Rules and matters would be suitable for a Transport Instrument.

However, this would be offset over time by:

- i. the reduced regulatory burden;
- ii. the benefits that come from being able to efficiently maintain these changes; and
- iii. the experience and familiarity with the new Instrument and subsequent processes.

### *Expected benefits of proposed approach, compared to taking no action*

This is a legislative and procedural proposal, and for this reason, we cannot estimate the monetised benefit of this proposal. However, we would expect that agencies (or other parties) will have more efficient operations leading to cumulative benefits to the agencies and the economy. For example, regarding the earlier example of the NZTA exemptions, the NZTA would be able to easily update the specifications for complying with the vehicle standards rule. As a result, NZTA and the Ministry would not have to spend months developing and progressing the proposal through the Ministerial rule-making process.

The Ministry and Minister would, therefore, be able to dedicate more time and resource to other more high-level matters. The Minister still has the ability to determine the scope of the Transport Instrument, and could remove the specified individual or Instrument if deemed necessary.

For Maritime's 2018/19 and 2019/20 rules programme, 27 percent of the rule changes could have been fully made through a Transport Instrument if one were in place. Also, a further 60 percent of the rule changes could have been made partially through a Transport Instrument if one were in place (as some rules on the programme seek multiple changes to a particular Rule provision or Rules Part).

Furthermore, for the most recent land transport Omnibus Rule Amendments, 89 percent of the changes could have been made through various Transport Instruments if they were already established.

Many transport users will benefit from particular Rules (those that require relatively frequent adjustment or that are highly technical in nature) being more up-to-date, responsive and efficient.

#### **4.2 What other impacts is this approach likely to have?**

NA – all impacts discussed above.

## **Section 5: Stakeholder views**

#### **5.1 What do stakeholders think about the problem and the proposed solution?**

This proposal would see the Minister of Transport empowered to make Rules authorising a specified individual from Maritime or the NZTA i.e. a Director to make Transport Instruments for a particular purpose under particular conditions.

The Minister and transport regulators are generally in support of this proposal as it is a mutually beneficial arrangement. The Minister's time is not consumed with small, technical and/or frequent rule amendments, and the regulators have greater oversight or abilities in regard to their transport mode.

This proposal would also benefit transport users as it would reduce unnecessary barriers and compliance costs which would take longer to resolve through Ministerial processes. Users would also have greater certainty and access to requirements that impact on them as Transport Instruments would be available on PCO's website.

We have not consulted on this proposal. Feedback on a similar proposal from consultation on the exposure draft of the Civil Aviation Bill was limited, but included the following points from the Law Society:

*There is a need for very clear delineation between the rules made by the Minister and the transport instruments made by the Director. This is necessary to avoid overlapping or confusing requirements...*

*...The proposal to provide for transport instruments also raises an issue about the regulator (who is responsible for administering and ensuring compliance with the rules) also being the law maker, because usually these roles are separate. We suggest that any powers for the Director to make transport instruments should be limited to implementing the requirements of the rules or regulations or specifying how compliance may be achieved.*

We agree that there needs to be clear distinction between Rules made by the Minister and changes made through a Transport Instrument by the specified individual. It is important that there is clear guidance about when, where and how the specified individual can use their power to avoid unintended consequences. Also, regarding their last point, the Transport Instrument will only enable the Director to specify how compliance might be achieved.

We expect minimal public interest in this proposal.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

The proposal will be given effect through the Regulatory Systems (Transport) Amendments Bill. An empowering provision will be created in the relevant legislation.<sup>10</sup>

Once Royal Assent is granted, Transport Instruments will be an option for addressing the detailed requirements currently part of some Rules and Regulations. Future Rule or Regulation changes will be needed to empower the use of individual Transport Instruments.

The Ministry will work closely with the agencies to develop guidance and understanding about:

- i. the relationship between Rules and Instruments;
- ii. what Instruments provide for;

<sup>10</sup> Land Transport Act 1998 and Maritime Transport Act 1994.

- iii. when proposed changes to the content of Instruments should be referred back to the Minister;
- iv. how Instruments will be given effect.

The agencies will need appropriate resource, expertise and processes in place to design and implement Transport Instruments.

Transport Instruments are likely to be suitable for circumstances where there are detailed requirements and the expertise resides at the agency-level. Transport Instruments would not be suitable if it determines or changes the rights and responsibilities of users, or is a political decision.

Below is the draft text from the CA Bill regarding Transport Instruments for context:

### **349 Director may make Transport Instruments**

(1) The Director may—

- (a) make a Transport Instrument for the purposes referred to in subsection (2); and
- (b) amend or revoke a Transport Instrument made under paragraph (a).

(2) The purpose of Transport Instrument is to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, controlling activities, setting requirements, procedures, or means of compliance, setting competency requirements, and providing for exceptions.

(3) A Transport Instrument made under this section—

- (a) has legal effect only to the extent that any of the regulations or rules refer to it; and
- (b) is treated as part of a regulation or rule that refers to it.

(4) For the purposes of subsection (3), regulations or rules may refer to—

- (a) a particular Transport Instrument as amended or replaced from time to time; or
- (b) any Transport Instrument that may be made for the purposes of regulations or rules (even if the Instrument has not been made at the time the regulations or rules are made).

(5) Noting in this section limits section 56(4) or section 329(4) (which provide among other things for rules or regulations to provide for the Director to impose requirements).

### **350 Procedures relating to Transport Instruments**

(1) The Director must not make a Transport Instrument unless the Director is satisfied that all persons and organisations that the Director thinks appropriate have been consulted, having regard to the subject matter of the proposed Transport Instrument.

(2) The Director may approve an amendment to a Transport Instrument (including approving incorporation of amendments to, or updates of, documents incorporated by reference) without complying with subsection (1) if the Director is satisfied that the amendment is minor or technical.

(3) A Transport Instrument is a disallowable Instrument, but not a legislative Instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act but only to the extent that the Instrument is given effect to in accordance with section 349(3).

(4) The Director must, as soon as practicable after a Transport Instrument is made,—

(a) notify the Transport Instrument in the *Gazette*; and

(b) ensure that a copy of the Transport Instrument is available—

(i) free of charge on an Internet site maintained by or on behalf of the regulator; and

(ii) for purchase in hard copy at a reasonable charge.

(5) A failure to comply with subsection (4) does not affect the validity of a Transport Instrument.

### **351 Incorporation of material in Transport Instruments**

(1) Section 65 (which provides for the incorporation of material by reference) applies to Transport Instruments as if Transport Instruments were rules.

(2) For the purposes of subsection (1), every reference in section 65 to a rule must be treated as a reference to a Transport Instrument.

## **Section 7: Monitoring, evaluation and review**

### **7.1 How will the impact of the new arrangements be monitored?**

As part of our regulatory stewardship role, we evaluate the system, how it is working, and whether improvements could be made. This is a growing priority for the Ministry. We are developing a separate tool which will enable us to systematically review the transport system, legislation and actors.

The impacts of the proposed Transport Instruments will be monitored by the Regulatory Policy team at the Ministry. As part of monitoring we will track:

- i. how many Rules are amended or drafted which empower a Transport Instrument;
- ii. the number of Transport Instruments issued;
- iii. the time it takes to prepare and amend Transport Instruments;

- iv. whether the Transport Instruments are delivering on the objectives (responsive, appropriate decision-making power, reduce regulatory burden, enforceable); and
- v. whether there are any unintended consequences.

This would allow us to evaluate the effectiveness of Transport Instruments, and consider whether any changes are necessary to either the legislation or process within the transport agencies.

## **7.2 When and how will the new arrangements be reviewed?**

We will monitor the use and implementation of Transport Instruments over time. The annual rules programme provides a vehicle through which to review the use of Transport Instruments and report on this to the Associate Minister of Transport.