



24 February 2019

Final Report

Independent Review of the Ministry of Transport's Processes for Undertaking Consultation on the Clean Car Standard

Ministry of Transport
Te Manatū Waka



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This report responds to the Ministry of Transport’s request for an independent review of its handling and consideration of certain submissions made to it on the Government’s proposed Clean Car Standard.

1. The issue in scope

On 9 July 2019, the Ministry of Transport (the Ministry) released a discussion document ‘Moving the light vehicle fleet to low-emissions: discussion paper on a Clean Car Standard and Clean Car Discount’¹.

Submissions were called for and submitters could respond to the consultation questions by going to <https://transport.cwp.govt.nz/clean-cars/>. Alternatively, people could write to the Ministry using the email; cleancars@transport.govt.nz.

Submissions were scheduled to close on 20 August 2019. Submissions were actually received up to and including 3 September 2019.

The Ministry received a large number of submissions through both channels from individuals, corporates, industry representatives as well as advocacy groups.

More than one thousand submissions were sent by email to cleancars@transport.govt.nz from the email domain “@campaignnow.co”. Some of these submissions were automatically blocked by the Ministry’s automated SPAM filters. Because the Ministry was concerned that these emails may have been created by a “bot”, a manual rule was also created to block the emails.

It subsequently became clear that these submissions were from individuals using a pre-populated form generated through a campaign website configured to allow people to send their submissions through that website to the cleancars@transport.govt.nz email.

On 30 September 2019 the Chief Executive of the Ministry initiated this Review.²

2. Scope and purpose of the review

The purpose and scope of this review was to establish how and why the Ministry made the decision to block the emails, including what led to some of them being treated as spam by the Ministry’s information technology system.

The review also considered the processes used to identify spam and/or denial of service attacks, and whether these are appropriate for dealing with similar situations in the future.

The review considered the Ministry’s approach against best practice in the public service. This review makes findings and provides advice and recommendations designed to assist the Ministry’s approach to undertaking consultation in the future.

3. Approach

In undertaking this review, we:

¹ Ministry of Transport (2019). Moving the light vehicle fleet to low-emissions: discussion paper on a Clean Car Standard and Clean Car Discount. Wellington: Ministry of Transport.
Published in July 2019 by the Ministry of Transport, PO Box 3175, Wellington 6140, New Zealand.
ISBN 978-0-478-10031-0 (PDF). The document is available at <https://transport.cwp.govt.nz/clean-cars/>.

² See Appendix 2

- a. Looked at the specific piece of research noted above, how it was commissioned, carried out and reported on
- b. Interviewed all relevant staff and management³
- c. Researched and considered relevant government policies that apply to consultation processes being undertaken by government agencies
- d. Developed findings and recommendations.

4. Limitations and acknowledgements

This review has been undertaken in reliance on the information supplied by the Ministry and what people have told us during the interviews we conducted.

We would like to acknowledge the thoughtful, open and constructive input from all those who contributed to this review. We gained a clear sense of the genuine desire of everyone involved to understand what the lessons are to be taken out of the events that led to the review in line with our Terms of Reference⁴. We do not make any findings nor make any comment on the conduct or competence of any individual.

5. Clean Car Standard - Context

In June 2019, the Government agreed that the Ministry of Transport would release a public consultation document seeking feedback on a vehicle fuel efficiency standard and a vehicle purchase feebate scheme to address light vehicle emissions.

Cabinet agreed that public consultation would be undertaken over a six-week period between 24 June and 5 August 2019.⁵

The Ministry was seeking feedback on the proposed standard as an input to the Ministry's further advice to their Minister on the standard.

6. The Ministry's consultation process

In accordance with government guidelines for effective communication, the Ministry considered who the stakeholders were that it wished to consult and the best channels to use to reach their target audience.

This was discussed internally, and a range of channels were selected to provide a variety of ways for people and industry to participate in the consultation process. A dedicated email cleancars@transport.govt.nz was set up as one of the channels.

Many organisations will ask their members to comment on a consultation and provide them with boilerplate text that covers all the significant points. This is not an inappropriate approach to take and can make it easier for people to participate who otherwise might not provide their feedback.

The National Party set up a campaign site to allow people who wanted to, to make a submission on the standard to the Ministry through the email set up for that purpose. It used a specialist provider to facilitate this process, CampaignNow. CampaignNow is managed by Code Nation (<https://www.codenation.com/>) an Australian creative agency supporting climate action and socially progressive causes.

³ See Appendix 1

⁴ See appendix 2

⁵ Noting that the actual period of consultation was subsequently amended to end on 20 August 2019. However, emails were actually received into the Ministry's email up to 3 September 2019

7. The Ministry's controls and security settings for e-mail

As required by the New Zealand Information Security Manual, the Ministry operates a number of security controls to protect itself from malicious emails that distribute SPAM, viruses, malware, as well as protecting the Ministry from volume-driven 'denial of service' (DoS, DDoS) attacks.

It currently uses SMX email security and archiving, and Revera⁶, a cloud services provider for email filtering. As with anti-SPAM and anti-virus applications, the Ministry uses industry compliant automated and standardised algorithms, managed by SMX, to control for SPAM.

Reasons an email might be marked as SPAM include:

- The propensity of the originating IP address to send SPAM
- Frequency / high volumes of the emails
- The similarity of emails to each other (title, content, originating email address)
- Misuse of email headers to misrepresent the originator of the email.

The issue of computer-generated responses that are made to look like genuine responses to a consultation process is a growing issue internationally, with the potential to undermine democratic processes and effective decision-making by agencies and politicians. For instance, in 2017 in the United States a SPAM bot made 1 million genuine looking comments on a government proposal⁷

8. The decision to block emails from the Campaign Now site

Between 12 August 2019 and 3 September 2019 the Ministry received 1,644 emails from the email address action@campaignnow.co. 1,621 of these were received before the end of the consultation period (20 August 2019). These were either received, blocked by the automatic anti-SPAM rules, or blocked after the Ministry put a manual SPAM rule in place on 13 August 2019.

Date	Received at the gateway	Automatically marked as SPAM and blocked	Blocked after implementing the anti-SPAM rule	Received into the Clean Cars inbox
12 Aug	27	2	0	25
13 Aug	963	65	380	518
14 Aug- 20 Aug	631	0	631	0
21 Aug – 3 Sep	23	0	23	0
Total	1644	67	1034	543

⁶ A subsidiary company of Spark NZ Ltd.

⁷ <https://qz.com/1138697/net-neutrality-a-spambot-made-over-a-million-anti-net-neutrality-comments-to-the-fcc/>

All of these originated from the same email address and one of two IP addresses. Within the text of the email a different name appeared, e.g.:

John Smith <action@campaignnow.co>

Jason Jones <action@campaignnow.co>

This configuration is consistent with malicious campaigns where multiple sender names are often used to distribute SPAM from the same email or domain. The actual email address of the originator was not visible to the Ministry. It did not appear in either the email body or in the 'From' or 'Cc' fields and did not appear in any of the system-level reporting of emails. As well as blocking emails from action@campaignnow.co the Ministry's SMX system also blocked a number of other emails that were sent to it as SPAM.

The initial alert to the emails came out of the policy team responsible for managing the consultation process. An advisor alerted his manager who subsequently discussed what they were observing with a more senior manager. Collectively they sought the advice of Revera, the Ministry's IT service provider (including email service), through Revera's helpdesk. In consultation, the decision was made by a policy manager to place a manual block on the emails. Part of the reason for doing so, was a belief that if the emails were legitimate, the Ministry would be able to go back and allow them into the process.

It was possible to find originators' individual email using email properties and the individual's email addresses using the 'reply to' option. But this was not known or tested in the first instance.

In total 67 of the emails were blocked and reported as SPAM by the Ministry's automated SMX system, mostly on 13 August. Patterns that probably triggered SMX to reject the emails included:

- 13 August - 951 emails received in 10 hours
- 13 August - 20 apparently identical emails received in 17 seconds
- 13 August - 14 apparently identical emails received in 14 seconds

As currently configured SMX would again reject similar emails as SPAM.

SMX also correctly identified four other emails sent to the Clean Cars mailbox as SPAM.

The sender (action@campaignnow.co) would have been sent 67 advisory emails letting them know their email was blocked.

After identifying the email address as potential SPAM, a block was applied to the email address 'action@campaignnow.co'. 1034 emails were blocked after 3.40pm on 13th August.

There are currently 6 rules blacklisting external addresses and domains (this was the seventh).

Emails are manually blocked for similar reasons to the automated process:

- The source of the email is identified as a phishing, whaling, DDoS or other security threat.
- Where automated processes are not catching all (or any) of the emails, but the emails are manually identified as SPAM.

As with the automated blocking of the initial 67 emails, action@campaignnow.co would have received 1014 advisory emails advising that the email had been blocked. We were told that it would be unlikely that these emails would have been monitored by the operators of the CampaignNow website.

Following a press statement by the leader of the National Party, Simon Bridges, the Ministry became aware that the emails were from legitimate sources and represented the views of individuals seeking to make a submission. Following inquiries by the Ministry it was able to

reasonably quickly identify that it had made incorrect assumptions about the emails. It then undertook appropriate enquiries including contacting the operators of the website and made arrangements to have the emails resent.

We understand that subsequently all the emails, minus around 20 that were duplicates, including those rejected by the automatic SPAM controls were resent to the Ministry and collated as part of the consultation feedback process and reported in the consolidated advice to the Minister by the Ministry.

Findings and Recommendations

9. Findings

As a result of our review of the material, the research we undertook and the interviews we held, we made the following findings:

1. The Ministry approached the planning for the consultation on the Clean Car Standard in an appropriate manner and in accordance with the government guidance on undertaking effective consultation.⁸
2. As well as using an email, the Ministry also targeted workshops at specific stakeholder groups and considered other channels before settling on the approach used. It did not specifically consider potential risks of using email as a channel and did not therefore consider the risk that genuine feedback emails might be rejected. For the same reason the Ministry did not consider what responses might be appropriate if this happened, or indeed if an actual SPAM attack happened. This meant that the Ministry's actual response was more ad hoc than it might otherwise have been.
3. The Ministry initially identified the unusual email activity through the advisor who was responsible for monitoring responses through the email address. Following their alerting management to this issue, legal and policy staff, with management, engaged with Revera to seek advice on how best to respond to the emails. Following advice from Revera a decision was taken to block the emails coming from the @campaignnow site. One of the reflections we received from Ministry staff was that in hindsight more time could have been taken to understand the nature of the issue the Ministry was facing before acting to block the emails.
4. SMX also correctly identified four other emails sent to the Clean Cars mailbox as SPAM.
5. Following a press statement by the leader of the National Party, Simon Bridges, the Ministry became aware that the emails were from a legitimate source.
6. The Ministry took steps to have all the emails, less those that were duplicates, including those rejected by the automatic SPAM controls to be resent to the Ministry. These emails were then collated as part of the consultation feedback process and reported in the consolidated advice to the Minister by the Ministry.
7. Subsequently, on 30 September 2019, the Ministry's Chief Executive wrote to Simon Bridges apologising for the mistake the Ministry had made and advising that the matter would be rectified and the views of people using the CampaignNow website would be taken into account.

⁸ See for e.g. <https://www.mfe.govt.nz/publications/rma/5-how-consultation-may-be-conducted>
<https://www.digital.govt.nz/standards-and-guidance/engagement/online-engagement/how-to-develop-an-online-engagement-strategy/3-choose-the-right-tools-for-online-engagement/#3-1-meet-the-requirements-for-all-tools>

8. On 30 September the Chief Executive of the Ministry initiated this Review.
9. We did not see anything that gave us any cause for concern in relation to how Ministry staff approached the consultation process per se. The Ministry has provided training to employees about the danger of cyber-attacks of all types, and there is good awareness within the Ministry of the need to remain vigilant against SPAM and other sorts of electronic attacks.
10. In our view, staff were acting appropriately and professionally and were genuine in their belief that they were facing a potentially serious threat to the integrity of their consultation process. All staff we spoke to were genuinely interested in understanding what happened and were active in proposing changes that might help prevent similar issues arising in the future.

10. Recommendations

Having regard to our findings we make the following recommendations:

1. We recommend that future consultation planning processes specifically consider the best channels for undertaking consultation and that at the planning phase a specific assessment of possible risks be undertaken, and appropriate mitigation steps/plans be approved as part of the consultation plan.
2. The Ministry review its current consultation toolkits, templates and guidance to ensure they reflect best practice and that staff undertaking consultation be reminded to apply these resources when planning and undertaking any future consultation activities.
3. In future, where the Ministry receives a large number of emails, good practice would be to have an agreed standard operating procedure in place covering how to review these and make good decisions on how to respond. This process should involve appropriate Ministry staff, including IT security specialists, as necessary.
4. We recommend that in future where the Ministry intends to block suspicious emails, that these initially be placed into a quarantine folder so an investigation could be conducted to determine the appropriateness of the emails. We note however, that normal email SPAM configurations are still likely to result in automated blocking/rejections of emails sent in large numbers from the same IP address.
5. Where the Ministry is undertaking consultation using an email address, the Ministry should make it clear in its communications and consultation guidance material, that people or organisations that are considering using campaign websites, or other automated systems for providing feedback, should discuss this with the Ministry first to enable the Ministry to set appropriate rules to allow that feedback to be received.

Appendix 1 - List of people interviewed⁹

- Nick Brown, Deputy Chief Executive - Governance and Engagement
- Nick Edwards, Manager - Digital and Knowledge
- Brendan Booth, Chief Legal Adviser
(Previously acting Deputy Chief Executive - Governance and Engagement)
- Glen-Marie Burns, Manager - Urban Development and Environment
- Advisor - Urban Development and Environment

⁹ Note all are Ministry of Transport staff

Appendix 2 - Terms of Reference

Terms of Reference 30 September 2019

Review of the Ministry of Transport's handling and consideration of certain submissions made on the Government's proposed clean car standard

Purpose

The purpose of the review is to provide independent advice to the Secretary for Transport:

- On how the Ministry handled and considered multiple submissions from the same email domain made on a consultation paper setting out proposals to implement a clean car standard
- Recommending any changes to how the Ministry should handle and consider form submissions made in a similar manner in the future.

Context

On 9 July 2019, the Ministry released a discussion document *Moving the light vehicle fleet to low-emissions: discussion paper on a Clean Car Standard and Clean Car Discount*.¹

The document outlines how to make a submission:

Make a submission to make sure your views are heard

To make sure your views are heard, you can respond to our consultation questions by going to <https://transport.cwp.govt.nz/clean-cars/>.

Or you can write your response to the consultation questions and email the pdf or word document to cleancars@transport.govt.nz.

Submissions close on 20 August 2019.

This document is asking for feedback from both the general public and the vehicle industry. Parts 2 (Clean Car Standard) and 3 (Clean Car Discount) have been split into two sections. Parts 2A and 3A contain general information about the proposals, while Parts 28 and 38 have more detailed information that may be more applicable to those working in the vehicle industry. But you are welcome to provide feedback on both sections.

The Ministry received a large number of submissions through both means made available from individuals, corporates, and representative and advocacy groups.

More than 1000 submissions were sent by email to cleancars@transport.govt.nz from the email domain "@campaignnow .co". A decision was taken that these emails may have been created by a "bot", and a rule was put in place to block the emails. It is now clear that these were form submissions from individuals rather than machine generated.

¹ Ministry of Transport (2019). *Moving the light vehicle fleet to low-emissions: discussion paper on a Clean Car*

Standard and Clean Car Discount. Wellington: Ministry of Transport.

The scope of the review

The review will establish how and why the Ministry made the decision to blank these emails,

- including what led to some of them being treated as spam by the Ministry's information technology system.

The review will also consider the processes used to identify spam and/or denial of service attacks, and whether these are appropriate for dealing with similar situations in the future.

The review will consider the Ministry's approach against best practice in the public service. The intent of the review is to provide advice and make recommendations so the Ministry's submissions handling and consideration can be as effective as possible in the future.

The reviewers will not make any findings nor make any comment on the performance, conduct or competence of any individual."

The reviewer

The reviewer will be external to the Ministry.

The reviewer will exercise independent judgement regarding the process they follow as part of the Review, the nature and depth of their review, and the communication of their findings and advice.

The reviewer will have access to all relevant Ministry of Transport documentation, personnel, and internal and external communications that they deem to be relevant.

The reviewer will arrange for suitable mechanisms to keep the Secretary up to date on the progress of the Review.

Deliverable and timing

The reviewers will produce their final report with its findings and recommendations by a date specified in the contract with the reviewers. The report will be provided to the Secretary. A public version of the final report will be released on the Ministry of Transport website as soon as practicable.

Approved by:



Peter Mersi
Chief Executive

Date: 1/10/2019