

[In Confidence]

Office of the Minister of Transport

Cabinet Legislation Committee

Amendment to the Land Transport (Infringement and Reminder Notices) Regulations 2012

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Land Transport (Infringement and Reminder Notices) Amendment Regulations 2023 (the Regulations).
- 2 I am also seeking a waiver to the 28-day rule. This is based on the proposed Regulations only conferring benefit to the public and that the regulations should come into force by 11 March 2023 to align with the Land Transport (Drug Driving) Amendment Act 2022 (the Act).

Relation to government priorities

- 3 These Regulations are required to given effect to the intent of the Act.

The Act introduces a more effective regime to prevent drug impaired driving

- 4 The Act introduces a more effective regime for detecting and deferring drug impaired driving, as part of the Government's road safety objectives through Road to Zero. The Act received Royal Assent on 11 March 2022 and is set to come into force on 11 March 2023.
- 5 The Act provides for a medical defence to be used by drivers charged with a drug driving infringement offence if they have consumed qualifying drugs in accordance with a valid prescription and instructions from a prescribing health care practitioner.
- 6 The medical defence would not be used at the roadside. Instead, following receipt of an Infringement Notice, the driver would contact the Police Infringement Bureau and provide evidence of a valid prescription for the qualifying drug and that they were compliant with the instructions of their health care practitioner.

Amending the Regulations will ensure people are aware of the medical defence if they are issued an Infringement or Reminder Notice for drug impaired driving

- 7 To ensure people are aware of the medical defence, Schedule 1 and Schedule 5 of the Regulations require amendment ahead of the Act coming into force. The proposed amendments to the Regulations incorporate information about the drug offence, the alleged qualifying drug(s) and the medical defence into the Infringement Notice (Schedule 1) and information about the medical defence in the Infringement Reminder Notice (Schedule 5).
- 8 These amendments are required to ensure drivers who receive these notices are aware of the qualifying drug they have tested positive for and the medical defence provisions.
- 9 I issued drafting instructions to the Parliamentary Counsel Office to draft amendments to the Regulations. On this basis of:

IN CONFIDENCE

- 9.1 Cabinet's authorisation to the then Associate Minister of Transport, in consultation with the Minister of Police, to make decisions in relation to "any minor, technical, procedural, transitional or consequential matters that arose during the drafting of legislative amendments" for the purpose of giving effect to the compulsory roadside oral fluid testing regime [DEV-19-MIN-0306.56 refers],
- 9.2 Paragraph 7.71(d) of the Cabinet Manual, which states, "if the regulations are routine and do not require new policy decisions, the Minister may authorise drafting without reference to Cabinet".

Implementation

- 10 New Zealand Police (Police) is updating and testing the Infringement and Reminder Notices concurrently based on the Regulations coming into force on 11 March 2023.

Timing and 28-day rule

- 11 The proposed Regulations will come into force on 11 March 2023.

I am seeking a waiver of the 28-day rule

- 12 To ensure the Regulations come into force on 11 March 2023 a waiver of the 28 day rule is sought. I am seeking a waiver of the 28-day rule under Clause 7.97(a) of the Cabinet Manual because, the Regulations will only confer benefit to the public. The Regulations notify recipients of Infringement and Reminder Notices of the existence of statutory defences that will exist on and from 11 March 2023 onwards.

Compliance

- 13 The proposed regulations comply with each of –
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 2020;
 - 13.4 relevant international standards and obligations;
 - 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 14 Te Manatū Waka has advised that it has not identified any grounds for the Regulations Review Committee to draw the proposed regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 15 The proposed regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 16 The Treasury's Regulatory Impact Analysis team has determined that these amendments to the Land Transport (Infringement and Reminder Notices) Regulations 2012 are exempt from the requirement to provide a Regulatory Impact Statement.
- 17 This exemption is granted on the grounds that there are no or only minor impacts on businesses, individuals, and not-for-profit entities, and simply gives effect to decisions made through the Land Transport (Drug Driving) Amendment Act 2022.

Publicity

- 18 The proposed Regulations will be notified in the *New Zealand Gazette*.

Proactive Release

- 19 I intend to proactively release this Cabinet paper on Te Manatū Waka Ministry of Transport website within 30 working days of Cabinet's consideration.

Consultation

- 20 Police, the Ministry of Justice, Waka Kotahi NZ Transport Agency, Manatū Hauora, the Ministry for Pacific Peoples, Te Puni Kōkiri, the Ministry for Women and Parliamentary Counsel Office were consulted on this paper. The Department of the Prime Minister and Cabinet was informed.

Recommendations

The Minister of Transport recommends that the Committee:

- 1 **note** that the Land Transport (Drug Driving) Amendment Act 2022 provides a medical defence if a person has taken their medication as prescribed or administered by their health practitioner;
- 2 **note** that in accordance with the Cabinet Manual, I have authorised consequential amendments to the Land Transport (Infringement and Reminder Notices) Regulations 2012 to include information about the medical defence;
- 3 **note** that the Land Transport (Infringement and Reminder Notices) Amendment Regulations 2023 will give effect to my decision referred to in recommendation 2 above;
- 4 **authorise** the submission to the Executive Council of the Land Transport (Infringement and Reminder Notices) Amendment Regulations 2023;
- 5 **note** that the Land Transport (Infringement and Reminder Notices) Amendment Regulations 2023 come into force on 11 March 2023;
- 6 **note** that a waiver of the 28-day rule is sought:
 - 6.1 so that the regulations can come into force on 11 March 2023;
 - 6.2 on the grounds that amending infringement and reminder notices to notify recipients of a statutory defence confers only benefits on the public;

IN CONFIDENCE

- 7 **agree** to waive the 28-day rule so that the Regulations can come into force on 11 March 2023.

Authorised for lodgement

Hon Michael Wood
Minister of Transport

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT