

Vulnerable Users and Pathways package – agreeing the scope

Reason for this briefing	This briefing proposes the scope for a package aimed at improving the safety of vulnerable road users and looking at who and what should go on the footpath. The package also includes amending rules relating to walking, cycling and public transport.
Action required	Agree to the proposed scope of the <i>Vulnerable Users and Pathways</i> regulatory package, and that the Ministry of Transport and the NZ Transport Agency prepare a Cabinet paper to agree for consultation to proceed on the draft rules. Note the next steps.
Deadline	N/A
Reason for deadline	N/A

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
[REDACTED]	Senior Adviser, Mobility and Safety	[REDACTED]	✓
Brent Johnston	Manager, Mobility and Safety	[REDACTED]	

MINISTER'S COMMENTS:

privacy

Date:	20/04/2018	Briefing number:	OC180043
Attention:	Hon Julie Anne Genter (Associate Minister of Transport)	Security level:	In-Confidence

Minister of Transport's office actions

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| <input type="checkbox"/> <i>Noted</i> | <input type="checkbox"/> <i>Seen</i> | <input type="checkbox"/> <i>Approved</i> |
| <input type="checkbox"/> <i>Needs change</i> | <input type="checkbox"/> <i>Referred to</i> | |
| <input type="checkbox"/> <i>Withdrawn</i> | <input type="checkbox"/> <i>Not seen by Minister</i> | <input type="checkbox"/> <i>Overtaken by events</i> |

Purpose of briefing

1. This paper proposes the *Vulnerable Users and Pathways* regulatory package of relatively well-developed proposals aimed at improving the safety of vulnerable road users. It asks for your agreement to start rule development on the package. It proposes to provide you with a Cabinet paper and supporting documents to allow for Cabinet consideration in early June 2018, with formal consultation on draft rules to follow.

Executive Summary

2. The *Vulnerable Users and Pathways* regulatory package aims to promote safe movement on the footpath for all users. The package will enhance the liveability and vibrancy of New Zealand cities and towns through better designed and regulated pathways, which will reduce barriers to active transport.
3. The first part of the package addresses issues around what vehicles, if any, can use footpaths and other legally defined pathways, such as shared paths. The package also looks at a series of relatively straightforward changes to rules to clarify specific legal issues around the use of public transport, cycle safety and cycle path design.
4. Over the past few decades, there have been many new types of motorised vehicles. These new devices, such as electric scooters, were rare or did not exist when some of our transport rules were originally made. Some of these devices have the potential to significantly improve mobility for groups such as the elderly and disabled, and to substitute for more conventional modes of travel.
5. The current rules have not kept pace with these changes, creating ambiguity and, in many cases, a lack of any rules concerning where vehicles of different types can be used. Some vehicle types may be prohibited for no obvious reason while others remain largely unregulated, potentially posing safety risks.
6. We considered different options when developing the package. One option was a substantially bigger package, which would have included reviewing the vehicle classification system (such as looking at uncertainties in the operation of e-bikes relating to current power-based standards). This option is not preferred as it is likely to require primary legislation changes which would significantly impact delivery timeframes.
7. We are also working on a longer term 18-24 month set of potential rule changes that require substantial policy investigation. The contents of this second set of proposals is flexible and we will be keen to discuss its scope with you as part of the walking and cycling strategic approach work we have signalled in our Output Plan for June 2018.

The *Vulnerable Users and Pathways* package

8. On 22 November 2017, we briefed you on opportunities for creating a step change in uptake of public transport, walking and cycling (OC05378 refers). One of the opportunities identified in the briefing were rule amendments to make public transport, and walking and cycling safer and more accessible.
9. The *Vulnerable Users and Pathways* regulatory package will clarify rules about who and what vehicles can use the footpath, improve safety for vulnerable roads users and clarify some other rules relating to public transport, walking and cycling.

11. The package comprises changes that are relatively well developed and we propose that it is progressed ahead of a larger programme of work. Preliminary policy work has already been completed on most of the work in the package, meaning it can commence reasonably quickly. We have also established that potential changes do not require changes to the Land Transport Act 1998. Amendments to primary legislation would be expected to add substantial length to the project.
12. The package will address some of the concerns that were raised around vulnerable roads users at the Local Government Road Safety Summit on 9 April 2018. The package also supports the Government's objectives of building a 21st century transport system that reduces congestion, improves safety, reduces carbon emissions, and provides greater choice. The package would lead to a range of outcomes, including increasing safety and access to opportunities, enabling mobility, increasing health and reducing congestion.

Clarify the rules around what types of vehicles should be allowed on footpaths, shared paths and cycleways, and under what conditions

13. We propose that the package address inconsistencies, complexity and over-prescription relating to the vehicle categories and rules governing the use of footpaths, shared paths and cycleways. For example, most six year old children on a bicycle cannot currently legally ride on the footpath, while mobility devices, which can travel up to 35km/h, can.
14. Currently, as defined in the Road User Rule, the following vehicles are allowed to travel on the footpath.
 - 14.1. A wheeled recreational device – this is a wheeled device (excluding a cycle that has a wheel diameter exceeding 355mm) that is propelled by human power or gravity. Wheeled recreational devices also include devices that have an auxiliary propulsion motor or motors with a combined maximum power output not exceeding 300 watts. This includes vehicles such as scooters, skateboards and in-line roller skates with or without small motors.
 - 14.2. A mobility device – which is defined as a vehicle that is designed and constructed (not merely adapted) for use by persons who require mobility assistance due to a physical or neurological impairment; and are powered solely by a motor that has a maximum power output not exceeding 1,500 watts.
15. These rules do not apply to a person who rides a moped or motorcycle on a footpath in the course of delivering newspapers, mail, or printed material to letter boxes if the road controlling authority has authorised the use of the footpath for that purpose.¹
16. Power measured in watts (or kilowatts) is the primary criterion for what can operate on the footpath under current legislation, which is a key concern. A vehicle's power can be relatively easily altered by a vehicle owner, or in some cases can be declared fraudulently. The actual power cannot be determined without highly specialised tools.
17. There is a separate concern that the definition of mobility device allows manufacturers to simply assert a vehicle is a 'mobility device' without any evidence as to what makes it such. Some manufacturers appear to be using the term to bypass existing safety requirements.

¹ An example of a vehicle which is allowed on the footpath is the 'Paxster'. This is a heavy quadricycle, which has a specific exemption from the NZ Transport Agency to operate in controlled environments.

Investigating a mandatory minimum overtaking gap for vehicles when passing cyclists

18. We are investigating whether a rule change imposing minimum overtaking gaps would achieve the outcome of safer cycling and less dangerous close passes by motorists, drawing on research commissioned by the NZ Transport Agency in 2016.²
19. The Cycling Safety Panel's 2014 report, *Safer journeys for people who cycle* made a recommendation that New Zealand should trial a minimum overtaking gap rule change. The recommendation would mandate a 1 metre minimum passing distance at under 60km/h and 1.5 metres when travelling at over 60km/h.
20. The value of implementing a minimum overtaking gap rule is finely balanced. An evaluation was conducted in Queensland, Australia after a two year trial of a minimum overtaking gap law in 2016. It found that although enforcement officers believe the rule improved safety, it was difficult to enforce, due to perceptions that it was difficult to collect evidence that would withstand scrutiny in Court. The evaluation also determined that while awareness improved, motorist attitudes to cyclists did not appear to have improved and the effects of this for road safety were not clear.
21. Cycling stakeholders will support the introduction of a minimum overtaking gap rule change. Those who are unlikely to support such a change include stakeholders such as the Road Transport Forum who would be concerned about the viability of such a rule on narrow roads with large vehicles. There is also a reasonably large dissenting part of the population who are likely vocally disagree with this proposal.

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Confidentiality of advice

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Giving buses priority when exiting bus stops

23. We propose a change that would give buses a legal priority when leaving a bus stop. Currently drivers do not have to give buses priority when they pull out from bus stops and back into the flow of traffic. This has become an increasing problem in Auckland but will also be of benefit in other urban centres, especially Wellington and Christchurch.
24. Giving way to buses leaving a bus stop is currently only considered a courtesy. When this courtesy is not extended, it creates delays for buses as they have to wait for a suitable break in the traffic or for other road users to provide a gap for merging back into the traffic flow. If this delay is repeated many times through a bus route it significantly impacts on travel time reliability, and the efficient operation and perception of public transport.

² <https://www.nzta.govt.nz/assets/Walking-Cycling-and-Public-Transport/docs/Minimum-Overtaking-Gap-Feasibility-Study-FINAL.pdf>.

25. Although this change in the rule would come at a small cost to other motorists in time lost, it has a low risk, would provide a time benefits to bus passengers and operators, promote public transport and reduce confusion over who should give way. Although enforcement of this rule change may be an issue, it is intended to signal that public transport has priority in traffic flows as buses are carrying more people than cars.

Straightforward rule amendments to improve the safety of vulnerable road users

26. We propose a number of other relatively straightforward rule changes that could improve the safety of vulnerable road users. In 2016, the NZ Transport Agency commissioned a report into a range of road user rules, which could encourage walking and cycling in New Zealand.³ The proposed rule changes following this report, are to:
- 26.1. enable cyclists to legally travel straight ahead from left-turning lanes instead of having to cycle in a narrow adjacent lane where other traffic may be travelling
 - 26.2. enable cyclists to legally overtake slow-moving traffic on the left (also known as “undertaking”)
 - 26.3. clarify give way rules for separated cycle lanes at intersections (currently it is unclear whether turning motor vehicles or straight ahead cycle lane users have priority)
 - 26.4. allow footpaths, shared paths or cycleways to have right of way over crossing side roads. This would be in specified circumstances and marked with paint or other signage.

The proposed framework for access to pathways

27. We propose amendments to the Road User Rule to introduce a principle-based forward leaning regulatory framework for determining the vehicles that may use various pathways and the conditions they must comply with.
28. Our proposed framework will comprise general and easily understood requirements that are a mixture of performance (users must behave in a certain way) and prescriptive (vehicles must not exceed a specified speed and be no larger than a specified size) rules.
29. Using clear criteria should enable the rules to work for new and potentially unforeseen technologies, including potential future small driverless delivery vehicles that might operate on the footpath for some or all of their journey.
30. It is possible other rules may be needed, such as weight and design standards around things like sharp protrusions, which will be considered during rule development and consultation. Councils will also be able to make bylaws that adjust the constraints about the types of vehicles may use footpaths in their areas.

Confidentiality of advice

³ <https://www.nzta.govt.nz/assets/Walking-Cycling-and-Public-Transport/docs/RUR-MWH-FINAL.pdf>.

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Media interest

33. The package is likely to create media interest, especially as issues around footpath use are contentious. We are already developing a communications package for this, in conjunction with the NZ Transport Agency and your office.
34. There will also be many stakeholders who have a lot of interest in this package. We already know that these interests will be varied, and some stakeholders will oppose additional users on footpaths.

Next steps

35. If you agree to progress the package, we will provide you with a draft Cabinet paper seeking agreement to consult on the draft Rules. We propose to provide you with the draft Cabinet paper in May 2018, along with final impact summaries and a draft communications plan.
36. We and the NZ Transport Agency have begun drafting the impact summaries for each part of the proposed package. We will also be trialling the child impact assessment tools developed by the Ministry for Social Development.⁴
37. If Cabinet agrees, we will arrange for the amendment rules to be drafted in conjunction with the NZ Transport Agency, and the Parliamentary Counsel Office, which draft the changes to the Road User Rule.⁵ As well as the changes to rules, new regulations will also have to be drafted setting out associated penalties.
38. This would allow us to carry out consultation on draft rules by September 2018, with finalisation of the rules to follow. We expect to be able to produce a final package for your signature by the end of the year. However, final timing is dependant on the outcome of the consultation and the availability of resource to draft the rules.


⁴ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>.

⁵ The NZ Transport Agency drafts changes to most land transport Rules however any changes to the Operator Licensing Rule 2017 or the Land Transport (Road User) Rule 2004 are traditionally drafted by the Parliamentary Counsel Office.

39. The Ministry will work closely with the necessary stakeholders throughout the development of the package. For instance, there is a question around the safety of some emerging devices. As part of the package we would work with the Ministry of Business, Innovation and Employment around consumer protection standards and how they apply.
40. At the end of 2017, we provided you with a briefing entitled *The Transport Rules Programme* (OC05418 refers), which sets out the rule making process in more detail.

Recommendations

41. The recommendations are that you:

- (a) **agree** to the overall scope of the *Vulnerable Users and Pathways* package including: Yes/No
- i. *clarifying the rules around what types of vehicles should be allowed on footpaths, shared paths and cycleways, and under what conditions*
 - ii. *investigating a mandatory minimum overtaking gap for vehicles when passing cyclists*
 - iii.  Confidentiality of advice
 - iv. *giving buses priority when exiting bus stops*
 - v. *making straightforward rule amendments to improve the safety of vulnerable road users.*
- (b) **agree** that Ministry of Transport and the NZ Transport Agency prepare a draft Cabinet paper in May 2018 to agree for consultation to proceed on the draft rules Yes/No
- (c) **note** the proposed next steps.

Karl Simpson
Director, Regulatory and Data

MINISTER'S SIGNATURE:

DATE: