

Chair

Cabinet Economic Growth and Infrastructure Committee

## THE TRANSPORT RULES PROGRAMME 2016/17 AND THE FOUR YEAR REGULATORY PLAN 2016-2019

### Proposal

1. This paper asks Cabinet to note both the proposed Transport Rules Programme 2016/17 and the Ministry of Transport's Four Year Regulatory Plan 2016-2019. It asks Cabinet to agree that Transport Ministers may make some rules with others being referred back for Cabinet's consideration.

### Executive summary

2. This Cabinet paper details the Transport Rules Programme for 2016/17 (the 2016/17 Programme) as required by the Cabinet Manual 5.11. The 2016/17 Programme comprises 26 rules projects. [REDACTED]  
[REDACTED]  
[REDACTED]
3. The 2016/17 Programme is a rolling two year rolling programme, reflecting the reality that rule development can start at different times throughout the year and that additional issues can arise from consultation.
4. Transport Ministers are required to consult with the public on each transport rule as part of the rulemaking process, as specified in the empowering Acts. Transport Ministers will consult with their Cabinet colleagues in advance of public consultation where rules are likely to have significant:
  - 4.1. impacts on other portfolios
  - 4.2. public or industry interest
  - 4.3. new costs.
5. On this basis, Cabinet consideration will be required for the following rule proposals:
  - 5.1. Aviation: Mandate automatic dependent surveillance broadcasts (expected to be lodged by December 2016)
  - 5.2. Aviation: Global Navigation Satellite Systems under Instrument Flight Rules (expected to be lodged by December 2016)



## Proposed 2016/17 Transport Rules Programme

11. There are 26 rules projects on the 2016/17 Programme: six civil aviation rules (includes one omnibus rule), seven land transport rules projects (includes one omnibus rule), and nine maritime and safety, and marine protection rules (including two omnibus rules). In addition, there are four consequential amendment rules (see Appendix 1 of the attached Four Year Regulatory Plan 2016-2019).
12. I would like to highlight four rules projects that I consider to be of high priority. They are:

### 12.1. **Aviation: Global Navigation Satellite Systems (GNSS) under Instrument Flight Rules (IFR)**

The change would update the current rules for use of GNSS under IFR. Some parts are out of date and do not reflect the move, under New Southern Sky, for a performance based navigation environment for all IFR operations.

### 12.2. **Land Transport: Driver licensing**

This is an ongoing review to update and refresh the driver licensing system to make it less prescriptive and to reduce the customer compliance burden while maintaining road safety. As part of the review, the Government recently released a Discussion Paper for public consultation. Following the analysis of submissions on the proposals in the Discussion Paper, it is likely that I will come back to Cabinet for approval to amend the Land Transport (Driver Licensing) Rule 1999.

### 12.3. **Land Transport: Vehicle dimensions and mass**

A review has been undertaken of the regulatory framework that applies to the dimensions and mass of heavy vehicles operating on New Zealand roads. The review investigated whether the Land Transport Rule: Vehicle Dimensions and Mass 2002 was fit for purpose and has identified a number of opportunities to enhance the productivity of heavy vehicles and reduce compliance costs for industry. Consultation is now taking place on the proposed replacement draft Land Transport Rule: Vehicle Dimensions and Mass 2016.

### 12.4. **Land Transport: Small passenger services**

On 21 April 2016, the Minister of Transport announced the outcome of a review into the legislative framework for the licensing of small passenger service vehicles.

The Land Transport Act 1998 will need to be amended as will Land Transport Rule: Operator Licensing 2007, Land Transport Rule: Work time and logbooks 2007, Land Transport (Road User) Rule 2004, Land Transport (Driver Licensing) Rule 1999, Transport Services Licensing Regulations 1989 and the Land Transport (Offences and Penalties) Regulations 1999. Consequential amendments may also be required to other transport rules to give effect to the Government's decisions. This will ensure that the current system is fit for purpose and takes account of new technologies.

13. The remaining rule proposals aim to meet international obligations as well as the Ministry's regulatory stewardship obligations.

*Rules that will be revoked or modernised*

14. Rules generally deal with specific ongoing subject areas such as licensing, safety standards, and vehicle dimensions and mass. The requirement for legislative amendment in each subject area is ongoing. Rules are amended as required to reflect changes in the operating environment, which may involve revoking or adding components. The current regulatory reform focus is on ensuring transport rules are fit for purpose and do not impose unnecessary costs.



*Policy Investigations*

16. Alongside the 26 rules on the 2016/17 Programme there are also 12 ongoing policy investigations. These are areas where the Ministry of Transport and the transport agencies are currently working, or plan to undertake work, which may lead to proposed rule changes.
17. If specific policy investigations recommend rule changes, Transport Ministers may move these onto the current rules programme and commence rule development. Significant issues will be referred to Cabinet prior to rule development, and potentially again before rules are signed, if further issues arise during consultation.

**Additional matter**

18. This paper also requests that Cabinet consider rescinding paragraph (h) of Cabinet Minute CAB (99) M20/2B(1). This paragraph imposes requirements for Cabinet involvement in transport rule-making by the Minister of Transport that exceed those of the Cabinet Manual 2008, which suggests that Ministers need to consult their Cabinet colleagues about matters of public interest, importance, or controversy, and that Ministers may authorise drafting without reference to Cabinet for routine and minor issues.

19. Paragraph (h) of the Cabinet Minute invites the Minister of Transport to seek the agreement of Cabinet before drafting of a rule commences and before signing a rule into law. The Cabinet Manual 2008, on the other hand, limits Ministerial consultation with Cabinet colleagues about matters of public interest, importance or controversy (Cabinet Manual 5.11). Rescinding paragraph (h) of the Cabinet Minute would also allow transport rule-making to be consistent with the provisions of Cabinet Manual 7.86 (d) about processes for regulations, which says that if the regulations are entirely routine and do not require new policy decisions, the Minister may authorise drafting without reference to Cabinet.

#### The Transport Four Year Regulatory Plan 2016-2019

20. The transport sector is regulated by 21 Acts and 250 rules and regulations. These regulate transport safety, environmental protection, and transport infrastructure in the land (road and rail), aviation and maritime transport modes. They also provide confidence in the international aviation and maritime communities that New Zealand has a safe and secure transport system. This enables the international connectivity that is essential for our exporters to thrive.
21. The Minister for Regulatory Reform has requested that Cabinet has the opportunity to consider departmental regulatory priorities before they are published. The 2016/17 Programme is a component of the Ministry's Four Year Regulatory Plan 2016-2019.
22. The key regulatory focus for the Ministry, outlined within the Four Year Regulatory Plan, is to ensure the stock of legislation remains fit for purpose for the transport sector, is able to respond to a changing environment, enables uptake of new technologies and approaches and does not impose unnecessary costs on users.
23. The Ministry uses its Four Year Regulatory Plan to demonstrate how it identifies and approaches regulatory change as part of the Ministry's work programme and achieves Government priorities.
24. In the Four Year Regulatory Plan 2016-2019, there is an increased focus on evaluation. The Ministry will work closely with the transport Crown entities to develop an annual plan of evaluation.
25. Overall, I believe that the transport regulatory framework is fit for purpose. It achieves its objective of balancing the tradeoffs of cost, certainty and flexibility. The Ministry's regulatory reform programme<sup>2</sup> identified some key areas for reform and streamlined the regulatory design process so that it is more efficient and timely. The Ministry has brought increased rigour into the rules

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<sup>2</sup> Developed in response to the New Zealand Productivity Commission's 2014 report Regulatory Institutions and Practices.

process that ensures that only matters that genuinely require a rule change are included in its rules programmes.

26. The Ministry's ongoing programme of regulatory reform focuses on a range of short, medium and longer-term initiatives, to increase quality, decrease complexity, increase flexibility and streamline processes.

#### Consultation

27. The Civil Aviation Authority, the New Zealand Transport Agency, Maritime New Zealand, the Ministry of Justice, the Ministry for the Environment, New Zealand Police, the Treasury, and the Ministry of Business, Innovation and Employment have been consulted on this paper and their views are incorporated. The Department of Prime Minister and Cabinet has been informed.
28. The matters covered in this paper are within my delegated portfolio of responsibilities. The Minister of Transport has been consulted on these proposals and he agrees with the submission of this paper.

#### Financial implications

29. 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

30. Consequential amendments to 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 for consequential regulations pending Cabinet Policy decisions, if required.

#### Regulatory Impact Analysis

31. 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

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

## Publicity

33. Regulatory Impact Statements and final rules will be publicised as required by the relevant legislative provisions and will be published on the Ministry of Transport's website. This will be managed by the Ministry of Transport or the relevant transport agency.

Recommendations

34. I recommend that the Committee:

1. **note** that in 2016/17, Transport Ministers intend to progress the proposed Transport Rules Programme 2016/17 as set out in Appendix 1 of the attached Four Year Regulatory Plan 2016-2019
2. **note** that all transport rules undergo public consultation, and Cabinet will be informed of any significant risks before consultation
3. **agree** that Transport Ministers make rules arising from the rules programme without further reference to Cabinet, unless in the course of their development a significant policy issue or risk emerges
4. **agree** to rescind paragraph (h) of Cabinet Minute [CAB (99) M 20/2B(1)], which would mean Transport Ministers would only need to take rules to Cabinet that require policy decisions, or that might be contentious
5. **agree** that the following rules come back to Cabinet for consideration
  - 5.1. Aviation: Mandate automatic dependent surveillance broadcasts
  - 5.2. Aviation: Global Navigation Satellite Systems under Instrument Flight Rules  

  - 5.4. Land Transport: Driver licensing review
  - 5.5. Maritime Transport: Part 102 Certificates of Insurance and Amendment
6. **agree** that Transport Ministers may instruct the Parliamentary Counsel Office to draft consequential amendments to regulations where, for timing reasons, it is desirable to issue drafting instructions for consequential regulations in advance of Cabinet policy decisions. This is in order to deliver the 2016/17 Transport Rules Programme  


8. **note** that this paper, which includes the 2016/17 Transport Rules Programme and the Four Year Regulatory Plan 2016-2019, will be published on the Ministry of Transport's website with appropriate redactions.

Hon Craig Foss

Associate Minister of Transport

Dated: \_\_\_\_\_