

OC220165 – Part Two

10 May 2022

Tēnā koe

Part Two Response

I again refer to your request for information dated 13 March 2022 sent to the Minister of Transport Hon Michael Wood, which was transferred to Te Manatū Waka Ministry of Transport (the Ministry) on 14 March 2022. Pursuant to the Official Information Act 1982 (the Act), you requested a copy of 21 briefings, which are listed in the document schedule attached as Annex One.

On 11 April 2022 we provided you with a decision on 16 of the documents in your request and released nine to you. Within that letter we also notified you of an extension to the time period for responding to the remaining five documents. The extension was due to consultations necessary to make a decision on the request being such that a proper response to the request could not reasonably be made within the original time limit. We have now completed the necessary consultations and our response is detailed below.

For clarity and completeness, all 21 documents that fall within the scope of your full request are detailed in the document schedule. The schedule outlines how the documents have been treated under the Act, and notes where the decision was provided as Part One on 11 April.

With regard to the decision on the five documents addressed in this letter (as Part Two of our response), four are being released, and one is refused in full as it has since been published on our website. Certain information or full documents have been withheld or refused under the following sections of the Act:

- | | |
|-------------|---|
| 9(2)(a) | to protect the privacy of natural persons |
| 9(2)(f)(iv) | to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials |
| 9(2)(g)(i) | to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty |
| 18(d) | the information requested is or will soon be publicly available. |

With regard to the information that has been withheld under Section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act, who can be contacted at:

info@ombudsman.parliament.nz

This letter and attached documents complete our response to your request.

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry's website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā



Hilary Penman
Manager, Ministerial Services

Annex One – Document schedule

Doc #	Reference Number	Title of Document	Decision on request
1	OC210861	Enabling Drone Integration	Refer to Part One sent 11 April 2022.
2	OC210916	Budget 2022 Vote Transport - Initiatives for submission	Refer to Part One sent 11 April 2022.
3	OC210933	Half-year economic and fiscal update 2021 - forecast of National Land Transport Fund Revenue	Refer to Part One sent 11 April 2022.
4	OC210818	Summary of the review into Road Safety Investment and Delivery	<p>Some information withheld from the briefing paper under Section 9(2)(a). Annexes One and Two are refused under Section 18(d) as they are publicly available. Annex One – Final MartinJenkins Report: www.transport.govt.nz/assets/Uploads/Road-Safety-Investment-and-Delivery-Report-MartinJenkins-FINAL.pdf Annex Two – Agency Actions Responding to the Review: www.transport.govt.nz/assets/Uploads/Road-Safety-Investment-and-Delivery-Report-Agency-Response-January-2022.pdf</p>
5	OC210966	Clean Vehicle Bill Targets and Other Matters	Refer to Part One sent 11 April 2022.
6	OC210908	COVID-19- Extension of the Essential Transport Connectivity (ETC) Scheme to 2022	Refer to Part One sent 11 April 2022.
7	OC210976	Auckland Light Rail - meeting with Waka Kotahi Board Chair and Chief Executive	Refer to Part One sent 11 April 2022.
8	OC210975	Air New Zealand Licence Variation - Hong Kong	Refer to Part One sent 11 April 2022.
9	OC210981	Air navigation system review-terms of reference and structure	Refer to Part One sent 11 April 2022.
10	OC210943	Programme assessment criteria for Waka Kotahi	Refer to Part One sent 11 April 2022.
11	OC210985 T2021/ 2951	Final approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24	<p>Refused in full under Section 18(d) as the documents are publicly available on our website. Briefing paper: www.transport.govt.nz/assets/Uploads/REDAC TED-Final-Approvals-for-loan-facility-for-Waka-Kotahi-to-support-the-National-Land-Transport-Programme-2021-24-MARKED-UP_Redacted.pdf Attachment - Notice of Facility: www.transport.govt.nz/assets/Uploads/WATER</p>

Doc #	Reference Number	Title of Document	Decision on request
			MARKED-Notice-of-Facility-Waka-Kotahi-NZTA-NLTF-December-20214583496.2.pdf Attachment - Variation Letter: https://www.transport.govt.nz/assets/Uploads/WATERMARKED-Variation-side-letter-December-2021-to-the-2020-Waka-Kotahi-NZTA-COVID-Loan4596274.1.pdf Attachment - Previous joint briefing (OC210860 / T20212309): www.transport.govt.nz/assets/Uploads/REDAC TED-Loan-Facility-for-Waka-Kotahi-to-Support-the-National-Land-Transport-Programme-2021-24-MARKED-UP_Redacted.pdf
12	OC210986	Proposed transport sector amendments under the Covid Protection Framework	Some information withheld under Section 9(2)(a).
13	OC210813	Road Safety Penalties Review - Proposed recommendations for public consultation	Refer to Part One sent 11 April 2022.
14	OC210988	Transport bids for 2022 legislative programme	Refer to Part One sent 11 April 2022.
15	OC210991	Further information on North Shore Airport's application for airport authority status	Refer to Part One sent 11 April 2022.
16	OC211018	Update on the alleviation of current supply chain issues	Refer to Part One sent 11 April 2022.
17	OC210982	Effective Transport Financial Penalties - Update	Some information withheld under Sections 9(2)(a), 9(2)(f)(iv) and 9(2)(g)(i).
18	OC210884	Setting new objectives for the planning, procurement and delivery of public transport	Some information withheld under Sections 9(2)(a), 9(2)(f)(iv) and 9(2)(g)(i).
19	OC211016	Research into the use and effectiveness of alcohol interlocks	Refer to Part One sent 11 April 2022.
20	OC211020	COVID-19 - Update on development of MIAC exit strategy	Refer to Part One sent 11 April 2022.
21	OC220011 T2022/52 BRF21/ 22011215	Auckland Light Rail Board Appointments: confirmation of position description and skills matrix	Refer to Part One sent 11 April 2022.



2 December 2021

OC210818

Hon Michael Wood

Action required by:

Minister of Transport

Friday, 10 December 2021

SUMMARY OF THE REVIEW INTO ROAD SAFETY INVESTMENT AND DELIVERY

Purpose

To provide you with a summary of the findings of the independent Road Safety Investment and Delivery Review (the Review) into the efficiency and effectiveness of road safety investments. It also advises you on the process for considering variations to the 2021-24 Road Safety Partnership Programme (RSPP) to respond to the Review findings.

Key points

- Earlier this year, Te Manatū Waka Ministry of Transport (Te Manatū Waka) commissioned MartinJenkins to carry out an independent Road Safety Investment and Delivery Monitoring Review (the Review).
- Overall, the Review identified that good progress has been made in setting a clear direction and alignment of agencies towards the key priorities required to lift New Zealand's road safety performance, as set out in Road to Zero.
- The Review has, however, identified several improvements and opportunities to further strengthen the delivery of road safety investments and activities. Te Manatū Waka, Waka Kotahi and NZ Police have committed to deliver several actions in response to the Review. This action plan document is set out at Annex Two.
- We now seek your feedback on the Review findings and recommendations. We would also like to specifically test your comfort with whether the proposed action plan in response to the findings delivers on your expectations.
- A lack of governance and monitoring, combined with increasing demands on Waka Kotahi and NZ Police, present potential risks in responding to the Review findings. Strong oversight and monitoring will be required to ensure the actions are effectively implemented.
- We recommend that the Road to Zero Chief Executives' Group takes a leading role to monitor progress against the Review recommendations. This includes providing advice on the impact of new priorities and additional organisational demands on the delivery of road safety activities.

- We recommend consulting with the Minister of Police to seek feedback on the Review, including the proposed action plan. We also recommend you provide a copy of the Review to the Waka Kotahi Board, along with a letter setting your expectations of the Board in response to the Review, including inviting the Board's views on any necessary amendments to the Road Safety Partnership Programme (RSPP).
- Te Manatū Waka, Waka Kotahi and NZ Police recommend that the Review is released, in full on Te Manatū Waka website. Subject to your direction, Te Manatū Waka can work with your Office to prepare a draft press release and back pocket questions and answers to support the release of the Review and action plan.

Recommendations

We recommend you:

- 1 **note** that Waka Kotahi NZ Transport Agency will work through the key findings made in the Review and provide advice to its Board on amendments to the Road Safety Partnership Programme (RSPP)
- 2 **agree** to Te Manatū Waka proactively releasing the Review on its website, along with the actions that each agency has committed to in response to the Review Yes / No
- 3 **advise** if you would like to issue a press release announcing the release of the Review Yes / No
- 4 **refer** this briefing to Hon Poto Williams, Minister of Police and consider any feedback prior to sending the attached letter to the Waka Kotahi Board Yes / No
- 5 **agree** to sign and send the attached letter setting out your expectations to the Waka Kotahi Board about the amended RSPP following any comments from the Minister of Police. Yes / No



Robert Anderson
Manager, Mobility and Safety

2 / 12 / 2021

Hon Michael Wood
Minister of Transport

..... / /

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments**Contacts**

Name	Telephone	First contact
Robert Anderson, Manager, Mobility and Safety	s.9(2)(a)	✓
Hugh Mazey, Senior Advisor, Mobility and Safety	s.9(2)(a)	

SUMMARY OF THE REVIEW INTO ROAD SAFETY INVESTMENT AND DELIVERY

Te Manatū Waka commissioned an independent Road Safety Investment and Delivery Review

- 1 Earlier this year, Te Manatū Waka Ministry of Transport (Te Manatū Waka) commissioned MartinJenkins to carry out an independent Road Safety Investment and Delivery Monitoring Review (the Review).
- 2 The Review was commissioned to enable Te Manatū Waka to provide Ministers with more detailed advice on the efficiency and effectiveness of investment in road policing and safety infrastructure treatments.
- 3 The Terms of Reference established three primary areas of focus for the Review. These included:
 - 3.1 assessing whether there has been an appropriate level of alignment between the Government's strategic direction and delivery of road safety priorities
 - 3.2 forming a view on the overall efficiency and effectiveness of investment, systems, structures, accountability mechanisms, culture, and governance to support the delivery of road safety activities and interventions
 - 3.3 identifying barriers or challenges that may be having an impact on the effective and efficient delivery of the Government's future investment in road policing activity and the next stage of network safety infrastructure treatments.
- 4 In the context of the focus areas noted above, the Review assessed the effectiveness of road safety investment through the Speed and Infrastructure Investment Programme (previously the SIP) and road policing funded through the Road Safety Partnership Programme (RSPP).
- 5 The Reviewers were asked to make recommendations within the context of the findings against the focus areas that would enable Waka Kotahi and NZ Police to improve the efficiency and effectiveness of investment in road safety interventions.

The Review found that work is underway to embed strong foundations, but further work is required to strengthen the governance and oversight of road safety investment

- 6 Overall, the Review found good progress has been made in setting a clear direction and alignment of agencies towards the key priorities required to lift New Zealand's road safety performance. These are articulated in the *Road to Zero* strategy and action plan.
- 7 The Review also notes that key initiatives and actions are underway to enhance delivery effectiveness of investment in road safety activities. This includes, for example, the establishment of more formalised governance, assurance, and accountability mechanisms across agencies.

- 8 The Review has identified several improvements and opportunities to further strengthen the delivery of road safety investments and activities. These primarily focus on strengthening governance across the road safety partnership, enabling more transparent insights and reporting on road safety investment and performance, and improving alignment in decision making and the delivery of road safety interventions and activities.
- 9 The Review found that:
- 9.1 there is alignment between the Government's strategic direction and the strategic focus for road safety outcomes in both NZ Police and Waka Kotahi
 - 9.2 there has been a recent resetting of previous arrangements in both Waka Kotahi and NZ Police to achieve safety outcomes
 - 9.3 there is good and aligned understanding in both Waka Kotahi and NZ Police at senior management levels of Road to Zero outcomes and the focus on road safety as a priority
 - 9.4 there is more work to be done to get consistent delivery against this intent within both organisations at operational levels through ensuring decisions at district and regional levels appropriately prioritise and allocate resource to road safety activity, and through an increased focus on working together at regional and district levels to achieve road safety outcomes
 - 9.5 both Waka Kotahi and NZ Police are aware of the work to be done and are actively putting in place governance, management, and delivery mechanisms to address this
 - 9.6 the RSPP is still bedding down as an initiative where the agencies work in equal partnership, with recently strengthened arrangements for governance and oversight across the portfolio
 - 9.7 historically other priorities have crowded out the allocation of road policing resources, with recent steps being taken to address this issue
 - 9.8 there is a lack of performance data and evaluation across the system at a granular level, including financial measures, and this presents a challenge for assessing performance efficiency and effectiveness for making investment decisions.

To address these key findings the Review identified several areas for improvement

- 10 The Review identified several areas for improvement:
- 10.1 all three agencies in the road safety partnership to strengthen efforts to work together to discharge accountabilities and achieve better alignment between investment planning and delivery against the outcomes sought in *Road to Zero*
 - 10.2 expedite the formation of the Chief Executive Governance Group and Ministerial Oversight Group on Road to Zero and clarifying roles and responsibilities for enabling cross governance arrangements and reporting

- 10.3 where data analysis and insights permit, review the measures of NZ Police activity in the RSPP and complement current output measures with activity and intervention deployment measures that better align towards achievement of *Road to Zero* outcomes
- 10.4 continue to strengthen reporting on performance on activity and achievement of results in Waka Kotahi and NZ Police
- 10.5 establish an assurance framework to complement governance arrangements that will provide a line of sight on performance from operational through to governance levels
- 10.6 expedite the development and implementation of the NZ Police Safe Roads operating model to guide focus and consistent approaches to road safety policing, particularly at district and area levels
- 10.7 NZ Police to pursue the opportunity to take evidence of effective road policing practice in some districts (as evidenced in performance results) and assess for applicability to other districts
- 10.8 Waka Kotahi to review its investment prioritisation methodology for being able to accommodate safety outcomes/benefits from social and regulatory programmes over a time horizon of ten years.

Each agency has committed to deliver on the Review findings and recommendations

- 11 The Review outlined key recommendations that each agency could progress to strengthen the effective delivery of road safety investment. The agencies have developed an action plan to release alongside the Review. A draft of the action plan, in response to the Review, is set out in Annex One.
- 12 The action plan provides a clear response that will enable the agencies to respond to the recommendations in the Review. If these actions are progressed, we are confident that the issues in the Review will be appropriately addressed in time.
- 13 Some of the issues identified through the Review are historic challenges that require active focus and effective governance to address. In some cases, both Waka Kotahi and NZ Police will need to enable changes at organisational and cultural levels to address the underlying issues.
- 14 We anticipate it will take around one year to implement the actions and a further six months to realise improvements, recognising the systemic nature of some of the issues. Maintaining momentum will require a concentrated effort and we are confident we can do this.
- 15 It is recommended that the refreshed Road to Zero Chief Executives' Group be responsible for monitoring the ongoing response to the Review, and that this group would report to the Road to Zero Ministerial Oversight Group on progress once in place.

There are some limitations in the Review that impacted the findings

- 16 As outlined in the key findings, the Review identified a lack of clear and consistent performance data and insights over the delivery of road safety investment. This presented a challenge for assessing performance efficiency and effectiveness for making investment decisions. As a result of this, the Review does not provide specific comment on activity levels.
- 17 Similarly, the Review noted challenges in identifying clear financial information to monitor the line-of-sight of road safety investment through the investment lifecycle, i.e. from investment decision making through to delivery. The Review makes comments on these matters at a high level, but it was unable to undertake any value-for-money analysis due to this information being unavailable.
- 18 Improvements are currently being progressed to address these matters. Waka Kotahi has established more robust delivery and performance reporting, which is still developing. This is overseen by an executive sub-committee of Waka Kotahi's Senior Leadership Team and is reported to the Waka Kotahi Board (the Board).
- 19 NZ Police has also signalled that it will be progressing an independent activity-based costing review to strengthen transparency over the allocation and use of dedicated road policing funding.

A lack of sustained progress to embed the Review recommendations presents risks to progressing *Road to Zero*

- 20 Investment in infrastructure safety treatments and road policing are key pillars to the delivery of the commitments set out in Road to Zero. It is critical that sustained efforts are made to ensure effective delivery of investment in these areas.
- 21 There is a risk that a lack of progress in responding to the Review findings could limit the realisation of the system targets signalled in Road to Zero. This could directly impact the achievement of the 40 percent reduction in deaths and serious injuries by 2030.

There are significant expectations on Waka Kotahi and NZ Police that need to be carefully balanced

- 22 Te Manatū Waka notes there are significant expectations on both Waka Kotahi and NZ Police to support a range of key Government priorities over the next year.
- 23 In the context of Waka Kotahi, alongside supporting the ongoing COVID-19 response, Waka Kotahi will have a significant role supporting the delivery of the Government's climate and environment priorities.
- 24 Te Manatū Waka recommends that you discuss these matters with the Board to assess how Waka Kotahi will balance existing and new priorities, and whether it is concerned about any delivery and performance trade-offs.
- 25 Diversion of road policing resource remains an ongoing challenge as NZ Police responds to additional priorities and increasing demand within districts (e.g. family harm incidents).

- 26 Currently, NZ Police is having to prioritise resource to balance competing demands, particularly as it plays an increasing role in supporting the ongoing response to COVID-19.
- 27 NZ Police is transparent about these challenges and is willing to work with the road safety partnership to support progress in this area. Te Manatū Waka recommends that Ministers may need to consider the broader expectations being placed on NZ Police, and the associated implications of these on the delivery of road policing activity. We suggest this is an item for discussion at the Road to Zero Ministerial Oversight Group on 14 February 2022.

Effective governance and oversight are required to address the Review findings

- 28 Te Manatū Waka considers that the action plan in response to the Review will provide a good basis for addressing the key issues impacting the delivery of road safety investment. However, without clear governance and oversight to monitor the delivery of these actions, there is a risk that progress will not be at the pace and scale required to bring about improvement.
- 29 Over the last few months, Te Manatū Waka, working with Waka Kotahi, NZ Police, and ACC, has made good progress in embedding the refreshed governance structure for Road to Zero.
- 30 We consider that the Road to Zero Chief Executives' Group has an important role in monitoring the effective delivery of progress under Road to Zero. Our view is therefore that this group would be the appropriate mechanism to monitor the ongoing response to the Review, and to provide Ministers with assurance on progress.
- 31 Subject to your feedback, Te Manatū Waka will work with Waka Kotahi and NZ Police to establish formal reporting and monitoring on progress against the review findings and recommendations to this group. It is intended that reporting will be provided on progress through the Road to Zero Ministerial Oversight Group.

We recommend you write to the Board to set out your expectations in response to the Review

- 32 The Board is accountable for the delivery of road safety investment made through the National Land Transport Fund (NLTF). This accountability sits in two capacities.
- 33 The first capacity relates to the Board's role overseeing investment in road safety interventions and activities delivered by Waka Kotahi, such as education campaigns and infrastructure treatments. The second capacity relates to the Board's role as purchaser of road policing activity from NZ Police through the RSPP.
- 34 Te Manatū Waka is aware that the has a focus on strengthening oversight and delivery of investment into road safety. The Board has a key role to play in responding to the Review through its statutory role and accountabilities in managing investment as part of the Road to Zero activity class.
- 35 We therefore recommend that you write to the Board to provide a copy of the Review, and to set your expectations of the Board in responding to the findings and recommendations. The letter also invites the Board's views in considering variations

to the 2021-24 RSPP. A draft letter is attached in Annex Two for you to provide to the Board.

Your feedback is sought on the Review findings, recommendations, and next steps

- 36 With the Review complete, we now seek your feedback on the findings and recommendations. We would like to specifically test your comfort with whether the action plan delivers on your expectations. We recommend consulting with the Minister of Police to also seek feedback on these matters.

There is significant external interest in the Review findings

- 37 We expect that there will be significant public and stakeholder interest in the conclusions from the Review and the actions that agencies will be taking in response. Given the high-profile nature of the issues covered in the Review, we consider that it would be in the public interest to release the Review in full.
- 38 On 26 October 2021 your Office received a request from s 9(2)(a) from Stuff for a copy of the Review under the Official Information Act 1984 (OIA). Our recommendation was that you refuse the request on the basis that the Review will soon be proactively released.
- 39 Based on general Ombudsman guidance, relying on this ground means the document should be released within six weeks of the refusal. Based on the date the response was sent to s 9(2)(a), to remain consistent with the Ombudsman guidance, the document would need to be released by 25 January 2022.
- 40 If you disagree to the proactive release of the Review, it will need to be prepared for release to s 9(2)(a) in response to the OIA request as the refusal ground will no longer be valid. Our recommendation would be that it is released in full.
- 41 We anticipate that there will be a high level of scrutiny over the Review given the nature of some of the findings. In response to these concerns, it is important to note that the Review was proactively initiated by Ministers and that many of the issues respond to systemic and historic challenges in the governance and oversight of road safety investment and delivery.

We can work with your Office to prepare communications material to support a proactive release

- 42 Subject to your direction, Te Manatū Waka can work with your Office to prepare a draft press release and supporting questions and answers to support the release of the Review and action plan. We will work with your Office on the preferred timing for the release of the Review.

IN CONFIDENCE

ANNEX ONE: FINAL MARTINJENKINS REPORT

Annex One refused under section 18(d) of the Official Information Act.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

UNCLASSIFIED

IN CONFIDENCE

ANNEX TWO: AGENCY ACTIONS RESPONDING TO THE REVIEW

Annex Two refused under section 18(d) of the Official Information Act.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

UNCLASSIFIED

IN CONFIDENCE

**ANNEX THREE: DRAFT LETTER TO THE CHAIR OF THE WAKA
KOTAHI BOARD**

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

UNCLASSIFIED

Sir Brian Roche
Chair Waka Kotahi Board
boardsecretariat@nzta.govt.nz

Dear Brian,

Earlier this year, the Minister of Police and I jointly directed the commissioning of a review into the effectiveness and efficiency of investment into road safety (the Review). The Review was specifically intended to provide Minister's with more detailed insights on investment in road policing and safety infrastructure treatments.

The Review is now concluded. I have enclosed a copy for the Waka Kotahi Board's consideration.

Note: the Review referred to in this paragraph is refused under section 18(d) of the Official Information Act

Overall, the Review identified that good progress has been made in setting a clear direction and alignment of agencies towards the key priorities required to lift New Zealand's road safety performance, to deliver Road to Zero. The Review has, however, identified several improvements and opportunities to further strengthen the delivery of road safety investments and activities.

Road to Zero sets ambitious targets that aim to ensure there are no deaths or serious injuries on New Zealand roads. Effective enforcement and infrastructure improvements are key levers in being able to deliver these targets.

The findings from the Review highlight some challenges impacting the way in which road safety investments are being made and delivered. I acknowledge Waka Kotahi over the last 12 months has taken steps to strengthen its oversight and delivery of investment into Road Zero.

However, the Review highlights further improvements are required to realise the vision of Road to Zero. Without a concerted effort to respond to the Review findings, there is a risk that we will not make sufficient progress.

As the land transport funder, the Waka Kotahi Board also has an important role overseeing investment through the Road to Zero activity class. This includes approving the Road Safety Partnership Programme (RSPP).

When I conditionally agreed to the 2021-2024 RSPP, it was subject to the RSPP being amended to reflect the recommendations of the Review and matters raised by the Secretary for Transport. I would like the Waka Kotahi Board to provide me with advice on any potential variations to the RSPP within the context of the Review findings by 1 February 2022.

My strong expectation is that the Waka Kotahi Board will fully consider the Review findings and recommendations, and ensure genuine changes are put in place to realise improvements in the way investments in road safety are being made.

As a nation, we have significant progress to make to improve our road safety performance. Strong partnership and clear governance will be essential to harness the impact we can collectively have to achieve the Road to Zero vision.

I look forward to working with the Waka Kotahi Board, and the wider road safety partnership, over the next year to improve road safety in Aotearoa.

Yours sincerely

Hon Michael Wood
Minister of Transport

Copy to:

Hon Poto Williams
Minister of Police

Peter Mersi
Secretary for Transport

Andrew Coster
Police Commissioner

Nicole Rosie
Chief Executive, Waka Kotahi

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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13 December 2021

OC210986

Hon Chris Hipkins

Action required by:

Minister for COVID-19 Response

Wednesday, 15 December 2021

cc Hon Michael Wood

Minister of Transport

PROPOSED TRANSPORT SECTOR AMENDMENTS UNDER THE COVID PROTECTION FRAMEWORK

Purpose

This briefing seeks your agreement to make amendments to the Covid Protection Framework Order (the Order) to:

- remove long haul scenic train services from the COVID-19 Vaccination Certificates (CVC) prohibited list, thereby enabling KiwiRail to require a COVID-19 vaccine certificate (CVC) for entry
- remove face mask requirements (when passengers are in allocated carriages) for long haul scenic train services

It also notes that there are potential issues in relation to driver licence testing and training that we intend to further investigate and monitor.

Key points

- Since the COVID-19 Protection Framework (the Framework) was announced and settings began to be embedded, a small number of transport operators or sector representatives have sought changes to settings, or highlighted issues for monitoring.
- The two proposals in this briefing relate to settings for KiwiRail's long haul scenic train services (and specifically the Tranz Alpine service, which KiwiRail plans to restart in mid-January 2022).
- As these trains are regarded as public transport services under the Order, they are currently prohibited from requiring a CVC from passengers. KiwiRail considers that given the tourism focus of these services (rather than them providing access to essential services like medical care or supermarkets/pharmacies), and their long haul nature, KiwiRail is seeking a change to this setting. Allowing KiwiRail to seek a CVC (not a negative test) will enable overseas customers (and wholesale agents) to book with confidence and align with the vaccine policy for workers that KiwiRail has already introduced. This proposal is supported by the Ministry of Health.

UNCLASSIFIED

- Passengers are also currently required to wear face coverings for the duration of these long haul services. Given the tourism nature of the service and that they are long haul services, Kiwirail would like requirements to be more akin to current hospitality requirements and allow passengers to remove masks when they are seated and within their allocated carriage. There are a number of other controls in place including allocated seating, needing to eat in allocated seating, and ventilation and cleaning protocols. This proposal is also supported by the Ministry of Health.
- If Ministers have concerns around all three long haul services being removed from the CVC prohibition list, and face covering requirements, there could be an exemption considered only for the Tranz Scenic service (which runs return from Christchurch to Greymouth). This service is scheduled to re-commence in mid-January 2022, and the others in late 2022 (if at all). The Tranz Scenic service is the operator's priority and has the lowest risk profile as the shortest of the three services and without any regional stops.
- If you agree with the proposals in this briefing, we understand there will be an amendment to COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) in mid/late December and these changes could be reflected then.
- We also wish to use this briefing to draw your attention to issues relating to driver licence testing and to licensing support services (such as driver training and community mentor programmes) that assist people to prepare for their driving test. We are working with Waka Kotahi NZ Transport Agency (Waka Kotahi) to understand the scale of the potential issue, as at present the Framework prohibits practical driver testing and training for those who are unvaccinated. We will monitor developments and keep you informed on this issue.

Recommendations

We recommend you:

- 1 **note** that some proposed changes to the Covid Protection Framework transport settings have been sought by the sector; with two relating to long haul scenic trains and one relating to driver licence testing

Long haul scenic trains

EITHER

- 2 **agree** that long haul scenic trains (namely the Northern Explorer, Coastal Pacific and Tranz Alpine) be removed from the Covid Vaccination Certificate prohibited services list (where these are currently included as public transport services), thereby enabling the operator (KiwiRail) to seek evidence of a COVID Vaccination Certificate from passengers

AND

Yes / No

- 3 **agree** that long haul scenic train passengers be exempt from face covering requirements when passengers are within their allocated carriage (but will still be required when boarding the train, and moving beyond their allocated carriage)

Yes / No

OR

- 4 **agree** that the Tranz Alpine train service be removed from the Covid Vaccination Certificate prohibited services list (where it is currently included as a public transport service), thereby enabling Kiwirail to seek evidence of a vaccine certificate from passengers Yes / No

AND

- 5 **agree** that passengers be exempt from face covering requirements for the Tranz Alpine train service when passengers are within their allocated carriage (but will still be required when boarding the train, and moving beyond their allocated carriage) Yes / No
- 6 **note** we understand there are a number of people not permitted to sit their drivers licence test as they have chosen to not be vaccinated against COVID-19, and possibly cannot now access training to support driver licensing, as a result of the service being a 'close proximity' one and COVID-19 vaccine certificates therefore being required. We will seek further information on the scale of the issue and impacts and keep you informed.
- 7 **note** any decisions you take through this briefing will be reflected in the pre Christmas amendment to the Order that is under development.



Shelley Tucker
Director: COVID-19 Response
 13 / 12 / 21

Hon Chris Hipkins
Minister for COVID-19 Response

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Shelley Tucker, Director: COVID-19 Response	s 9(2)(a)	✓
Helen Presland, Principal Advisor: COVID-19 Response	s 9(2)(a)	

PROPOSED TRANSPORT SECTOR AMENDMENTS UNDER THE COVID PROTECTION FRAMEWORK.

Cabinet has taken recent decisions on the application of COVID-19 Vaccination Certificates (CVCs), and other settings under the Covid Protection Framework (the Framework)

1. Limiting access to certain settings to those who are vaccinated has been identified as a tool to help support the broader public health response to COVID-19. In a domestic context, CVCs can also be used as evidence to ensure people in those settings can demonstrate they are either fully vaccinated, or medically exempt from vaccination.
2. A range of decisions have been made to date on the policy approach and implementation of CVCs and the settings in which they may be required,
 - a) On 18 October, Cabinet considered high level advice relating to the use of CVCs, noting broad categories to define settings for the application of vaccine requirements, and agreeing high level settings in which to mandate a required use of CVCs. Cabinet also agreed to issue drafting instructions to support the introduction of CVCs and to prohibit their use in certain settings [CAB-21-MIN-0421 refers];
 - b) On 21 October, delegated Ministers agreed the final settings for the introduction of CVCs as part of a revised COVID-19 Protection Framework, which were announced publicly on 22 October; and
 - c) On 26 October, Cabinet took further decisions relating to the implementation of CVCs in domestic settings, agreeing that life preserving basic needs providers are not able to limit the type of service provided to customers/patrons based on a CVC vaccine requirements [CAB-21-MIN-0421 refers]
 - d) On 11 November, you agreed the specific application and recommended scope of prohibitions for the use of vaccine requirements (including CVCs) in order to protect people's access to life-preserving basic needs providers, irrespective of their vaccination status.

Public transport, other than air travel and Cook Strait Ferries, has been agreed as prohibited from using CVCs

3. Cabinet agreed that there are certain settings where denying entry on the basis of vaccination status will be prohibited. Where vaccine requirements are prohibited, a place/service/PCBU cannot limit the kind of service provided to patrons based on their vaccination status (e.g. making unvaccinated customers use the self-checkout counters only).
4. On the basis of subsequent advice from DPMC officials, you agreed that public transport services will be prohibited from requiring proof of vaccination (either via My Vaccine Certificate or another tool) as condition of entry, use or access. As such, all public transport (buses, trains, ferries, taxis/ubers, rental vehicles etc) apart from air travel was prohibited from using vaccination requirements as a condition of use/entry. This decision reflected that access to public transport is necessary to ensure access to life-preserving services.
5. In taking that decision, advice from officials noted that any option around excluding interregional travel from the prohibited services list would be complex. Since then, you

have removed Cook Strait Ferries from the CVC prohibited list, and both operators for the Strait have subsequently introduced vaccination or testing policies for their services.

6. We note there has also been a request to you from some parts of the small passenger services sector (e.g. taxis) that they should be allowed to require a CVC as a condition of using their services. These services are also considered public transport under the Order. We understand there is no proposal to change the settings for these services at this time, however, if you wish, further advice could be prepared for you on this.

We would recommend also removing KiwiRail's long haul scenic train services from the CVC prohibited list

7. Although none are currently operating. KiwiRail has three long haul scenic trains services:
 - The Tranz Alpine, a return service between Christchurch and Greymouth (4.5 hours each way);
 - The Northern Explorer, a return service between Wellington and Auckland (10.5 hours each way); and
 - The Coastal Pacific, a return service between Christchurch and Picton (6 hours each way).
8. We are now recommending that KiwiRail's long haul scenic trains are removed from the CVC prohibition list, or that the single service, the Tranz Alpine, is removed from the CVC prohibition list. Although the operator is particularly focussed on the Tranz Alpine (which is due to recommence in mid-January 2022), we have considered the three long haul scenic trains as a group of like services, and consider the current issue to exist across all three services (noting this is to greater and lesser degrees).
9. The issue is that these trains are currently regarded as public transport services under the Order, and they are therefore currently prohibited from requiring a CVC from passengers. KiwiRail's strong preference is for passengers to be vaccinated, which is in line with all workers being vaccinated, and the expectations of the overseas tourism operators, which is an important market for these services. For the international tourism market, even a negative test is insufficient. The ability to impose a vaccine only policy for passengers would enable overseas customers (and wholesale agents) to book with confidence.
10. There is a very strong tourist focus on these services. Passengers are not thought to be using these long haul trains to commute for example, or to access core services like medical care or supermarkets/pharmacies.
11. Officials agree that there is a distinction between these services and other public transport services, and that passengers are very likely to be on board for tourism reasons. We agree that these long haul scenic train services could be removed from the CVC prohibited list for this reason.
12. If Ministers have concerns around all three long haul services being removed from the CVC prohibition list, there could be an exemption considered only for the Tranz Scenic at this time. This service is scheduled to commence in mid-January 2022, and the others in

late 2022 (if at all). The Tranz Scenic service is KiwiRail's priority and has the lowest risk profile as the shortest of the three services and without regional stops.

There has also been a request for face coverings to not be required throughout the entire journey on these services

13. Under the Order, passengers will also be required to wear face coverings for the duration of the long haul services when they recommence.
14. Again, given the tourism nature of the service and that these are long haul services, Kiwirail would like requirements to be more akin to hospitality requirements and allow passengers to remove masks when they are within their allocated carriage. There are a number of other controls in place including allocated seating, crew wearing face masks in passenger areas, needing to eat in allocated seating, and ventilation and cleaning protocols.
15. Officials agree that (especially if CVCs are required, and given other protocols) that being able to remove masks within allocated carriages on these long haul services seems reasonable.
16. As with the CVC proposal above, Ministers could choose to only change face covering requirements for the Tranz Scenic service.

There is also an emerging issue around driver licence testing (and potentially also driver training) through the requirement for those sitting tests or undergoing training to be vaccinated

17. Ministers have agreed that Orange and Red levels, close proximity businesses and services can only open to the public if they operate with CVCs/My Vaccine Pass (MVP). At Green, a close proximity can operate without CVCs/MVP, however they must also operate with physical distancing limits. A close proximity business or service is one that carries out activities that require a worker being closer than 1 metre to the client. The Ministry of Business, Innovation and Employment considers that driver training and the practical test element of the driver licensing process constitutes a close proximity service.
18. The current CVC requirement for driver training and testing is expected to exacerbate delays in individuals obtaining their driver licence or, in some cases, being unable to obtain their driver licence altogether.
19. We have been advised by Waka Kotahi that VTNZ sent texts to 4,578 customers with tests booked between the 3 December 2021 and 10 December 2021. Two hundred and one customers responded to the text message prompt, due to not being able to produce a CVC in time for their test. Of these, 128 tests have been cancelled and will need to be rescheduled. Seventy-three people have chosen to wait until a CVC is not required. Other individuals may have already rescheduled their tests online.
20. For many New Zealanders, obtaining a driver licence plays an important role in accessing essential services such as education, healthcare and food. Some groups already find it hard to access the driver licensing system. These include Māori, Pacific people, sole parents, and rural cohorts. Some of these groups have lower-than-average vaccination rates.

21. The Ministry of Transport and Waka Kotahi are concerned about potential access and equity issues under the current settings and note that there is a potential impact on road safety due to non-compliance with the regulations (e.g. individuals driving unlicensed because they cannot obtain one under the Framework).
22. In addition to creating a transport disadvantage, not holding a valid driver licence can contribute to a range of other negative outcomes for the individuals involved with wider impacts for New Zealand society. For example, driver licence offending (e.g. driving without a licence or breaching licence conditions) can result in financial penalties and loss of licence, which in turn may hinder an individual's ability to access or retain employment. Driver licence-related offending can result in an individual's first interaction with the criminal justice system, for example, through referral of unpaid infringements to the court system. Police infringement data (2019 and 2020) shows that 74 percent of Graduated Driver Licence infringements are referred to court unpaid and 79 percent of unlicensed driver infringements are referred to court unpaid.
23. We are also aware that the issue extends to those support people needed to complete the practical test, including anecdotal examples of a support person of a chaperoned Muslim woman and refugees needing an interpreter. This extends to those who are acting as a reader/translator during a Driver Theory Test. These tests are currently unable to be completed at either AA or VTNZ centres as the distancing requirements under the Framework are unable to be met.
24. We are also monitoring issues relating to driver training and driver assessment (for example, driving schools, driving instructors, course providers, and community mentor programmes). Waka Kotahi advises that these operations form a significant part of the driver testing system alongside VTNZ.
25. Neither the Ministry nor Waka Kotahi yet have a full understanding of the scale and impact of the issue in relation to driving training, including the extent to which unvaccinated people cannot prepare for driving tests if they do not have access to these services. If issues continue to present, options may include exempting some or all of these services from the close proximity service requirements, or enabling some or all of these services to be offered to vaccinated or *tested* individuals.
26. We will work with Waka Kotahi to engage with the sector on both of these issues – driver licence training and testing, to understand the extent of the issue. We will also work with other agencies to understand the impact on particular groups, such as Pacific people and Māori. The Ministry of Social Development is also providing advice. We will update you following completing the further work in the New Year.

Public health advice

27. Public health advice is supportive of the three long-haul, scenic train services being removed from the CVC prohibited list. It is recognised that these services focus on the tourism market and are not generally used to commute or to access essential services. In addition, there are alternative air and land transport providers that service these routes. Public health is also supportive of the proposal to not require passengers to use face masks when in their allocated carriage. This advice takes account of the other control measures outlined, including the proposal to allow CVCs to be required.

Next steps

28. If you agree with the proposals in this briefing, the changes can be reflected in the Order amendment that is under development, and the change communicated through updated guidance and other operator material.
29. We understand this amendment will be completed before Christmas 2021.
30. Kiwirail is aware of and supports the proposal in this paper. We will convey Ministerial decisions to them.

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21 December 2021

OC210982

Hon Michael Wood

Action required by:

Minister of Transport

15 February 2022

EFFECTIVE TRANSPORT FINANCIAL PENALTIES – UPDATE

Purpose

To provide you with updated information on the Effective Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool), and its use.

To provide you with a set of talking points to discuss the Framework and Tool with your Cabinet colleagues.

Key points

- We have previously engaged with you on the Framework and Tool [OC210050 and OC210414 refers].
- Financial penalties are just one enforcement option as part of a risk-based, responsive, and flexible regulatory system. The Framework and Tool enables consistency and fairness across all transport modes when a financial penalty is pursued.
- We have made further refinements to the Tool since you last saw it. We have added more nuanced categories for lower-level penalties to respond more sensitively to the large number of low-level land transport (traffic) offences.
- We have used the Framework and Tool to inform proposed penalty levels for some offences in the aviation, maritime and land contexts. We consider that this approach has proven effective in proposing more consistent, fit-for-purpose penalty levels.
- s 9(2)(f)(iv) [REDACTED]
- We recommend releasing the Framework and Tool on the Ministry's website s 9(2)(f)(iv) [REDACTED]. While there are some risks associated with releasing these documents, it will help the wider transport sector, government agencies, and interested members of the public understand the rationale behind adjusting transport financial penalties.
- We invite you to discuss the Framework and Tool with your Cabinet colleagues.

Recommendations

We recommend you:

- 1 **agree** to the Framework and Tool being publicly released on the Ministry's website
s 9(2)(f)(iv) Yes / No
- 2 **consider** discussing the Framework and Tool with your Cabinet colleagues. Yes / No



 Megan Moffet
 Manager Regulatory Policy
 .21 / .12. / 2021

 Hon Michael Wood
 Minister of Transport
 / /

Minister's office to complete:

- ☐ Approved
 ☐ Declined
☐ Seen by Minister
 ☐ Not seen by Minister
☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Megan Moffet, Manager Regulatory Policy	s 9(2)(a)	✓
Emma Bray, Adviser	s 9(2)(a)	

EFFECTIVE TRANSPORT FINANCIAL PENALTIES – UPDATE

We have previously engaged with you on the Effective Financial Penalties Policy Framework and Categorisation Tool

1. We first provided you with a draft of the Effective Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool) in March 2021 [OC210050 refers]. We addressed further questions you had on transport related penalties in July 2021 [OC210414 refers].
2. We have since made a small amendment to the penalties categories outlined in the Tool to provide more scope for appropriate penalties for lower-level land transport (traffic) offences.

Financial penalties support a safe and effective transport system, but many are inconsistent, disproportionate, or otherwise unfit-for-purpose

3. To help ensure a safe and effective transport system, participants need to follow the requirements set in legislation that establish that system.
4. Regulators have a broad range of tools and approaches – from education and awareness to licence revocation and prosecution – to use in designing a risk-based, responsive, and flexible transport regulatory system to support compliance and respond to offending. Regulatory and enforcement agencies also have wide discretion in applying enforcement approaches and associated penalties.
5. Financial penalties (infringement fees and maximum fines before a court) are a specific intervention tool. They support the system by encouraging positive and responding to negative behaviour (particularly of a more serious nature). Infringement fees in particular provide an intermediate step between education and prosecution that allow regulatory agencies more discretion in their enforcement approaches.
6. We have identified various issues with the process by which financial penalties across transport legislation have been developed and maintained. This has included:
 - Isolated, arbitrary development
 - Lack of review to ensure currency
7. These process issues have led to problems that reduce the effectiveness of transport-related financial penalties, including:
 - Inconsistency across legislation
 - Disproportionality to level and risk of harm
 - Inappropriate penalty levels for different offender types

To address these problems, we have developed the Framework and Tool

8. The Framework and Tool provide the Ministry with a systematic approach to address problems with financial penalties across the transport system. The Framework has undergone a comprehensive policy development process over more than two years.

9. The Framework supports reviewing existing, and setting new, financial penalties in transport legislation. It enables penalties that are better aligned to levels of harm and more consistent across transport modes, as well as with other relevant, modern, regulatory regimes. The Framework involves a process to determine financial penalty levels based on considering four effectiveness principles.
10. We have provided you with detail about the framework previously [OC210050 refers], and a high-level outline is contained in Annex 1.

The Framework and Tool will help ensure consistency and fairness when a financial penalty is pursued

11. The Framework and Tool support a regulatory stewardship approach focussed on supporting more effective financial penalties. When considering a piece of work, the Ministry may determine, after weighing up all possible enforcement options, that a financial penalty is the best option to pursue. If this is the case, then the Framework and Tool guide penalty setting and ensure the determined financial penalty is proportionate, consistent, and better targeted to address specific offending and groups of offenders.
12. The eventual long-term outcome will be that every financial penalty in the transport regulatory system will have a common connecting factor and be consistent across all transport modes. This is in line with the Ministry's stewardship role.

We have made further refinements to the Tool since you last saw it

13. We have designed the Tool to support the Ministry and transport regulatory agencies to effectively implement the Framework. The Tool outlines a stepped process to categorise financial penalties according to the Framework's principles.
14. We have added in more nuanced categories (see 1A, 1B, 2A and 2B in Table 1 below) for lower-level penalties to respond more sensitively to the large number of low-level offences in the land transport regime. These categories recognise that traffic offences make up the bulk of all transport penalties and are also mostly committed by individuals. Consequently, relatively small penalty level variations can have large impacts on how the penalties are viewed by the public, enforced, and the social consequences that can result from unpaid penalties.

Table 1: Penalty scale for harm and types of offenders

Harm category	Fee			Fine		
	Individual	Special Reg Ind ¹	Business or undertaking	Individual	Special Reg Ind	Business or undertaking
1A	\$50	\$150	\$500	\$250	\$750	\$2,500
1B – new	\$150	\$450	\$1,500	\$750	\$2,250	\$7,500
2A	\$250	\$750	\$2,500	\$1,250	\$3,750	\$12,500
2B – new	\$350	\$1,050	\$3,500	\$1,750	\$5,250	\$17,500
3	\$500	\$1,500	\$5,000	\$2,500	\$7,500	\$25,000
4	\$700	\$2,100 ²	\$7,000	\$3,500	\$10,500 ³	\$35,000
5	\$1,000	\$3,000 ²	\$10,000	\$5,000	\$15,000 ³	\$50,000
6	N/A	N/A	N/A	\$10,000	\$30,000	\$100,000
7	N/A	N/A	N/A	\$20,000	\$60,000	\$200,000
8	N/A	N/A	N/A	\$30,000	\$90,000	\$300,000
9	N/A	N/A	N/A	\$50,000	\$150,000	\$1,500,000
10	N/A	N/A	N/A	\$60,000	\$180,000	\$3,000,000

We have used the Framework and Tool to inform proposed penalty levels for offences

15. We have already used the Framework and Tool to inform proposed penalty levels for some serious offences in the Civil Aviation Bill and a series of lower-level offences in civil aviation, and similar serious and lower-level offences in the maritime area. The Framework and Tool have also been used, alongside other considerations, to inform proposed penalty levels in the Road Safety Penalties review (OC210813 refers).
16. We consider that the Framework and Tool's approach has been effective in proposing more consistent, up-to-date, and fit-for-purpose penalties. This has included some significant proposed penalty level changes.

¹ Special Regulated Individual.

² Note this penalty level is above maximum amounts currently allowed in transport regulations for fees, with limits of \$2000 (individual) and \$12,000 (body corporate). Therefore, the lesser limits will apply.

³ Note this penalty level is above maximum amounts currently allowed in transport regulations for fines, with limits of \$10,000 (individual) and \$50,000 (body corporate). Therefore, the lesser limits will apply.

17. For example, using the Tool to guide penalty levels in reviewing some offences in regulations has led to penalty proposals up to seven times current levels,⁴ and some lowered penalties. Proposals for increased or lowered penalties may result where, for example, penalties have not been reviewed for decades or are currently disproportionate to likely harm.

We plan to consult on proposed penalty changes in 2022, initially maritime and marine protection penalties

18. We have used the Framework and Tool to assess a small selection of penalties in the Maritime Transport Act, and a wider suite of offences in the maritime and marine protection regulations. The proposed penalty adjustments will address the differing levels of financial penalties under the *Maritime Transport Act 1994* compared to the *Health and Safety at Work Act 2015* (HSWA) and modernise our approach to a range of penalties for offences that generally apply to large and/or international shipping vessels.
19. s 9(2)(f)(iv) [REDACTED]
20. s 9(2)(f)(iv) [REDACTED]
We have also proposed to consult on the Road Safety Penalties review later in 2022, subject to your agreement [OC210813 refers].
21. The Framework and Tool will be clearly referenced s 9(2)(f)(iv) [REDACTED] to explain how and why some financial penalties are being proposed for adjustment.

We recommend releasing the Framework and Tool on the Ministry's website and invite you to discuss them with your Cabinet colleagues

22. We recommend publicly releasing the Framework and Tool as documents on the Ministry's website s 9(2)(f)(iv) [REDACTED], so they are available to the wider transport sector, other government agencies, and interested members of the public. This is an important step to set out our operational policy informing how and why we set fees and fines, 'socialising' it, and supporting effective implementation of the Framework and Tool.
23. s 9(2)(g)(i) [REDACTED]

⁴ For example, there is a \$100 fee for using a craft where there is a safety risk to persons on board (such as in rough seas, adverse weather, or emergencies), without every person wearing a properly secured personal flotation device - Maritime (Offences) Regulations, Rule Part 91.4(6). Due to this offence's high safety risk, using the Tool's assessment process recommended a \$700 fee.

24. s 9(2)(g)(i) .
25. We do not consider that these risks override the benefits of publication. This is because the Framework provides a strong process to actually fix problems with financial penalties in the transport system, and we intend to address these problems by reviewing penalty levels across transport legislation.
26. We will also develop communications messages for release of the Framework and Tool. This material will emphasise their objectives and benefits to mitigate publication and implementation risks.
27. You have previously mentioned you would like to discuss the Framework and Tool with your Cabinet colleagues before the Ministry publicly releases the documents. We invite you to take the Framework and Tool to your Cabinet colleagues and have attached talking points to this briefing to help aid your discussions (ANNEX 1).

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ANNEX 1

Talking Points to use in discussions with your Cabinet Colleagues

1. Financial penalties (infringement fees and fines) are important tools to support the transport system, as they can encourage compliance and respond to negative behaviour.
2. To be effective, financial penalties need to be up-to-date, consistent, proportionate to harm and fit-for-purpose.
3. Current penalty levels across transport legislation are inconsistent, were developed arbitrarily and in isolation, and are often disproportionate to their severity and risk of harm.
4. The Ministry has developed the Effective Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool) to help ensure financial penalties across all transport modes are proportionate, consistent, and better targeted to address particular offending and groups of offenders.

The Framework

5. The Framework has four principles for determining effective financial penalties. The financial penalty needs to:
 - respond to the offence's severity
 - act as a deterrent to undesirable behaviour
 - be proportionate
 - consider the responsibilities and financial capacity of the person or entity in the system
6. The Framework assesses offences' severity by considering three types of possible harm:
 - *System* – harm to the transport regulatory system itself from breaching any transport requirements or rules.
 - *Safety* – actual harm, or risk of harm, to people.
 - *Environmental and property* - actual harm, or risk of harm, to the environment or property
7. The Framework identifies two new categories of potential offenders that penalties can apply to:
 - *Special regulated individuals (SRIs)* – commonly individuals with professional responsibilities in the transport system
 - *Businesses or undertakings (BUs)* – commercial operators or not-for-profit organisations

The Tool

8. We have designed the Tool to support the Ministry and transport regulatory agencies to effectively implement the Framework. The Tool outlines a stepped process to:

- categorise financial penalties according to the Framework principles
 - assign penalty levels by points
9. The Tool's categorisation process links recommended penalty amounts to:
- severity of harm
 - likelihood of harm occurring should the offence occur
 - types of potential offenders (individuals, SRIs, BUs)
10. The Tool would bring transport penalty levels, if reviewed and with legislative amendments, up to HSWA levels for comparable offending which occurs in the transport system. This would, for example, enable better addressing serious offending by large commercial entities.

Consideration of public policy contextual factors

11. The Framework supports an objective, logical approach to set consistent and fit-for-purpose transport related financial penalties. However, it also allows penalties to reflect wider public policy context where necessary.
12. The Tool guides users through a staged process to propose penalty levels that respond to an offence's severity, are a deterrent, are proportionate, and applicable to either 'regular' individuals, SRIs, or BUs. Following that process, the Framework and Tool propose that any broader public policy contextual factors, where relevant, are considered to inform the final proposed penalty levels.
13. These may be factors relevant to the transport sector or wider society. For example, this might include the most likely type of offenders (such as vulnerable population groups) and the underlying causes of their offending.
14. Financial penalties are just one enforcement approach the Ministry can use to encourage compliance and respond to negative behaviour. The Ministry assesses all options before deciding to pursue a financial penalty. If the Ministry determines a financial penalty is the best option, then the Framework and Tool should be used to guide penalty setting.



22 December 2021

OC210884

Hon Michael Wood

Action required by:

Minister of Transport

Monday, 28 February 2022

SETTING NEW OBJECTIVES FOR THE PLANNING, PROCUREMENT, AND DELIVERY OF PUBLIC TRANSPORT

Purpose

To seek agreement on new overarching objectives for the planning, procurement and delivery of public transport and provide advice on the implications of these objectives. This briefing also provides advice on progressing labour market interventions s 9(2)(f)(iv)

Key points

- Following your direction we have developed revised objectives for the new framework for planning, procuring, and delivering public transport services (the new public transport framework) that target s 9(2)(f)(iv)
- These new objectives will guide the development of operational policy s 9(2)(f)(iv)
- The labour market objective can be supported by more specific interventions. You have three options to achieve this: through amendments to the LTMA; through including bus drivers in the Part 6A provisions of the Employment Relations Act; or through Waka Kotahi NZ Transport Agency's (Waka Kotahi) procurement policy. These options are not mutually exclusive.
- s 9(2)(f)(iv) and s9(2)(g)(i)
- We propose you invite Waka Kotahi to develop operational policy to progress labour market interventions in the first instance. This will provide the fastest pathway to establishing labour market protections and will be required even if the interventions are legislated.

- s 9(2)(f)(iv) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- We previously signalled a two-stage process for policy decisions, s 9(2)(f)(iv) [REDACTED]. However, this will delay progress with reforms, particularly from a legislative perspective. We recommend a single Cabinet process to enable all policy decisions to be taken s 9(2)(f)(iv) [REDACTED]
- Operational policy will be critical to the implementation of the new public transport framework. We propose to establish a working group on operational policy, with membership to include public transport authorities, unions, and bus operators.

Recommendations

We recommend you:

- 1 **agree** to set the following objectives for the planning, procurement, and delivery of public transport services:
 - a) s 9(2)(f)(iv) [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
- 3 **invite** Waka Kotahi NZ Transport Agency to develop operational policy for labour market interventions Yes / No
- 4 s 9(2)(f)(iv) [REDACTED] :

- a) [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] s 9(2)(f)(iv) [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]

7 **agree** to establish a Working Group on operational policy focused on implementing reforms to the planning, procurement, and delivery of public transport services Yes / No

8 **agree** to a single Cabinet process, seeking decisions on all policy matters s 9(2)(f)(iv) Yes / No



Robert Anderson
Manager, Mobility and Safety
22 / 12 / 2021

Hon Michael Wood
Minister of Transport
..... / /

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Robert Anderson, Manager, Mobility and Safety	s 9(2)(a)	✓
Jacob McElwee, Principal Adviser, Mobility and Safety	s 9(2)(a)	

SETTING NEW OBJECTIVES FOR THE PLANNING, PROCUREMENT AND DELIVERY OF PUBLIC TRANSPORT

We have drafted new objectives for the new public transport framework based on your direction

- 1 In September 2021, we provided you with advice on the outcomes of consultation and next steps for the PTOM review. In this advice we proposed new objectives for the planning and procurement of public transport incorporating feedback from consultation (OC210669 refers).
- 2 You provided feedback on the new proposed objectives and we met with you to further understand your direction for reform. The table below sets out the objectives proposed in OC210669, your feedback, the revised objectives, and our rationale for the proposed wording.

Table One: Revised objectives for the new public transport framework

s 9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
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<p>s 9(2)(f)(iv)</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
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The new objectives will guide the development of operational policy s 9(2)(f)(iv)

3 Together the new proposed objectives target:

s 9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 One of the key purposes of establishing these objectives is to guide the development of operational policy, which will sit behind any legislative reforms. We propose to establish a Working Group on operational policy. This would focus on how to give effect to the new objectives, along with any other more detailed policy changes (see paragraphs 52-53 and Appendix One for more detail).

5 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Section 115 currently includes two principles that relate to the founding objectives of PTOM:

- 5.1 competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently
- 5.2 incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services.

6 s 9(2)(f)(iv) [REDACTED]
[REDACTED]. We provide further advice around the labour market and the value for money objectives below.

The labour market objective can be supported by more specific interventions

7 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8 As part of the PTOM review discussion paper, we consulted on options to establish these protections, namely:

- 8.1 amending the Land Transport Management Act
- 8.2 extending the Part 6A protections in the Employment Relations Act 2000 (ERA) to public transport bus drivers
- 8.3 changes to Waka Kotahi procurement policy.

9 Feedback on these options was mixed and, as we have noted above, the options are not mutually exclusive.

10 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

s 9(2)(g)(i) [REDACTED]

11 Section 237A of the ERA stipulates that the relevant Minister may only recommend inclusion of a new occupation in Schedule 1A, which lists the occupations subject to the Part 6A protections, if:

- 11.1 the Minister receives a request to do so from a person or an organisation; and

<p>s 9(2)(g) (i)</p>		
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

- s 9(2)(g)(i) [REDACTED]
- [REDACTED]

We recommend inviting Waka Kotahi to develop operational policy for labour market interventions

15 s 9(2)(g)(i) [REDACTED]
[REDACTED] we propose that labour market interventions are established through Waka Kotahi procurement policy in the first instance. This will provide the fastest pathway to protecting bus driver wages and conditions in future procurements and will be necessary even if the interventions are legislated.

16 s 9(2)(f)(iv) [REDACTED]
[REDACTED]

s 9(2)(f)(iv)

- 17 Should you agree to this approach, we recommend inviting Waka Kotahi to develop operational policy to give effect to these outcomes. We note that the Bus Driver Terms and Conditions Steering Group, which is chaired by Waka Kotahi, was established to progress outcomes consistent with 16.3. We envisage this Steering Group could be tasked with informing the development of operational policy.
- 18 We consider the development of operational policy should precede Cabinet decisions on reforms because:
- 18.1 the Government's objectives for the public transport labour market have been well signalled
- 18.2 this will enable the sector to plan for implementing labour market interventions in upcoming service procurements²
- 18.3 the development of operational policy can further inform future Cabinet policy decisions, should they be required.

s 9(2)(f)(iv)

■

² Auckland Transport and Nelson City Council are developing plans for upcoming service procurements.

■ s 9(2)(g)(i)

[REDACTED]

■ s 9(2)(f)(iv)

[REDACTED]

■ s 9(2)(f)(iv)

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

s 9(2)(f)(iv)

[REDACTED]

27 Appendix Three provides a high-level comparison of the end of term employee transfer arrangements in the Auckland metro rail franchise and in Australia. Further work will be needed to assess the suitability of these approaches for the New Zealand public transport bus sector.

28 We also anticipate that the negotiation of a fair pay agreement for bus drivers would result in greater consistency in the minimum terms and conditions offered by different operators, thereby increasing certainty about costs for operators.

s 9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(g)(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(g)(i)

We will provide advice on remaining policy proposals for the PTOM review in March 2022

48 To date we have provided advice on:

48.1 the design and initial implementation of the 2025 zero-emission bus mandate (OC210795 refers)

48.2 setting new objectives, progressing labour market interventions, s 9(2)(f)(iv)

49 Subject to your decisions on this paper, in March 2022 we will provide advice on:

49.1 enabling decarbonisation of the public transport bus fleet

49.2 improving roles and relationships between key players in the public transport sector

49.3 whether changes are required to the framework for exempt services

49.4 how on-demand public transport services should be treated under the new framework.

50 Table Three below outlines a revised project timeline, including the provision of advice in March 2022.

We propose a single Cabinet process to seek policy decisions for the new framework

51 We previously signalled a two-stage process for policy decisions

s 9(2)(f)(iv)

However, this will ultimately delay progress with reforms, particularly from a legislative perspective. We expect moving to a single Cabinet process would enable policy decisions by Cabinet s 9(2)(f)(iv)

We propose to progress development of some operational policy in tandem with refining the remaining policy proposals

52 Operational policy will be critical to the implementation of the new public transport framework. You have indicated that implementing labour market interventions should be a priority. To achieve this, we have recommended inviting Waka Kotahi to develop operational policy that supports your desired outcomes. We envisage Waka Kotahi may task the Bus Driver Terms and Conditions Steering Group with guiding the development of this operational policy.

53 We also propose to establish a Working Group to develop broader operational policy, for example enabling decarbonisation and reviewing the Waka Kotahi Procurement Manual. This Working Group will be directed by Cabinet policy decisions, and will be comprised of representatives from Te Manatū Waka, Waka Kotahi, public transport

authorities, unions, and bus operators. A draft Terms of Reference is attached in Appendix One for your information.

Table Three: Revised PTOM review project timeline

Activity/Output	Indicative Timing
Stakeholder engagement on policy options	Commenced in October 2021 and ongoing
Decisions on s 9(2)(f)(iv), objectives, labour market intervention	February 2022
Confirm membership of working group on operational policy	February 2022
Commence development of operational policy for labour market intervention	February/March 2022
Advice on outstanding policy issues	March 2022
Initial meeting of the operational working group	March 2022
Draft Cabinet paper seeking policy decisions	Late April 2022
Cabinet paper seeking policy decisions	s 9(2)(f)(iv)

**Appendix One: Draft Terms of reference for the PTOM review Working Group
on Operational Policy**

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

s 9(2)(f)(iv)

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]


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- [illegible]

Appendix Two: Independent research found tendered contracts cost significantly less than negotiated contracts under PTOM

- 1 Research by Ian Wallis⁵ compared the impacts of alternative procurement methods (tendered vs negotiated contracts) under PTOM on contract prices in Auckland and Wellington.
- 2 The research found that:
 - 2.1 for the tendered contracts, significant cost reductions were achieved compared with previous tendering rounds, reflecting the considerable increase in the number of bidders per contract; and
 - 2.2 for the negotiated contracts, gross costs averaged 10–15 percent higher in Auckland and 30–35 percent higher in Wellington than the equivalent tendered costs.
- 3 According to Ian Wallis' research these cost disparities reflected the weak position of the regional councils in their contract negotiations with operators. He concluded that this was a result of the councils not having recourse to tendering as a fallback negotiating position and coming under considerable time pressures to introduce the new services.
- 4 Ian Wallis has further estimated the resulting increase in costs to public transport authorities in Wellington and Auckland. This has been estimated as an increase to gross costs of approximately \$50 million per annum for both Wellington and Auckland.
- 5 s 9(2)(g)(i) A large area of the document is redacted with grey bars. A diagonal watermark reading "RELEASED UNDER THE OFFICIAL INFORMATION ACT" is overlaid across the entire page.

⁵ Wallis, I (2020) Value for money in procurement of urban bus services – Competitive tendering versus negotiated contracts: Recent New Zealand experience. *Research in Transportation Economics* 83.

Appendix Three: A comparison of approaches for safeguarding employment and terms and conditions at the end of the contract term

Features	Auckland Metro Rail Special Purpose Vehicle	Typical Australian private metro bus contract
Description of mechanism	<p>Auckland Transport (AT) has a call option under its rail services contract to require the incumbent private operator to sell to the incoming operator either the shares or assets of its Special Purpose Vehicle (SPV) used to deliver the rail services. A template Sale Purchase Agreement (SPA) is prescribed to support the sale of shares.</p> <p>AT exercised its option to require the sale of shares in the SPV in its recent rail services procurement.</p>	<p>Contractual obligation on government to require the incoming operator to make offers of employment to existing contract staff.</p>
Occupations	<p>Includes all staff employed by the SPV to deliver the rail services, except for named senior management positions.</p>	<p>Contract staff are generally defined as all employees employed to carry out the contract services. In some cases, senior management, administration and non-operational staff are excluded.</p>
Terms and conditions	<p>With the option for the sale of shares in the SPV there is no change of employment or employer, leaving terms and conditions unchanged.</p> <p>With the option for a sale of assets held by the SPV, the incumbent operator terminates staff employment, who are then entitled to redundancy, and AT requires the new operator to make offers of employment.</p> <p>However, if offers are made on the same or more favourable terms and conditions, and service is treated as continuous, then employees are not entitled to redundancy under the Rail and Maritime Transport Union Collective Employment Agreement.</p>	<p>Employment offers are required to be on equivalent terms and conditions.</p>
Leave entitlements	<p>Under the share sale option, leave entitlements remain unchanged.</p> <p>Under the asset sale option, staff employment will be terminated</p>	<p>Leave entitlement balances transfer to the incoming operator if an employee accepts an offer of employment from the incoming operator.</p>

	and leave entitlements required to be paid out. However, the incoming operator, union and its members could agree to transfer leave entitlements to the new employer.	
Funding of entitlements	Historically, the liability for funding and accruing leave entitlements has been held by AT. The new operator is responsible for leave management and differences between actual and forecast leave balances.	The outgoing operator is required to transfer funds to the incoming operator for the value of leave entitlements for transferring employees.
Information for procurement	Vendor financial and taxation due diligence information is provided to assist bidders assess the commercial implications of the sale of shares for the SPV. Noting that the preference of bidders was for a sale of assets to avoid uncertainties around the quantification and transfer of tax and other undischarged liabilities of the SPV.	The operator is required to provide information on employees for disclosure as part of a procurement process, including, occupation, terms and conditions, years of service, leave entitlements, payroll, etc.
Implications for contract prices	<ul style="list-style-type: none"> • Potential for bidders to request an indemnity from AT in relation to assets and liabilities under the sale of either the shares or assets of the SPV (or include a bid premium). • Sales of shares in the SPV or offers on the same or more favourable terms and conditions removes the risk of redundancy costs. 	<ul style="list-style-type: none"> • The outgoing operator does not need to include end of term redundancy costs in the contract price. • The operators bidding for the new contract have information to accurately price the labour cost of contract employees. • The incoming operator will inherit the existing terms and conditions of employment and may seek to negotiate changes over the contract term.
Implications for contract structure	<ul style="list-style-type: none"> • Requires an SPV structure and supporting reporting regime with ring fencing of staff, assets and liabilities. 	<ul style="list-style-type: none"> • Employees need to be dedicated to a specific contract.