ROAD TRANSPORT FORUM NEW ZEALAND INC

SUBMISSION TO THE HOUSE OF REPRESENTATIVES TRANSPORT AND INDUSTRIAL RELATIONS COMMITTEE ON LAND TRANSPORT RULE AMENDMENT BILL 173-1

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REPRESENTATION

Road Transport Forum New Zealand (RTFNZ) is made up of several regional trucking associations for which the Forum provides unified national representation. The Forum members comprises of Road Transport Assns.NZ, National Road Carriers, and NZ Trucking Assn. The affiliated membership of the Forum consists of about 3,000 individual road transport companies which operate 16-18,000 trucks involved in road freight transport as well as companies that provide services allied to road freight transport.

The Forum is the authoritative voice of New Zealand's road freight transport industry which employs 22,600 people (3.0% of the workforce), has a gross annual turnover of $6 billion and transports about 80% of New Zealand's land based freight.

The Forum members are predominately involved in the operation of commercial freight transport services both urban and inter-regional. These services are largely based on the deployment of trucks some as single units for urban delivery and others as multi-unit combinations that may have one or more trailers supporting rural or regional economies.

RTF SUPPORT FOR THE MASS AND DIMENSIONS POLICY CHANGES AND INTRODUCTORY COMMENT ON THE PRINCIPLES OF THE REVISED COMPLIANCE OBJECTIVES OUTLINED IN THE BILL

The RTF submission will focus on:

- The revised definitions and their application to Rules;
- The new road closure provisions;
- The stopping and inspection and weighing of vehicles including redirection orders.
- Alternative weighing technology and its application to RUC recoveries and increasing the maximum overloading penalty.

RTF has been a leading advocate of mass and dimension policy development and welcomes the key policy changes outlined in the VDAM Draft Rule which provide improved scope to increase incrementally transport efficiency and productivity. From the outset of the 2015 /2016

VDAM reform process the regulatory authorities signalled a more robust and comprehensive approach to compliance would be implemented. This was justified on the grounds that as the axle and vehicle combination mass limits and dimensional characteristics are increased towards the safety margins of the infrastructure capability, the compliance framework must tighten to ensure risk to the network and pavement consumption remains manageable.

The changes proposed in Subpart 4 of the Bill reflect that position but also cover off some changes that assist the implementation of new enforcement strategies. The Bill also reflects aspects of the policy development Ministry of Transport consulted RTF on back in December 2015 and some of changes the Forum submitted have been included accordingly.

The Regulatory Impact Statement (RIS) covering the vehicle dimensions and mass related provisions provided a comprehensive analysis of the changes proposed and the reasons behind the changes. Likewise, the RIS for the proposed miscellaneous amendments does the same for changes listed as miscellaneous amendments to the Land Transport Act. Despite these comprehensive summaries about the amendments and the accompanying commentary around the equity issue of the compliant operators bearing the costs of the non-compliant doesn't mean all the proposals should go forward without comment from the sector that is impacted by these changes. As a consequence, RTFs comments are largely confined to aspects of Subpart 4A of the Bill. We have elected not to comment on the miscellaneous provisions as many appear to only be legal clarifications, technical updates or consequential changes arising out of a number of the core issues presented by this Bill.

There are a number of amendments that are supported in principle within the heavy vehicle section and miscellaneous provisions of the Bill. This doesn't mean that the road freight sector won't find them challenging.

In our submission RTF will not be commenting on every clause that is within the heavy vehicle enforcement context as many are aimed at simplifying the inconvenience to operators that arise from the enforcement process.

We offer no comment on the passenger service or mandatory alcohol interlock sections of the Bill

Submission on specific clauses impacting on commercial road freight services

Clause 39 amending Section 2 and the definition of gross vehicle mass.

While we agree the definition of gross laden weight has posed some administrative problems for the Agency, we support the change in definition to gross vehicle mass as it confirms the technical and design capability of the vehicle or combination of vehicles. Not all vehicles are operated at their maximum design capability. More likely they are operated at a mass below that value and the legislative framework for mass enforcement depends more on the definition of the gross weight to determine compliance e.g.

Gross Weight in relation to a vehicle or combination of vehicles, means the weight of the vehicle or of the vehicles comprising the combination, together with the load that the vehicle or (as the case may be) the vehicles are for the time being carrying, including equipment and accessories; and, for the purposes of this Act and of the regulations and the rules, and without limiting the methods by which the gross weight of a vehicle may be determined, the gross weight of a vehicle may be determined by adding the weight on its axles or groups of axles. (This definition will have an important place in the Driver Licencing Rule because of its applicability to vehicle licence classes as explained below).

The definition of gross weight (as above) clearly makes the definition of gross laden weight superfluous. However, the Driver Licencing Rule uses the term gross laden weight to determine the license class applicable to vehicle weights. This Rule is currently undergoing fundamental review and the RTF driver licencing proposal equally relies on the concept of gross laden weight to recalibrate the licence classes to vehicle weight. RTF suggested a simplified and streamlined approach to the licencing regime would require resetting the vehicle gross laden weight thresholds, however, the term 'Gross Weight' would have to be substituted to cover off the proposed withdrawal of the term gross laden weight.

Clause 41 amends Section 16

Clause 41 amends Sec 16(1) by changing the term `may` in line 10 to `must` and in line 12 the term maximum **gross mass** is used in reference to maximum limits. This term is in the existing Sec 16(1) but isn't supported by a definition in the interpretations of LTA 1998, the primary legislation. It therefore seems to be an extrapolation of a term that doesn't exist in a legal sense but is part of the transport lexicon. Given the amended

definitions proposed by this Bill, the more appropriate term is probably `gross weight`.

The term `gross mass` is in the interpretations of the Vehicle Mass and Dimensions Rule 2002 as:

Gross mass in relation to any vehicle or combination vehicle, means the mass of that vehicle and its load, equipment, and accessories, which may be determined by adding the mass on the vehicle's axles or axle sets. This looks conspicuously like the interpretation for gross weight set out in the part 2 of LTA 1998.

We note the changes in amended Sec 16 (3) that relate to a new requirement to operate vehicles within the prescribed dimensions. This amendment is arguably long overdue however the critical element will be in the detailed criteria used to determine when a vehicle is actually dimensionally non-compliant. We expect this detail will emerge in due course through the Offences and Penalty Regulations which we believe is more reliable repository than having the criteria covered by an administrative policy position although the second approach may be adequate as an interim approach.

Clause 42 replaces Section 16A

The explanatory notes for Section 42 notes the existing Sec 16A provides that a road controlling authority may, by a public notice, direct that any heavy traffic may not proceed on certain specified sections of a road or roads.

The new parameters for the power in *new section 16A* are that there must be an urgent risk of either or both of the following:

- damage to a road;
- danger to the safety of road users.

And the road closure is to be a temporary one of no more than 6 months.

The new Sec 16A provides no requirement for public notification other than posting a sign when heavy traffic is prohibited from temporarily using a road and this could be in force for up to 6 months. There is no question over the legitimacy of closing the road and the reasons are fairly clear, however, the term urgent risk seems to suggest immediacy or imminent risk so the posting of signs and the closure could occur within a 24-hour period and that's where the problems commence for commercial operators.

An obvious problem for commercial transport operators is the amended provision has no obligation to notify or more particularly pre-notify commercial vehicles users of the temporary closure. This is a significant issue for commercial traffic in that contracts for service may well have been costed and predicated on various aspects of timed deliveries based on access through the section of network in question. The public notification typically provides an opportunity to advise clients and goods recipients of contractual changes that will result from using alternative routes.

The real concern here is that an RCA may decide to close roads or access to a road for commercial vehicles on the basis of public and social pressure from its constituents or rate payers. (The terms 'danger' and 'safety' are highly emotive conceptions for the public to grasp in the correct context.) The section provides no requirement to provide evidence or a problem analysis to support a decision to act on either of the two criteria. However, this may be able to be addressed by having an established policy framework to work through and in turn this would apply some rigor to the decision making process.

Taking a different perspective, we note Cl 5.6 the VDAM rule provides for RCAs to revoke permits if continued use of the road by over-weight or HPMV permitted vehicles may cause extraordinary damage or if there is a significant risk to public safety. The principles are similar to the statements in new Sec 16A but the language is different and the scope applies to only permit operated vehicles. What emerges in the VDAM approach is an unstated obligation to notify permit holders of the decision to revoke the permit. We would argue the installation of road closure signs falls well short of the current Sec 16A obligations to provide public notification of road access closures. The only positive aspect of the replacement Sec 16A is the codifying of reasons for the closure more clearly. The process and notification to users of the decision is inherently poor and could potentially place commercial vehicle users in a vulnerable position with respect to clients should a significant transportation route be closed, a point alluded to above. Another problem emerges with the imminent closure proposal and lack of public notification is that no thought has been given as to how an HPMV or standard mass B-train might be turned around if the driver suddenly finds he/she is on a route with a closed section or route connection. Given the issues we have highlighted we suggest Sec 16A be amended to include a public notification requirement as per the current Sec 16A (1).

Clause 44 amending Section 43 is largely an amendment to accommodate the dimensional compliance requirement which we have already commented on as part of our comments on Sec16(3) above.

Outside of this section we see overloading offences treated as strict liability offences with the only option for defending an overloading offence is to take the total absence of fault defence. Section 43A imposes constraints on the court to ignore arguments in mitigation for overloading offences but provides for the court to impose appropriate fines in other situations of infringement fees as long as the alternative penalty doesn't exceed the prescribed infringement fee. The overloading legal position may have been valid under a purely graduated overloading infringement fee regime but the legislation has now introduced a critical breach of permit penalty of $2000 where the gross weight is exceeded and the graduated scheme of overloading infringement fees is added to that penalty. Given this approach we suggest it might be time to consider reinstating to the courts the ability to impose fines for overloading infringement fees that are below the maximums specified in the current legislation.

Clause 45 amending Section 113A

The concern from the sector is whether the amendment allows access to electronic records by including the records required under Sec 65 of the Road User Charges Act be available under the amendment. There has always been considerable sensitivity around electronic records particularly where time signatures are used to validate or invalidate work time records. However, as the sector invests in more electronic services that aid business functionality the line between the paper based records and electronic management records and information services becomes more blurred. Interestingly the Road User Charges Act clearly separates vehicle generated electronic information from the records that relate to the vehicles commercial deployment and has a separate clause that provides for the issue of search warrants(Sec79) to recover information that would support an alleged offence against the RUC Act. This comment here is made to illustrate the importance of context around different sources of operator information and how Parliament has created different provisions around specific circumstances despite the need to access that information. This comment is also made to support the general industry concern that broad based access to operator records under 113A is not supported because information accessed for one purpose may be used for another purpose. The structure of the present legislative framework creates some separation between access and how the information accessed is to be used and for what purpose.

Clause 46(1) and (2) amending Section 123 Stopping, inspection and weighing of vehicles

In sec 123(3)(b) which is the subsection subject to change, the reference to the phrase `good cause to suspect` is now missing from the amended

version. We note the term good cause to suspect was framed around the officer's belief the driver was detouring around the weighing site to avoiding being weighed, whereas the amendment is focussed on the need to weigh the vehicle in place where that can be carried out safely and where the ground conditions are appropriately level. In this case since the context has changed. In our view, it is important to retain the phrase good cause to suspect as it supports a procedurally fair perspective in that an officer is expected to be reasonably confident a vehicle may be exceeding the weight limits. The phrase also inhibits speculative vehicle weighing. Interestingly, a large number of the commercial vehicle enforcement provisions in the Land Transport Act 1998 hold to the principle of good cause to suspect. RTF submitted on this aspect extensively through MOT's consultation process covering the changes to this clause. We are of the view good cause to suspect is a reasonably reliable first order test of confidence a vehicle may be overloaded before the decision is made to direct it for safe weighing some distance off route.

We can appreciate enforcement staff may have concerns with the phrase but we don't think it will inhibit the application of a redirection order made by an experienced and knowledgeable police officer.

Clause 46(2) is a huge step forward in that it replaces in Sec 125(4) the **All Trucks Stop** sign with the scope to specify certain vehicles or classes of vehicle that may be stopped for enforcement assessment. While we support the change there is a side issue that perhaps needs consideration and that relates to constantly focussing on one class of vehicles such as HPMVs because it is convenient. CVIU has generally focused on the heavy combination vehicles. Given that they are large pieces of industrial machinery there will inevitably be something that is found to be non-compliant and obviously the limited resources of CVIU will be focussed on where they are likely to create the most impact. But, conversely, the small single unit vehicles could or may receive less attention than they do presently unless the policy framework that provides more flexibility in selecting vehicles in the traffic stream setting some form of stopping distribution targets to ensure one group isn't over targeted for assessment versus another.

Clause 47 amending section 126 Off-loading of overweight vehicles
The changes to the off-loading limits were extensively consulted on by MOT with RTF and despite opposition to the reduction from some sectors an open 10% value off load value above legal weight across all vehicles could not continue to be accepted particularly when large numbers of vehicles were operating at higher than standard mass. MOT and NZTA have made it reasonably clear in their problem analysis that the 10% was open to abuse

and leaving it at 10% was not only presenting an elevated risk to the roading asset but exacerbating inequities across different types of operation where loading vehicles above the prescribed limits to this magnitude was not tolerated or not possible due to vehicle design or load constraints.

The vehicles operated most likely to be impacted by this change are those where the operator is least able to judge the loads with any great certainty. These include log, live-stock and aggregate transporting vehicles and vehicles transporting inbound containers. The change also is most likely to have an impact across groups of axles from position 3 to 8 on a multi axle combinations. While operators might be able to make reasonable judgements for gross vehicle weight, it is still likely to be what is termed exceeding the intermediate axle group weights that result in off loads where the new 2 tonnes off load limit will now apply.

The 2 tonnes applies for every weight recorded above a prescribed weight of 20 tonnes. It is probably not well understood that off-load limits apply to the gross weight, every axle weight, and every group of axles on the vehicle but any one axle being over the off-load limit at 10% could, as it can at present, potentially trigger a requirement to bring all of a vehicle's axle arrangements back into legal weight compliance.

Clause 48 amending Section 147

This is a straight forward facilitation amendment that is complementary to importing the new Cl 147A into LTA98 by excluding weigh-in-motion devices from the prescribed processes and notifications that cover off the accuracy of enforcement weighing sites and devices.

Clause 49 introduces a new clause 147A for alternative weighing technology

This amendment provides for the introduction of high speed weigh-in motion or other types of weight sensing systems outside the systems or devices specified in Sec 147. The new section is relatively logically laid out. We note sec 147A(4) limits the standard certification (for accuracy) period to 12 months but certification periods and calibration can be undertaken more frequently with these systems especially if the system has an automated function for recalibration. We note there is no reference when automated recalibration occurs being accuracy verified by one or more of the approved entities set out in Sec 147A(1).

We consider this an oversight in light of the emphasis placed on accuracy and who can attest to accuracy by this section. We note also Sec 147A (1) refers to `accurate` but accurate with respect to weigh-in-motion

weighers and similar weight sensing technologies is an entirely different concept to accurate with scaling systems used for enforcement weighing. Given that these systems are to be used initially for screening only, the text and sub-clauses of Sec 147A are probably acceptable. However, if these systems start to be used for more than screening of vehicles such as for direct enforcement of axle and gross mass weights we would expect the relevant sub clauses and process management around determining calibration accuracy to be revisited and consulted upon with the sector.

Given the questions we have raised around accuracy above we are opposed to alternative weighing technology being used to assess vehicle gross weight for the purposes of alleged over-weight recoveries against the Road User Charges Act 2012 outlined in subclause 147A(4)(a) and (b). This subclause is stretching the credibility of the accuracy of these devices when the overseas literature provided by manufacturers of these systems indicates the calibration performance normal range is about +/-5% in some jurisdictions and +/-6% in others depending on the performance Standard they are calibrated to.

In the Regulatory Impact Statement (RIS) the discussion alludes to variety of automated weighing systems one of which is vehicle on board weighing systems. Although these have become more accurate we are not sure how reliable they are and whether their design and installation is sufficiently robust to inhibit tampering, a factor the discussion also alludes to.

RTF would argue that the RUC recovery should only occur on the evidence of a vehicle weight assessment carried out on a verified and certified weighing device operated in accordance with the Transport (Measurement of Weight) Notice 1997.

We would propose adding an amendment to 147A(4) that says any assessment to investigate a possible offence against the RUC Act including any assessment for the recovery of unpaid RUC fees must be supported by a verified weighing carried out on a device deemed to be accurate in accordance with Sec 147.

Clause 50 amending section 152
This clause is mainly technical and the explanatory notes outline the back ground for this change.

Clause 51 adds a new subsection regarding rule making
The change by adding additional criteria in Sec 164(2)(da) changes the landscape considerably as it brings a new emphasis to the infrastructure impact and economic sustainability of changes to rules as much as vehicles

may cause of effect those aspects. The changes proposed confirm the New Zealand Transport Agency's shift in focus from productivity at a benefit cost to one of sustainable cost. While the change has merit the down side is that it could conceivably be seen as shift in rule making that could be interpreted as providing an underlying opportunity for supporting alternative transport modes where impact of a road vehicle based efficiency opportunity is considered uneconomic. We would expect these decisions to be subject to some rigorous analysis and the findings be made public.

We also would have thought 164(2) (c) and(e) had sufficient influence on rule decision making to limit unbridled growth in vehicle efficiency and productivity without the need to take a belt and braces approach by adding the new (da) however the explanatory notes to the Bill provide the background for the change.

Clause 52 amending Section 166 granting of exemptions

The amendment proposed in 2A follows the logic outlined above but provides more specific detail around the context infrastructure impacts of exemptions from ordinary Rules that relate to heavy vehicles.

Clause 54 amending the monetary fine provision of section 167 as it relates to overloading penalties

The change proposed sets the maximum penalty for overloading at $15000 a significant increase over the present $10000. The RIS suggests the change is in line with CPI increase since 1998. While this simple analysis may appear to have merit it ignores the way the regulations and rules can be used to recalibrate the infringement fees as has happened with HPMV critical offence penalties. The most recent changes have introduced a $2000 penalty along with the graduated mass penalties that apply upon breach of the gross weight stated on the permit. This is a better outcome than under a previous breach of permit offence regime where accumulative overweight penalties could amount to many thousands of dollars. In recent discussions officials have toyed with an approach that exceeding gross weight whether the vehicle is on a permit or not should result in a significant penalty to act as a deterrent together with accumulated weight infringements. This approach would be expected to mirror the present HPMV penalty system. This explanation tends to put the proposed increased maximum penalty in different perspective. In our view the proposed penalty increase is unjustified and giving more thought to the application of the current scope of penalties could also result in a deterrent effect. Another point is the industry's profits are at all-time lows due largely to the competition between carriers. It is this same competitive intensity that drives the overloading phenomena. The RIS also mentions there is little evidence to gauge the sensitivity of operator behaviours to levels of penalty

which kind of undermines the assumption increasing the penalty range will have some effect.

Concluding Comments

This Bill in some cases introduces new options and enhances existing options in Subpart 4 for enforcing the new VDAM provisions. Interestingly these are all focussed on the transport operator or vehicle user and therefore they ignore the market environment and commercial pressures where transport services are provided. These are not necessarily generated by the transport operators themselves. In a number of cases the purchasers of these services have significant influence over the contract for service relationship that it can result in poor decisions being made by some service providers. This was recognised by Parliament around 10 years ago and resulted in the introduction of the Chain of Responsibility provisions of 79T covering work time offending and speeding offences, and 79U covering gross weight offending. The objective of the chain of responsibility offences was to put a measure of liability onto those entities who procure transport services and place drivers and operators under duress Unfortunately, the structure of this legislation makes it expensive and resource intensive for bringing cases together. In essence nothing changed in the intervening years and the compliance and enforcement has continued to evolve around the management of vehicles and operators despite a number of assurances the chain of responsibility was a candidate for review to make it workable. It is very disappointing to see the only avenue that springs to a law drafters mind in the compliance environment in respect of the new VDAM provisions is to penalise the vehicle owner or transport service operator once again.