



# **ROAD TRANSPORT FORUM NEW ZEALAND INC**

## **SUBMISSION TO TRANSPORT AND INFRASTRUCTURE SELECT COMMITTEE - GOVERNMENT BILL 192-1 LAND TRANSPORT(NZTA) LEGISLATION AMENDMENT BILL**

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# ROAD TRANSPORT FORUM NEW ZEALAND INC

## 1. Representation

- 1.1 Road Transport Forum New Zealand (RTF) is made up of several regional trucking associations for which RTF provides unified national representation. RTF members include Road Transport Association NZ, National Road Carriers, and NZ Trucking Association. The affiliated representation of RTF is some 3,000 individual road transport companies which in turn operate 16-18,000 trucks involved in road freight transport, as well as companies that provide services allied to road freight transport.
- 1.2 The RTF is the peak body and authoritative voice of New Zealand's road freight transport industry which employs 32,868 people (2.0% of the workforce), and has a gross annual turnover in the order of \$6 billion. Road transport in its totality transports about 70% of New Zealand's land-based freight measured on a tonne/kilometre basis.
- 1.3 RTF members are predominately involved in the operation of commercial freight transport services both urban and inter-regional. These services are entirely based on the deployment of trucks both as single units for urban delivery and as multi-unit combinations that may have one or more trailers supporting rural or interregional transport.

## 2. Introduction

- 2.1 RTF has a significant interest in the introduction of this Bill as the changes proposed will impact, both directly and indirectly, on the road freight sector. It is within this context we offer our comments.

## 3. General

- 3.1 The Bill's purpose is succinct and the overall direction is supported by the sector. A large part the Bill's body text (Part 2 Amendments to the Land Transport Act 1998) is taken up with the substitution of the reference to *Agency* with that of *Director*, reflecting the new role of the Director of Land Transport encompassing the regulatory management function within the Agency.
- 3.2 Although the new directorship role suggests a new approach, for our sector this Bill represents a return to the past with management separation of the regulatory structure, function and safety management from the funding and infrastructure management function. This is a model that existed before Transit NZ/Transfund and LTSA (later LTNZ) were amalgamated into the present model as NZTA. (Ref para 2.2 MOT RIS

regulatory impact statement)

- 3.3 The road freight sector has previously articulated reservations about an amalgamated model, citing the likelihood the infrastructure management role would eventually overwhelm the regulatory capability. For the past few years (2014 to 2018) that has been the case, despite the best efforts of some individuals within NZTA.
- 3.4 The failure of the regulatory function was subsequently identified in the Martin Jenkin's analysis. (MOT RIS 2019)
- 3.5 The lack of regulatory oversight has seen regulatory compliance standards slip over time. Road freight transport is intensely competitive and it requires well founded regulatory oversight and regulatory management to ensure compliance and maintain public safety expectations.
- 3.6 In 2018 things started to change with Meredith Connell's involvement, but their intervention saw the regulatory management model overridden by a justice-based approach which would not have been sustainable. We are still returning to an equilibrium regulatory model.
- 3.7 NZTA's present auditing functions are possibly not always evidence-based and in many cases, trucking companies are being put through the audit ringer with little or no process management. It is against this background that RTF has high hopes the Director of Land Transport will be able to reset the regulatory functions to satisfy the general responsibilities of participants (which includes road transport operators as transport service licence holders) in the land transport system (Part 2 Land Transport Act 1998), and the public's safety expectations.
- 3.8 The following comments are specific in nature but are related only to the parts of the Bill and relevant clauses that are of interest to our sector. We see no point in taking a clause-by-clause analysis approach when there are significant sections of Bill's body text that we either agree with, or accept in principle.

#### **4. Specific comments on Part 1**

- 4.1 This part of the Bill largely outlines the functions and processes that the Agency and Director are charged with, as set out in an amended Land Transport Management Act 2003.
- 4.2 **Clause 5** (para 20, p8) amending Section 9 of the LMTA 2003 provides the appropriation funding to an agreed level for the Agency's regulatory functions and the Ministry's oversight function and then Clause 5 (6) outlines the Agency functions specified in **Clause 8** Section 95 on the following page.

- 4.3 **Clause 11** (p12) introduces the Director of Land Transport and the specified functions as Section 104A.
- 4.4 According to the explanatory notes **Clause 6** of the Bill amends Section 10 of the LTMA and excludes or has the effect of separating expenses and expenditure to support clause 5 from being drawn from the national land transport revenue.
- 4.5 The concern we have is the new role and function will typically incur costs that will need to be recovered and passed on to participants in the land transport arena.
- 4.6 Although we accept the cost impact of the new regulatory function within the Agency has yet to be determined the argument here is; there is no visibility of what those costs might be. We assume they will be managed through regulation and industry will be consulted accordingly.
- 4.7 The Regulatory Impact Statement (RIS) makes it clear the Martin Jenkins analysis attributes a lack of funding as part of the failure of NZTA's regulatory oversight function. We don't agree with this statement entirely. A significant problem with the regulatory system has been the lack of direction, policy, and practice guidance for Agency staff, as well as issues with staff competence and real-life experience or understanding of the trucking industry.
- 4.8 The Agency, like its predecessor organisations, has had significant income in the past drawn from various administrative and service charges, some of which was channelled through the Land Transport Fund. With that source now seemingly ring fenced, it appears those same charges might be used to direct fund the Agency and its activity. This would mean a potential significant increase in those charges and costs (to end-users) to support the new and additional regulatory functions and Ministry oversight outlined in the RIS.
- 4.9 We note the RIS p32 suggests Option 3 (see below) as the preferred funding mechanism, which parallels what we understand to be the intent of Clause 6 of the Bill confirming our comments both above and following the Option 3 statement:
- Option 3 (Preferred): Establish a new mechanism to fund portions of NZTA's regulatory activities and the Ministry's monitoring function from land transport revenue*
- 4.10 Which in explanation suggests that costs are allocated equitably across all risk creators and those benefitting from a well-regulated land transport system.
- 4.11 If we have interpreted the Bill's impact correctly, costs will be imposed on the transport sector to fund the revised and upgraded regulatory activity

but arguably, the cost impact would not be expected to fall disproportionately on some participants in the transport system.

- 4.12 Despite the intention to mitigate the impact of any additional costs for the Agency's widened scope of regulatory activity, we have no doubt costs will increase for end-users in one form or another. However, the proposal to improve the regulatory functionality of the Agency is both desirable and supported in principle.
- 4.13 **Clause 9** new section 96B p11 is an interesting approach supporting committee functionality in regard to Rule development. It is a clarification in approach to rule making the RTF would support.

## 5. Specific comments on Part 2

- 5.1 As mentioned in our opening comments, Part 2 of this Bill is largely reference amendments to sections of the Land Transport Act that would be within the scope of the statutory role of Director of Land Transport.
- 5.2 A number of the significant transfers of responsibility relate directly to the freight transport sector and are codified in the following extract of the explanatory notes and outlines as:
- responsibility for issuing, suspending and revoking driver licences under sections 23, 24, and 27 (*see clauses 18, 19, and 23*):
  - responsibility for fit and proper person assessments under sections 30C to 30G (*see clauses 29 to 33*):
  - responsibility for licensing of transport services under sections 30L, 30M, 30S, 30ZA, and 198, including the power to revoke licences, grant exemptions from work time requirements, approve alternative fatigue management schemes, and carry out inspections and audits that are necessary in the interests of land transport safety (*see clauses 36, 37, 40, 47, and 109*):
  - responsibility for disqualification and suspension of transport service driver and other persons under sections 87A, 87B, and 87D (*see clauses 62 to 64*).
- 5.3 Without wanting to limit the Director's authority, it is essential the decision-making related to an adverse outcome is in some way supported by a publicised process framework. This will give the sector confidence in the Agency when considering a revocation, and also for the purpose of ensuring procedural fairness in considering any adverse decision.
- 5.4 The policy process aspect of NZTA's auditing function has previously led to unfounded and sometimes questionable allegations from the industry against auditors, but equally we suspect some auditors have been selective in administering the reviewing of operators' TSLs and safety performance. Industry needs a system it can have confidence in.

- 5.5 **Clause 14** - The clause defines the Land Transport Act as not only the Land Transport Act 1998, but a number of associated acts including the Road User Charges Act 2012 that previously had been considered separately and on their own merits. The concern here is that the Director will be able to move unhindered across each Act. Each of these Acts, particularly the two referred to above, have historically had their own evidential frameworks for issuing proceedings. However, the wider definition raises, in the context of an operator audit, the appearance the Director has a wide ranging and unlimited mandate to use the evidence from one of the Acts to achieve an outcome under one of the others. Our preference would be for the status quo to prevail and each of two Acts be kept separate for the purposes of determining proceedings.
- 5.6 **Subclause (5)** sets out for the Agency to be an enforcement officer in respect of the circumstances set out in new section 208A. This change relates to NZTA taking over the infringement offences generated through vehicle surveillance equipment. Moving vehicle offences are wide ranging from speeding offences to non-payment of toll offences and failure to comply with a traffic control device (Traffic control camera). This is significant change from the Police administration of these offences and the amendment provides for either an employee of the Agency, or some other approved person, to issue the offences. This suggests the change gives some scope for the Police to continue in the enforcement role as is normal practice, but through some approval arrangement with Director.
- 5.7 **Clause 42** - Without wishing to repeat the explanatory notes it is sufficient enough for RTF to confirm its support for the change which enables the Director to take a flexible approach to TSL suspensions, by enabling the Director to impose conditions on a licence as an alternative to simply imposing a suspension. The provision also provides for the Director to remove the conditions when the entity is performing appropriately.
- 5.8 **Clause 90** - Clause 90 introduces the concept of enforceable undertakings and provides a wide ranging optional framework for the Director to allow someone to rehabilitate their practice and conventions in connection with any matter relating to contravention, or alleged contravention, of any aspect (other than serious offences) under any of the newly defined collated components of the new definition of Land Transport Act. While this approach has merit, it is likely that it will be administratively burdensome for all parties and we question where NZTA has the resource to make this initiative work in practice, especially when the enforceable undertaking agreement goes wrong, or the party defaults on the agreement and it ends up in the district court. The concept of enforceable undertakings offers an innovative solution to compliance, but it is going to be a trial and error approach. Only experience will demonstrate whether the concept is able to produce the desired outcome.

- 5.9 **Clause 101** - This change relates to setting of speed limits by roading authorities. It is semantics to require after “empower” to insert “or require”, in respect of setting speed limits. The process of determining the speed setting is still managed through the Rule and its accompanying technical guidelines.
- 5.10 **Clause 104 and 110** - Both these clauses relate to the record management function of the Agency and the new section provides confidence in the record management process around all registers from vehicle and driver records, through to speed setting and determination of cycle ways. One of useful aspects arising from the proposed improvements in record keeping and registers is the availability of these records on the public register for any person to get copies and certified copies, upon payment of the prescribed fee, if any.

## **6. Part 3 and Part 4**

- 6.1 The RTF has no comment on Part 3 Amendments to Railways Act 2005 or Part 4 Consequential amendments of this Bill.

## **7. Summary**

- 7.1 The overall direction of this Bill is supported by the road freight transport sector.
- 7.2 However, some parts of the Bill will impact, both directly and indirectly, on the road freight sector.
- 7.3 The road freight sector has reservations that with the Director of Land Transport role, the Agency’s regulatory functions will have adequate weighting in relation to the infrastructure management function, particularly given the recent Government announcement on infrastructure spending.
- 7.4 We remain hopeful that the Director of Land Transport will be able to reset the regulatory functions of the Agency to satisfy the general responsibilities of participants (which includes road transport operators as transport service licence holders) in the land transport system (Part 2, Section 4, Land Transport Act 1998), and the public’s safety expectations.
- 7.5 We have concerns that the new role of Director of Land Transport will incur costs that will need to be recovered and passed on to participants in the land transport arena, and there is currently no visibility of what those costs might be.
- 7.6 Our view is a lack of funding has not been the main contributor to the failure of the Agency’s regulatory oversight. Rather there has been a lack

of direction, policy and practice guidance for Agency staff, as well as issues with staff competence and real-life experience, or understanding, of the trucking industry.

- 7.7 Given the wide-ranging powers given to the Director of Land Transport in Part 2 of the Bill, we believe that decision-making relating to an adverse outcome is in some way supported by a publicised process framework. This will ensure procedural fairness.
- 7.8 We believe the Land Transport Act 1998 and Road User Charges Act 2012 should be kept separate for the purposes of determining proceedings and we have concerns about the Director of Land Transport's ability to move unhindered across each Act. We believe this opens the door to using evidence from one of the Acts to achieve an outcome under another Act. We believe the status quo should prevail and each of the two Acts be kept separate for the purposes of determining proceedings.
- 7.9 We have concerns about the Agency taking over as an enforcement officer in respect of some offences that were previously the domain of the New Zealand Police.
- 7.10 The Bill is designed to bring significant change to the Agency's regulatory oversight of the road transport sector which is a positive step. The difficulty for the Agency in this new role is to shake off the divisive characteristics of the Meredith Connell era of temporary management of the regulatory function. The next steps must evolve to restore industry confidence in the processes and safety management of industry, and participants in the land transport system, by having readily available safety evaluation determinations and performance processes that exhibit procedural fairness. These are a key feature of any regulatory safety management framework. To that end the Road Transport Forum looks forward in anticipation to see if the aspiration behind the Bill actually achieves that reality.

We would like to appear before the Select Committee to further discuss our views.