SUBMISSION

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Land Transport Amendment Bill

Local Government New Zealand's submission to the Transport and Industrial Relations Committee

31 October 2016

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LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

If the Select Committee considers it necessary, we would be happy to appear to answer follow up inquiries.

Introduction

Thank you for the opportunity to submit on the Land Transport Amendment Bill. Local Government New Zealand has coordinated with the Road Controlling Authorities (RCA) Forum and the Transport Special Interest Group (TSIG), representing regional government transport interests, for this submittal. Additionally, to create a thorough and balanced response, we have sought and considered comment from other stakeholder organisations, including The New Zealand Local Authority Traffic Institute (Trafinz) and The Blind Foundation.

The parts of the Bill of particular interest to LGNZ include heavy vehicle regulation and the regulatory framework for small passenger services.

LGNZ largely agree with the changes made to the Bill. However, there are several issues that we believe require greater clarification or revised language. Where appropriate, we have provided alternative language or recommendation.

In this submission we provide comment on the six parts of the Bill in the following order:

- alcohol interlocks
- public transport fare evasion
- fleeing drivers
- heavy vehicles
- small passenger services
- miscellaneous amendments.

Alcohol interlocks (subpart 1)

LGNZ generally support the proposals in the Bill to mandate the fitting and use of interlocks for recidivist drivers and first time offenders with very high blood alcohol levels. They provide a satisfactory way to penalise erring drivers while allowing them to continue to drive if necessary for their work. There is a national benefit from using this effective tool and some element of national funding can be justified.

International research shows a clear reduction in drink-drive offender recidivism during the time period that interlocks are fitted, and considers interlocks to be a useful component of any road safety toolbox to

address drink driving and alcohol related crashes.

One issue of concern is that of affordability. The affordability of interlocks for offenders is a key issue that needs to be addressed as the research shows that the lowest income demographic (<$20,000 per annum), is most heavily affected by drink drive convictions. Therefore the changes should not be implemented without a clearly articulated and funded subsidy programme.

Public transport fare evasion (subpart 2)

LGNZ supports the proposed new powers allowing passenger transport enforcement officers to obtain identification and address information for passenger transport users who are seeking to evade payment of a fare, and require them to get off the bus or train. The present reservation of these powers to New Zealand Police is impractical and it is apparent that substantial numbers of passenger transport users are flouting the requirement to pay.

We also support the introduction of stringent enforcement measures or penalties, such as infringement fees and maximum fines, as a way to deter passengers from fare evasion.

Fleeing drivers (subpart 3)

LGNZ supports the New Zealand Police in amending legislation that impacts on safe road use to provide consistency with other types of comparable road use offending.

We support a more consistent approach to the confiscation of vehicles involved in fleeing driver offences based on the road safety impact where fleeing drivers are involved in road crashes. Increasing the mandatory driving disqualification period may have more of an effect to reduce numbers of fleeing drivers, but the report on police pursuits (New Zealand Police, 2003) lists a number of key reasons that offenders gave for not stopping that are unlikely to change through increasing penalties and vehicle confiscation.

However, we do note that while current penalties for failing or refusing to provide information or providing false information are not leading to the identification of offenders and not incentivising the provision of information, it is uncertain whether the proposed changes will effect a change in attitude for the targeted drivers and vehicle owners, given the identified characteristics of fleeing drivers.

Heavy vehicles (subpart 4)

Generally, LGNZ agrees with the intended outcomes of the proposed changes to the legislation regarding heavy vehicles. We believe outcomes will lead to improved enforcement of rules, contributing toward greater regulatory efficiency and reduced compliance costs for operators who abide by the law.

Nevertheless, their members retain concerns about road safety with heavier trucks on the road, the cost of increased road maintenance due to those heavier vehicles, and limiting access to parts of the network that are unsuitable for such vehicles (such as weak bridges or low height clearances).

Heavy vehicles feature in a disproportionately high number of crashes (more than 20 per cent of crashes), nearly all of which result in serious injury or death, regardless of fault. Our concerns remain that enforcement around truck weights and routes should be increased, so as to protect the safety of road users, and the integrity of our networks.

Clause 42

Summary: Clause 42 replaces section 16A, which provides that a road controlling authority may, by a public notice, direct that any heavy traffic may not proceed in certain specified sections of a road or roads.

The new section 16A allows a temporary road closure to heavy traffic of no more than six months and requires specific conditions for doing so:

(a) damage to a road:

(b) danger to the safety of road users.

The wider power to close a road to heavy traffic for other reasons and for a longer period is available under section 22AB(1)(c), which allows bylaws to be made:

"prohibiting or restricting, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified motor vehicles or class of motor vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads;"

Response: LGNZ supports the amendment to section 16A as a rationalisation of the instruments available to a road controlling authority to manage use of a road. We also note that Regulation 10 of the Heavy Motor Vehicles Regulations 1974 also allows for the prohibition of heavy traffic on specified roads.

Clause 46

Summary: Clause 46 amends section 125, which relates to the stopping, inspection and weighing of heavy vehicles. Section 125 currently allows an enforcement officer to direct a heavy vehicle to a suitable weighing site up to 5 km away or to a weighing site up to 20 km away if the officer has good cause to suspect that the driver has detoured from the driver's normal route to avoid weighing. This latter power is replaced.

Instead, an officer can direct a heavy vehicle to a weighing site up to 10 km away if the site where the vehicle has been brought to a stop is unsuitable for weighing the vehicle, because it is unsafe (to other road users or to the officer) or not level enough for accurate weighing.

A second change to section 125 is to allow for targeted stopping of heavy vehicles. Currently, a sign must display the words "ALL TRUCKS STOP" which means that all trucks must pull over, regardless of their loading. The amendment to section 125(4) allows a sign to be used to target specific vehicles (individually or as a class or group).

Response: LGNZ supports enforcement officers avoiding having to stop unladen trucks or trucks obviously only partly laden and focusing resources on specific vehicles or types of vehicle, which would be likely to improve transport productivity and potentially also compliance.

We submit that the legal test for having good cause to suspect that the driver has detoured is a burden for enforcement and the increase to the limit to which a suspect heavy vehicle may be directed for weighing is a reasonable and efficient solution.

Clause 47

Summary: Clause 47 amends section 126, which deals with excessive loading, to the point at which trucks must be taken off the road, rather than just fined. Currently, section 126 provides that vehicles overloaded by more than 10 per cent must have their loads reduced. To reflect the increase of the average mass of heavy vehicles, the amendment allows the stopping and unloading of vehicles that are overweight by at least 10 per cent or by 2,000 kg (whichever is the lesser).

Response: The proposed amendments strike a reasonable balance in mitigating the risks associated with higher legal mass limits and protecting compliant operators against unfair competition from those who deliberately overload. LGNZ recognises that any axle, or set of axles, which is carrying 10 per cent more than its legal maximum will cause (based on the power function or load damage exponent for the pavement) from 46 per cent (4^{th} power) to 114 per cent (8^{th} power) more damage than it would at its legal maximum.

Clause 50

Clause 50 amends section 152, which concerns the power of the Minister to make ordinary rules. The amendment provides that rules may be made providing for the appropriate management of infrastructure. This is to reflect the purpose of the VDAM Rule, much of which is not directly safety-related but is concerned with the management of transport infrastructure and with limits on the mass and dimensions of vehicles to prevent damage to roads and bridges.

Response: We support appropriate management of infrastructure as a fundamental concern of members of LGNZ, the RCA Forum and TSIG. The purpose of this amendment is unclear, however, because it is explained as providing the appropriate power to make a Rule already in effect. The implication of the amendment is that the power to make the VDAM Rule was not available to the Minister when the Rule was made. As this seems unlikely, it follows that no amendment should be necessary to reflect the purpose of the VDAM Rule.

Clause 51

Summary: Clause 51 amends section 164, which relates to matters that the Minister or Agency must have regard to when making or recommending rules. The change means that the rule-maker must have regard to the appropriate management of infrastructure, including the impact of heavy vehicles on infrastructure and whether the costs of the use of the infrastructure are greater than the economic value generated by its use.

Response: We support this amendment as it addresses a fundamental concern of our members.

Clause 52

Summary: Clause 52 amends section 166, relating to exemptions from a requirement in a rule, and inserts a new (2A) after section 166(2):

(2A) In addition to the factors that must be considered under subsection (2), if the exemption relates to a heavy vehicle, the Agency must have regard to the potential impact on infrastructure (including, for example, potential damage to infrastructure such as roads and the cost of repairing the infrastructure).

Response: We support this amendment as it addresses a fundamental concern, not only with the cost of repairing the infrastructure, but also with the ability of the local road controlling authority to fund that cost within its existing plan and programmes. It has become increasingly apparent that assurances were over-optimistic that there would not be increased pavement deterioration with the increase in heavy vehicle mass permitted by the introduction of High Productivity and 50Max vehicles. Many authorities have found themselves having to bring forward their planned maintenance and renewal programmes for roads carrying

heavy vehicle traffic.

Small passenger services (subpart 5)

Summary: The Bill removes the current regulatory requirements that:

taxi vehicles must have mandatory signs (including information about fares, mandatory branding, and information supplied in Braille)

taxi drivers must—

- have an area knowledge certificate;
- pass a full licence test every 5 years; and
- have completed the passenger endorsement course.
- taxi service operators must—
- belong to an approved taxi organisation;
- provide services 24 hours per day, 7 days a week;
- hold a certificate of knowledge of law and practice; and
- monitor driver panic alarms in taxis from a fixed location 24 hours per day, 7 days a week.

Response: LGNZ conditionally supports this amendment. In keeping with changes in technology and transport, we understand that New Zealand aims to be nimble in responding to changes to meet new consumer demands. However, a substantial portion of the population does not have access to smart phones and remains reliant on regular small passenger service (SPS) for personal mobility. Taxis are a preferred option for many people who are blind or have low vision.

Vehicles offering SPS should continue to have mandatory information about fares and other information supplied in Braille. Drivers offering a SPS should have an area knowledge certificate and pass a full licence test every 5 years, as well as completing the passenger endorsement course. Operators of SPS should hold a certificate of knowledge of law and practice relevant to operating a SPS. They should also have the means to monitor driver panic alarms 24 hours per day, 7 days a week, even if not from a fixed location.

Local government has supported some of the changes to SPS regulation because these changes allow a more consistent approach for managing SPS and reduce the compliance costs associated with the provision of SPS. The increased flexibility in SPS will reduce the barriers for new operators to enter the market, which should lead to improved transport choices for consumers, increased competition, higher incentives for innovation and the uptake of new technology, and improved customer services. However, we continue to advocate for safe and equitable services for all small passenger services users, in particular our most vulnerable users who are part of our Total Mobility scheme.

It should be noted that the effect of the proposed changes on the Total Mobility Scheme has not been adequately explained. Total Mobility customers are generally more vulnerable and transport disadvantaged. The Total Mobility scheme is a national scheme co-funded by regional councils and the NZ Transport Agency. The scheme is particularly vital to people with disability who do not have independent access to a vehicle and cannot use public transport. The effects of this scheme should be better understood prior to removal of the regulatory requirements.

More specifically, if the requirement for operators to operate 24/7 is removed, Total Mobility customers could be disadvantaged when they require services outside of peak times or regular business hours. This is a

particular issue for rural areas, where Total Mobility users rely on taxi services to access essential services such as healthcare. It is also our experience that people with disability rely more heavily on SPS (that is, taxi services) than those without disability.

We note that 24/7 coverage by all operators providing TM services is not currently required. It is financially uneconomical to be available 24/7 for companies that operate in small centres. We would prefer to have a provider operating reduced hours (under the current allowed exemptions regulations) than no operator. We support exemptions still being able to be approved by the NZ Transport Agency.

We also have some concern around the removal of safety/personal security requirements for SPS which have provided a layer of assurance to customers in the past. In addition, putting the onus on Total Mobility users to negotiate fares and removing the English language requirement of drivers would put increased burden on an already disadvantaged group. The impact or change on safety and personal security should also be fully understood prior to a change in regulation.

Clause 55

Summary: Clause 55 repeals the definitions of passenger service license, taxi, taxi service and approved taxi organisation in section 2(1).

Response: It is not clear that removing all reference to "taxi" from the Act is necessary or helpful, if vehicles that will be recognised as taxis do continue to operate. It would be preferable to delete the specific sub-section within the definition that is no longer relevant, as for example:

Delete: (b) fitted with a sign on its roof displaying the word ""taxi"" and any other signs required by the regulations or the rules.

This would leave a definition of taxi that is compliant with the content of the Act:

taxi means a motor vehicle that is—

(a) a small passenger service vehicle; and (b) in use or available for use for hire or reward for the carriage of passengers other than on defined routes.

Clause 56

Summary: Clause 56 deletes "taxi" from section 22AB to reflect that taxis will no longer be separately regulated. We believe this deletion is unhelpful, as it offers no alternative wording to allow for the control of passenger service vehicles in a bylaw.

Response: The continued use of an undefined term for large passenger service vehicles ("buses") should be matched by retention of "taxis", which should be defined as above, as these terms will be used by many current bylaws.

Clause 58

Summary: Clause 58 repeals section 30B, which requires identification information to be provided in Braille in taxis.

Response: All vehicles offering small passenger services should have mandatory information about fares and information supplied in Braille.

The Blind Foundation has estimated that 53 per cent of its 12,000 members regularly use taxi services and estimated that there are about 75,000 people in New Zealand whose poor vision means they are dependent on other people to drive them, or on public transport. As 73 per cent of a survey of blind public transport operators reported diificulty in using public transport, taxis are a preferred option for many people who are

blind or have low vision.

Less than 15 per cent of visually impaired people are estimated to have access to data-enabled mobile technology essential to the facilitated services envisaged in the Bill. Some functions are purely visual and at the moment many applications do not allow for audio conversion that can be used by blind people. This is very relevant to the technical basis of the transactions foreseen in the Bill. People with visual disabilities also tend to have low incomes. This factor must be taken into consideration in estimates of the ability of people to adopt new technologies.

Clause 62

Summary: Clause 62 amends section 30L, concerned with the granting of transport service licences, to replace section 30L(1) and insert a new section 30L(1A), which states that a small passenger service licence may be granted only if the Agency is satisfied that a person who is to have control of the small passenger service lives in New Zealand.

Response: The intent of new section 30L(1)(d) is unclear. Is it to be read that in relation to a small passenger service licence, all relevant requirements of the Act, the regulations and the rules do not need to have been complied with, or that there are irrelevant requirements that also do need to be complied with? If the intention is to support the added requirement introduced by 30L(1A), as this would be a relevant requirement of the Act, section 30L(1)(d) might be expressed more clearly and to equal effect by:

(d) all relevant requirements of this Act, the regulations, and the rules have been complied with.

Clause 72

Summary: Clause 72 replaces section 79A(1) with:

(1) A person commits an offence if the person carries on (or, in relation to a small passenger service operator, facilitates) any transport service without the appropriate current licence.

The maximum penalty on conviction for an offence against section 79A(1) is a fine not exceeding $10,000. A person who is convicted of a subsequent offence is liable on conviction to a fine not exceeding $25,000.

Response: LGNZ believes the intent of this penalty is not commensurate with the violation if it is compared to the potential liability under section 79E of persons who merely use an unlicensed transport service, for which the maximum penalty on conviction is a fine not exceeding $25,000. It would appear that the far greater offence would be to carry on a transport service without the appropriate current licence than merely to use it. The proposed fines are inadequate in recognising the relative gravity of the offences.

We believe that the appropriate maximum penalty on conviction for an offence against section 79A(1) is a fine not exceeding $25,000 and a person who is convicted of a subsequent offence should be liable on conviction to a fine not exceeding $50,000.

Clause 73

Summary: Clause 73 inserts a new section 79AB making it an offence to drive a vehicle being used in a transport service if there is no relevant transport service licence held by the driver, by the transport service operator on whose behalf the driver is driving, or by the facilitator who facilitated the driver to connect with passengers. The maximum penalty on conviction for such an offence is a fine not exceeding $10,000.

Response: We believe the intent of this penalty is not commensurate with the violation if it is compared to the potential liability of a person carrying on a transport service without the appropriate licence, for which the penalty is no greater, or to the potential liability under section 79E of persons who merely use an unlicensed transport service, for which the maximum penalty on conviction is a fine not exceeding $25,000.

It would be reasonable to assume that the offence of driving a vehicle being used in a transport service for which there is not an appropriate current licence would be no less than the offence of using that service, but a lesser offence than to carry on a transport service without the appropriate current licence. The proposed fines do not appear to recognise the relative gravity of these offences.

We believe that the potential liability under section 79E of persons who merely use an unlicensed transport service should be a maximum penalty on conviction of a fine not exceeding $5,000. A maximum penalty on conviction for a driver in breach of new section 79AB of a fine not exceeding $10,000 would then be appropriate.

Miscellaneous amendments (subpart 6)

Clause 80

Summary: Clause 80 replaces the definition of moped as follows:

moped means a motor vehicle (other than a power-assisted pedal cycle) that has—

(a) 2 or 3 wheels; and

(b) a maximum speed not exceeding 50 kilometres per hour; and

(c) either—

(i) an engine cylinder capacity not exceeding 50 cc; or

(ii) a power source other than a piston engine

Response: As a "power-assisted pedal cycle" is undefined, but power-assisted bicycles and tricycles can now readily attain speeds of 50 km/h, we believe it is unclear what distinction is being made here between a moped, which was originally a pedal-assisted motorbike, and a power-assisted pedal cycle. Nor is it clear that the distinction is valid or useful now.

Clause 81

Summary: Clause 81 increases the fine for the breach of any bylaw made under section 29AB from $500 to $1,000 to align the maximum fee for a breach of a bylaw provided for in this Act and in the Government Roading Powers Act 1989 with infringement fees in provisions in the Land Transport (Offences and Penalties) Regulations 1999. The decision to amend the maximum fines so that they are no longer 27 years out of date is to be commended, but the decision to amend them to be already 17 years out of date from the outset is not.

Response: The matters that might be covered by a bylaw under section 29AB, and which might therefore be breached, are broad and not inconsequential. They include, briefly:

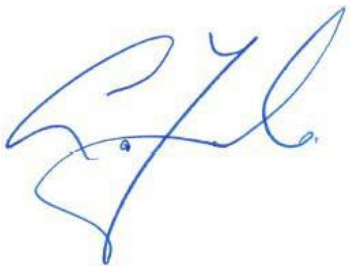
- hazardous routes;
- maximum speed limits;
- construction of anything on, over, or under a road;
- parking;
- one way roads;
- special vehicle lanes;

- erection of a danger to traffic;
- excavations near a road;
- safe weights for bridges or culverts; and
- stands or stalls in roads.

While the proposed increase in the maximum fine for a breach of a bylaw made for one of these purposes listed in section 29AB addresses the effect of inflation since 1999, LGNZ does not agree that it addresses the breadth of the matters that may be regulated or controlled by a bylaw made under this section or the seriousness of the potential consequences from a breach. A maximum fine of $2,000 would appear more appropriate.

Thank you again for the opportunity to comment on the Land Transport Amendment Bill.

Yours sincerely



Lawrence Yule

President

Local Government New Zealand