

# Regulatory Impact Statement: Increasing Penalties for Breaching Bylaws Restricting or Prohibiting the Transport of Dangerous Goods on High Risk Routes

## Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the NZ Transport Agency (Transport Agency) and the Ministry of Transport.
2. It provides an analysis of the issue and proposal to address the current low penalty associated with breaching bylaws that restrict or prohibit the carriage of dangerous goods on high risk routes.
3. The public policy intent is to align the penalty with the penalties for similar dangerous goods vehicle offences to dissuade operators or drivers from carrying dangerous goods on high risk routes.
4. The proposal is to provide a suitable deterrent and legislative framework by amending Land Transport Rule: Dangerous Goods 2005 (the Rule) to restrict or prohibit the carriage of dangerous goods where there is a bylaw in place restricting or prohibiting the carriage of dangerous goods on a specified road. This would enable a breach of this restriction or prohibition to be captured under amendments to the Land Transport (Offences and Penalties) Regulations 1999 (the Regulations) in line with similar offences concerning the transport of dangerous goods.
5. The planned opening of Auckland's Waterview tunnels in late 2016 or early 2017 has been the catalyst for this proposal, but the proposal would have general effect with regard to high risk routes.
6. There is limited evidence on the probability of a breach of a bylaw, but any breach at a site such as the Waterview tunnels could result in an incident with significant consequences for life and property.

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## Status quo

### Road controlling authority to make bylaws

7. Currently, vehicles carrying dangerous goods are prohibited from using high risk routes by bylaw. Section 22AB(1) of the Land Transport Act 1998 (the Act) allows road controlling authorities to make bylaws; prohibiting or restricting, absolutely or conditionally, a specified class of motor vehicle (which includes those carrying dangerous goods) from any road; and prescribe fines, not exceeding \$500, for breaches of any bylaw<sup>1</sup>.
8. Other dangerous goods offences come under the Rule.

## Problem definition

### Issues with current penalty (\$500 maximum)

9. The pending completion of the Waterview tunnels in Auckland in late 2016 or early 2017 has highlighted the disparity between the maximum penalty under a bylaw for a motor vehicle carrying dangerous goods on a specified road where restrictions on or prohibition of the transport of dangerous goods apply, and similar offences under the Rule. There is a risk of dangerous goods being carried in the tunnels.
10. Currently, \$500 is the maximum bylaw penalty. Penalties for breaches of the Rule for similar offences prescribed in the Regulations are between \$500 and \$10,000. A breach of the bylaw also requires the matter (including the penalty) to be determined by a Court while the Rule allows issuing of infringement fees for alleged breaches. This saves the extra processing costs for the NZ Police and the Courts in taking a prosecution to Court.
11. The Transport Agency, as the road controlling authority for the Waterview tunnels, intends to create a bylaw prohibiting the carriage of dangerous goods through the tunnels. Due to the tunnels' size and design there are very significant consequences associated with any vehicle fire in the tunnels were it to be caused or exacerbated by dangerous goods. In addition to any fire risk, dangerous goods also create additional risks from explosions or the release of toxic gases or liquids in the event of a vehicle crash. In a tunnel or similar situation, the effects cannot quickly disperse. Such an incident could be catastrophic to life and property to an extent far greater than a traffic crash or fire without dangerous goods.
12. The length of the Waterview tunnels, at 2.6kms, is "on the cusp" of effectiveness of a longitudinal ventilation system without a smoke duct. Inclusion of a smoke duct would have meant an increase in the diameter of the tunnel. The fire design size for the tunnel of 50 megawatts (MW)<sup>2</sup> is in line with Australasian practice and has resulted in significant cost savings. The design decisions were also predicated on prohibited dangerous goods vehicles using an alternative route<sup>3</sup>, which is the current designated route for dangerous good vehicles.

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<sup>1</sup> Where a class of traffic 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."

<sup>2</sup> Fire design size refers to the size of a fire that the tunnel is designed to withstand; in this case a fire that produces 50 megawatts of thermal power.

<sup>3</sup> "Tunnel Cross Section Report to the Value Assurance Committee", Western Ring Route – Waterview Connection, NZ Transport Agency, 20 August 2010, p.9.

13. If the maximum \$500 fine were attached to the bylaw prohibiting dangerous goods in the Waterview tunnels, the risk to an operator of incurring this fine may not act as a sufficient enough deterrent. It does not adequately reflect the extra risks inherent in a driver or operator ignoring the dangerous goods prohibition.

#### *Waterview tunnels*

14. The Waterview tunnels are key infrastructure for Auckland. They are three lanes wide and anticipate 90,000 vehicle movements per day. Modelling at a traffic speed of 80kph, there could be 566 vehicles in each tunnel at any one time. This number could be higher during peak times with lower average speeds. The Waterview tunnels only have egress passages every 150 metres. This compounds the risk of people being caught up in congestion during an incident.
15. Should dangerous goods vehicles breach the future bylaw and use the Waterview tunnels, any incident involving those vehicles has the potential to be catastrophic to life and property. Such an adverse event could result in many deaths and injuries. The route could also be closed for remedial work significantly longer than for an incident involving normal traffic. A significant event involving dangerous goods could necessitate the closure of the tunnels for months to repair the tunnel with the consequential negative impacts on the local and regional economy.
16. The Waterview tunnels will experience incidents. By way of comparison, the Lyttelton tunnel (at 1.9kms long) averages three truck fires per year and has also had three tunnel strikes (i.e. hitting the tunnel) in the past 12 months. Any such incident in the Waterview tunnels would be further complicated if it involved dangerous goods.
17. Requiring transport of dangerous goods to be restricted to the alternative route imposes only minor costs on operators, as the alternative route is one kilometre longer than the Waterview tunnels with an estimated 5 to 10 minutes additional journey time. However, it is expected to significantly reduce the risk for other road users given that any incident would occur in an open environment.
18. Other restricted routes, such as the Wellington and Lyttelton tunnels, also require the risk associated with dangerous goods motor vehicles be minimised.

#### **Compliance**

19. NZ Police report that there have been two bylaw offences for driving a prohibited motor vehicle through the Wellington tunnel in the past two financial years (2013/14 – 2014/15). For the Lyttelton tunnel there have been no bylaw offences for the same period. While offences for breaching bylaw restrictions on dangerous goods vehicles in existing tunnels are few in number, this is not evidence that there is no need to be concerned about rates of non-compliance at Waterview. This is because the risk assessment for each tunnel will be different.

#### *Oversize vehicles compliance*

20. Analogies can be drawn from the experience of oversize vehicles on Auckland motorways with current infringement fees of \$370. Despite clear markings and viable alternative routes, records for Auckland motorways since 2008 show approximately 91 incidences of bridge strikes by oversized vehicles that have required inspection or structural repairs. The Transport Agency's assessment is that some of these instances would have been the result of conscious decisions of the drivers to drive their oversized vehicles on Auckland motorways.

## Proposal

21. The proposal is to align the current low penalty for breaching a bylaw restricting or prohibiting the carriage of dangerous goods on high risk routes with penalties of similar dangerous goods offences. The pending completion of the Waterview tunnels is the catalyst to create a new offence under the Rule and then provide a new higher penalty, as a priority, for the carriage of dangerous goods on high-risk routes.
22. The proposal's objective is an improved deterrent to breaching restrictions or prohibitions on the transport of dangerous goods on high-risk routes with reduced processing costs in some instances. The proposed mechanism for implementing the proposal is to amend the Rule to include a clause restricting or prohibiting a vehicle carrying dangerous goods using a specified road where the road controlling authority has:
- made a bylaw restricting or prohibiting vehicles carrying dangerous goods from travelling on a specified road
  - installed signs indicating the existence of the restriction.
23. Any such bylaw should be as a result of analysing the risks to both the specified road and any alternative route of motor vehicles carrying dangerous goods. The Transport Agency provides guidance on risk analysis for restricting/prohibiting dangerous goods in tunnels<sup>4</sup>.
24. In conjunction with the proposed amendment for breaching restrictions or prohibitions on carrying dangerous goods on specified roads, subsequent changes to the Regulations would be sought to provide for penalties commensurate with existing penalties for similar offences against the Rule. The recommended new penalties for breaching route restrictions are highlighted below, with the current penalty under a bylaw and comparable dangerous goods vehicle offence and penalty provisions as follows:

Offence	Maximum fine on conviction for individual (\$)	Maximum fine on conviction for body corporate (\$)	Infringement fee for individual (\$)	Infringement fee for body corporate (\$)
Current bylaw for breaching restrictions or prohibitions on carrying dangerous goods on specified roads	500	500	NA	NA
Breaching restrictions or prohibitions on carrying dangerous	2,500	10,000	500	1,000

<sup>4</sup> <http://www.nzta.govt.nz/resources/guide-to-road-tunnels>.

goods on specified roads				
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Driver or operator of road vehicle transporting dangerous goods must ensure the vehicle is not parked for more than 18 hours unless it is in depot <sup>5</sup>	2,500	10,000	500	1,000
Driver or operator of road vehicle transporting dangerous goods must ensure vehicle stops at railway level crossings <sup>6</sup>	2,500	10,000	500	1,000

25. The new penalties as highlighted below would also be set at a mid-range level of existing penalties:

<b>Dangerous Goods Vehicle Offence</b>	<b>Maximum fine on conviction for individual (\$)</b>	<b>Maximum fine on conviction for body corporate (\$)</b>	<b>Infringement fee for individual (\$)</b>	<b>Infringement fee for body corporate (\$)</b>
Having the lowest penalty <sup>7</sup>	1,000	1,000	55	55
<b>Breaching restrictions or prohibitions on carrying dangerous goods on specified roads</b>	2,500	10,000	500	1,000
Having the highest penalty <sup>8</sup>	10,000	50,000	2,000	10,000

26. The proposed amendment would also allow for an increased penalty for breaches of bylaws associated with other specified roads (for example, the routes through and connecting the Victoria and Terrace tunnels in Wellington or the Lyttelton tunnel). For the Wellington tunnels,

<sup>5</sup> Clause 10.4(b)(i) of the Rule.

<sup>6</sup> Clause 10.4(b)(iv) of the Rule.

<sup>7</sup> Driver or operator of road vehicle transporting dangerous goods must have an approved handler test certificate which is immediately available to enforcement officers (Clause 10.4(e) of the Rule).

<sup>8</sup> Consignor of dangerous goods for transport must ensure that required dangerous goods documentation is provided (Clause 10.2(c)(i) of the Rule).

the existing bylaw currently equates the same public risk for carrying dangerous goods through a tunnel as for cycling through a tunnel<sup>9</sup>. While the immediate identified risk is with the Waterview tunnels, it is appropriate to have consistent penalties associated with other restricted routes.

- 27. The NZ Police and the NZ Fire Service have been consulted about the risks in the context of the Waterview tunnels and support an increase in penalties for non-compliance. NZ Police also supports using infringements as most dangerous goods vehicle offences are usually straight forward. Where there is a serious breach, NZ Police has the discretion to prosecute through the Court and the level of penalties is significantly higher.
- 28. This approach to setting penalties is also used elsewhere in land transport rules whereby breaches of a bylaw made by road controlling authorities are also a breach of the associated rule. For example, clause 5.1 of the Land Transport (Road User) Rule 2004 requires compliance with any speed restrictions including those set under bylaw and has corresponding penalties in the Regulations for breaching the requirement.

*Australian approach to penalties for transporting dangerous goods in tunnels*

- 29. In Australia, the level of penalties prescribed for breaching route restrictions, such as through tunnels, in transporting dangerous goods is similar to what is being proposed in New Zealand. Australia uses a system of penalty units with each state setting its own dollar amount for each penalty unit. The different states and their penalty units and infringement fees/fines are as follows:

State	Individual		Corporate	
	Penalty Units	\$	Penalty Units	\$
Queensland	10	1178	50	5890
New South Wales	40	4,400	200	22,000
Victoria	35	5,308.45	175	26,542.25

- 30. Providing a mechanism in the Rule to allow for penalties to be increased in the Regulations for breaching restrictions or prohibitions for transporting dangerous good in tunnels from the current low penalty would be in line with these Australian jurisdictions.

**Analysis**

**Supporting activities for compliance**

- 31. Currently, there are a range of regulatory education and compliance measures to support compliance with prohibitions or restrictions on the carriage of dangerous goods on high risk routes. These measures include driver education, heavy haulage liaison and awareness training, website and information resources, CCTV operator detection, and spot checks by the NZ Police.

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<sup>9</sup> Transit New Zealand (Wellington Tunnels) Bylaw 2003/12, clauses 3 and 7.



32. However, the measures may not be sufficient to minimise the risk associated with dangerous goods vehicles entering the Waterview tunnels with only a current maximum \$500 fine. While the Transport Agency plans to use these measures for the Waterview tunnels, an increase in penalty levels for breaching the bylaw to support these operational initiatives is sought and is aimed at those road users who may not willingly comply. An increase in penalties would not affect those individuals and businesses that comply.

### **Benefit of infringement fees as penalties**

33. Allowing for penalties to include infringement fees for alleged breaches, as allowed for under the Rule, is beneficial in terms of costs. A breach of a bylaw requires the Court to determine the matter, including the penalty and incurs costs for the NZ Police and the Courts. Converting the penalty into an infringement will enable breaches of a bylaw prohibiting or restricting dangerous goods vehicles on high risk routes to be dealt with immediately and avoid extra processing costs for the NZ Police and the Courts. Where the situation warrants, the NZ Police has the discretion to pursue Court action for serious breaches with the penalties being significantly higher than for infringements.

34. There is no natural justice consequence of allowing penalties to include infringement fees because infringement notices are challengeable and can be appealed to the Court.

## **Options considered**

### **Status quo**

35. The Rule is not amended: \$500 remains the maximum Court-imposed penalty for breaching bylaws (for both existing specified roads and the Waterview tunnels).

#### *Benefits*

36. No cost is incurred in changing rules or regulations but otherwise no benefit has been identified.

#### *Costs*

37. The absence of an effective penalty fails to minimise the risk to people and property on high-risk routes.

### **Increase the applicable penalty for breaching a bylaw on restricting or prohibiting a vehicle carrying dangerous goods on a specified road (preferred option)**

38. The Rule contains a requirement for motor vehicles carrying dangerous goods to comply with a restriction or prohibition on the carriage of dangerous goods on a road where the road controlling authority has made a bylaw restricting or prohibiting motor vehicles carrying dangerous goods from travelling on a specified road. This enables penalties to be prescribed in regulation.

#### *Benefits and Costs*

39. With respect to the Waterview tunnels, the final design considered the availability of an alternate route for vehicles carrying dangerous goods, which could then be barred from using the tunnels.

40. While it is possible to engineer out risks to a certain extent, this has inherent limitations and significant cost implications. Having decided on the design of the Waterview tunnels (to



Australasian standards), the appropriate public policy response is to mitigate risk arising from the carriage of dangerous goods.

41. This proposal is necessary to create the mechanism enabling a more appropriate penalty scale than that available through the bylaw making power alone and supports current measures of supporting compliance.

#### *Benefits*

42. The proposed amendment to the Rule to restrict or prohibit a vehicle carrying dangerous goods from operating on a route restricted under bylaw, has the following benefits:

- it would provide a mechanism for an increased penalty for vehicles carrying dangerous goods breaching restrictions or prohibitions on specified roads
- it would provide a mechanism which aligns the penalty for a breach of a bylaw restricting or prohibiting specified roads for the carriage of dangerous goods to similar penalties associated with the transport of dangerous goods
- it would provide meaningful support to operational initiatives to deter breaches of dangerous goods bylaws.

#### *Costs*

43. Significant costs have not been identified with this proposal. Instead, the proposed amendment to the Rule to restrict or prohibit a vehicle carrying dangerous goods from operating on a route restricted under bylaw:

- would not impose additional capital costs and manages risk
- would impose only minor costs to individuals and businesses that choose to comply with a restriction or prohibition on the transport of dangerous goods on high-risk routes by using an alternative route due to this proposal. A vehicle carrying dangerous goods on a restricted or prohibited route is already illegal as a result of existing bylaw making. This proposal to increase the penalties will not affect the legalities of the offence.

44. Offences that occur as a result of this proposal will have Court and/or infringement processing costs for the NZ Police, the Courts, and operators/drivers, but these are expected to be low as not many offences currently occur. The fines or fees are not true economic costs as they would go to the Crown. They are, however, a regulatory impact.

## **Monitoring, Evaluation and Review**

45. The Transport Agency will monitor and evaluate the impact of the amendment to the Rule as part of its regular review of land transport rules.

## **Consultation**

46. The proposal has been developed by the Ministry of Transport and the Transport Agency.
47. The preferred option has been discussed with the NZ Police and the NZ Fire Service during its development. Other agencies, such as the Ministry of Justice, the Accident Compensation Corporation and the Treasury were consulted as part of the departmental consultation process.