

Chair
Cabinet Economic Growth and Infrastructure Committee

LAND TRANSPORT AMENDMENT BILL – OUTSTANDING ISSUES AND APPROVAL FOR INTRODUCTION

Proposal

1. I propose that the Cabinet Economic Growth and Infrastructure Committee (EGI) agree a number of policy proposals for the Land Transport Amendment Bill (the Bill) and approve the Bill for introduction.
2. This paper has three parts. Part 1 sets out the broad policy intent for the Bill. Part 2 sets out a number of outstanding policy issues for which the Committee's agreement is sought. Part 3 provides the Committee with the necessary information to approve the Bill for introduction.

Executive summary

3. The Bill will:
 - introduce new requirements that will apply to all small passenger services, by removing outdated provisions and by catering for the use of new technologies that facilitate such services
 - make the alcohol interlock programme mandatory for repeat and serious first time drink-driving offenders
 - increase penalties for fleeing drivers, or for those who fail or refuse to provide information that may lead to the identification of fleeing drivers
 - include new provisions to help limit fare evasion on public transport
 - update the Land Transport Act 1988 (the Act) requirements relating to heavy vehicles¹
 - make miscellaneous changes to various Act provisions to make them more workable.

Overview of the new policy proposals

4. To enable the Bill to be finalised for introduction, this paper seeks the Committee's agreement to further changes. The additional policy changes relate to small passenger services and alcohol interlocks.

¹ In this paper, a reference to a "vehicle" is a reference to a motor vehicle (as the term is defined in the Act)

Small passenger services

5. In April 2016, the Committee agreed a range of changes to the small passenger services regulatory system (CAB-16-MIN-0145). I advised the Committee that I intended to give further consideration to the regulation of carpooling, and I have now developed a revised regulatory approach.
6. Under the revised approach:
 - traditional carpooling (e.g. where friends and neighbours share rides with each other) will continue unchanged
 - third parties that facilitate carpooling will be regulated. They will be required to hold a small passenger service licence and be subject to regulatory oversight by the NZ Transport Agency
 - drivers for third party facilitated carpooling services will not be required to meet any specific regulatory requirements under transport law (other than the limitation that they can only be recompensed on a cost-sharing basis).
7. While third party carpooling services in New Zealand are in their infancy, the revised approach will ensure there are no regulatory barriers to their greater uptake in the future. If there is a significant uptake of these services, then they will be able to make a contribution to reduced congestion and vehicle emissions in our major urban centres.
8. Removing the regulatory requirements for third party facilitated carpooling drivers involves a trade-off between the lower cost of third party facilitated carpooling on the one hand, and enhanced safety through a more highly regulated system on the other. Carpooling facilitators will, however, be able to implement their own initiatives to promote driver and passenger safety.
9. The implementation of the revised approach for third party facilitated carpooling will be supported by additional requirements that will enable the NZ Transport Agency to inspect records held by third party facilitators to enable the regulator to fully understand payments that are being made between passengers, operators and drivers. Enabling the NZ Transport Agency to audit this information is an important safeguard to prevent companies from 'gaming' the system by shifting their operations from commercial services (with the applicable regulatory requirements) to carpooling services (with lower regulatory requirements).
10. The Act currently states that a transport service licence holder is liable to a fine upon conviction, for failing to present a transport service vehicle for inspection when required to do so by the NZ Transport Agency. To future proof the system, this requirement, and the offence provisions, should extend to drivers of small passenger service vehicles.
11. Cabinet agreed in April 2016 that a driver would have to drive under a small passenger service operator. To give effect to Cabinet's decision and to promote regulatory compliance, I propose that there be a corresponding offence for failing to comply. The proposed penalty would be a fine not exceeding \$10,000 upon conviction.

12. The final proposal is an amendment to the Smoke-free Environments Act 1990. I propose that the current prohibition on smoking in operating taxis apply to all vehicles used in a small passenger service (rather than the current requirement for 'other' small passenger services, where smoking is permissible with the agreement of both parties).
13. This paper also identifies initiatives to better understand existing service levels for people with disabilities. Officials are working to determine whether additional measures are necessary to support monitoring and evaluation in response to Cabinet's direction from its April 2016 decision.

Alcohol interlocks

14. I propose that the Bill give the courts discretion to assess the likelihood of an offender having vehicle access, based on whether or not the offender would be likely to have lawful possession of a vehicle to the extent of being able to use it and fit it with an alcohol interlock device, or that is technically able to be fitted with an alcohol interlock device.
15. I also propose that a person on a mandatory alcohol interlock sentence who commits a further offence not involving the use of alcohol should be able to resume their existing alcohol interlock sentence at the end of serving the disqualification period associated with their new offence. As the Cabinet agreement applied only to mandatory disqualifications, a further minor adjustment is also needed to cater for those offenders who subsequently commit an offence involving a discretionary disqualification².

Aspects of the Bill that could be contentious

16. Some aspects of the Bill could be contentious, including the proposed provisions covering mandatory alcohol interlocks, small passenger services, and fleeing drivers.

PART 1 – POLICY INTENT OF THE BILL

17. The Bill amends the Act and consequentially amends other Acts, regulations and land transport rules. The Bill will enact the following policy proposals agreed to by Cabinet:
 - Reducing Road Trauma and the Cost of Drink-Drive reoffending: Mandatory Alcohol Interlocks [EGI-16-MIN-0099; CAB-16-MIN-0211 refers]
 - Increased Penalties for Drivers Failing to Stop and People Failing or Refusing to Provide Information to Identify Fleeing Drivers [EGI-15-MIN-0100; CAB-15-MIN-0153 refers]
 - Small Passenger Services – Future Regulatory System [EGI-16-MIN-0065; CAB 16-MIN-0145 refers]

² An example of this is careless or inconsiderate use of a vehicle in section 8 of the Act. If a person contravenes section 8 a court has discretion as to whether or not to disqualify the person from driving "for such period as the court thinks fit" (section 37(2)(b))

- Proposal to Manage Fare Evasion on Public Transport Services [EGI-15-MIN-0065; CAB-15-MIN-0086 refers]
- Land Transport Amendment Bill 2016: Updating Heavy Vehicle Regulation [EGI-16-MIN-0091; CAB-16-MIN-0211 refers]
- Land Transport Amendment Bill – Miscellaneous Amendments [EGI-16-MIN-0118; CAB-16-MIN-0257 refers]

Small passenger services

18. The Act and Land Transport Rule: Operator Licensing 2007 set out detailed requirements for transport services including taxis, shuttles, and private hire services. The existing regulatory regime does not take account of new business models within the small passenger services sector. The current framework and many requirements are obsolete, and impose varying levels of compliance burden on operators, inhibiting fair competition.
19. The Bill will simplify the legislation under a single category of small passenger services. A new, small passenger service licence will be required for anyone carrying on a small passenger service or facilitating such a service. This will enable operators to compete on an even footing.
20. Commercial drivers will still be required to hold a passenger (P) endorsement and display a driver identification card. They will be required to operate within their worktime limits, as set out in land transport rules. Their vehicles will need a current certificate of fitness. In addition, vehicles operated by drivers within the 18 urban areas will need to be fitted with an operational in-vehicle recording camera, unless an exception applies or an exemption is granted by the NZ Transport Agency.
21. Third parties who operate a small passenger service under a facilitated cost-sharing arrangement (e.g. organised car-pooling, except those organised by a council) will also be required to hold a small passenger service licence. Drivers of such services will not have to hold P endorsements, comply with worktime requirements or have a certificate of fitness for their vehicles. Drivers will need to ensure their vehicles continue to have a valid warrant of fitness.
22. While the Bill makes some consequential adjustments, the Operator Licensing Rule and the Work Time and Logbooks Rule are being re-drafted by the NZ Transport Agency and will be consulted on separately to the Bill. A draft Operator Licensing Rule, and other land transport rules that refer to small passenger services, will be available for the Select Committee to consider alongside the Bill.

Mandatory alcohol interlock sentence

23. An alcohol interlock sentence has been a sentencing option for courts since 2012³. Currently, a court may impose this sentence for drink drivers with two or more offences within five years, and for those with high alcohol levels (more than three times the current limit for adult drivers).
24. Courts have made little use of the alcohol interlock sentence. One of the reasons for this appears to be the lack of clarity in the legislation about when courts should impose the sentence. Other factors include the costs to the offender of fitting and leasing an interlock, and the current requirement to serve a 3-month disqualification before applying for an alcohol interlock licence and having an alcohol interlock fitted.
25. The amendments to the Act will make the alcohol interlock sentence mandatory for repeat and high-level first offenders. There will be a few specified exceptions – for example, if an offender has never held a New Zealand driver licence or has his or her licence revoked on medical fitness grounds. Offenders who qualify for an exception will have imposed on them the mandatory disqualification that applies for the offence they have committed. A term of imprisonment or a fine may also apply.
26. International studies of alcohol interlock programmes indicate that alcohol interlocks can reduce drink-driving reoffending by an average of around 60 percent while the offender is subject to the alcohol interlock sentence. As such, the mandatory alcohol interlock sentence is expected to have road safety benefits.
27. A subsidy scheme is being established to support the new mandatory alcohol interlock sentence. It is proposed that the interlock provisions come into force on 1 April 2018, or on an earlier date by Order in Council. This will allow the introduction of the new mandatory sentence to be co-ordinated with the establishment of the subsidy scheme, as well as allowing for other implementation measures that will be necessary.

Increased penalties for fleeing drivers

28. Every year, there are about 2,300 incidents of failing to stop, when drivers are requested or signalled to do so by the Police. Drivers who attempt to flee the Police endanger the safety of their passengers, other members of the public using the road, and the Police. Frequently, the actions of fleeing drivers result in crashes, serious injury, or death.
29. The current penalties in the Act are failing to deter fleeing drivers. This is because the failing to stop penalty structure is based on third or subsequent offending rather than on first and second offences. There is also an emphasis on punishing the offending that brought the driver to Police attention in the first place rather than treating the failure to stop and subsequent fleeing as a serious offence in its own right.

³ Introduced via the Land Transport (Road Safety and Other Matters) Amendment Act 2011, and brought into force on 10 September 2012 by the Land Transport (Road Safety and Other Matters) Amendment Act 2011 Commencement Order 2012.

30. The Bill will increase the mandatory disqualification period for fleeing drivers from 3 to 6 months for a first offence, 3 to 12 months for a second offence, and 1 to 2 years for a third or subsequent offence. The Bill will also introduce mandatory vehicle confiscation for a second or subsequent conviction within a 4-year period.
31. In addition, an enforcement officer will be empowered to require any person in lawful possession of a vehicle that has been involved in a failing to stop incident, to provide all information about who was driving at the time. There will be increased penalties for failure or refusal to provide information leading to the identity of the driver, or providing false or misleading information. If the person in possession of the vehicle fails to comply, the Police will be empowered to seize and impound the vehicle for 28 days.

Managing fare evasion

32. Electronic ticketing has been used on public buses for more than five years. Generally, electronic ticketing reduces the overall risk of fare evasion, as the requirement to “tag on-tag off” enables the correct fare to be charged. However, the introduction of electronic ticketing in Auckland has led to problems in managing public transport fare evasion on trains.
33. The Act currently provides that a person who fails to pay a passenger service or public transport service fare and is liable to pay, commits an infringement offence. There is currently no requirement for a passenger to produce evidence that he or she has paid the fare, or provide his or her name and address to an enforcement officer. Consequently, enforcement is ineffective, particularly for travel between train stations that do not have physical barriers.
34. The Bill gives enforcement officers new powers to require evidence that a passenger has paid a fare. If they are liable to pay a fare and a valid ticket is not produced, the passenger will have to provide details of their name, address, telephone number, and date of birth. A passenger may also be required to disembark or not to board.
35. Failure to produce evidence of having paid a fare will attract the same penalty as currently⁴. There will be a new \$1,000 maximum fine on conviction for failure to provide identifying details or failure to comply with a direction to disembark or not to board.

Updating heavy vehicle regulation

36. The Ministry of Transport and the NZ Transport Agency have reviewed the regulatory framework governing the dimensions and mass of vehicles using New Zealand roads. Most of the requirements are contained in regulations and land transport rules⁵, but the review has identified that some changes to the Act are also needed for enforcement purposes.

⁴ An infringement fee of \$150 and a maximum fine of \$500.

⁵ Notably, Land Transport Rule: Vehicle Dimensions and Mass 2002.

37. The changes are mainly technical. More significant changes include:

- amending the conditions under which a heavy vehicle can be redirected for more than five kilometres in order to reach a suitable site for weighing
- increasing the maximum level of infringement fee that can be set for an overloading offence from \$10,000 to \$15,000
- reducing the overloading tolerance before the Police can require a vehicle to be offloaded
- enabling Road Controlling Authorities to close roads to heavy traffic in urgent circumstances where there is a risk of damage to the road, or to the safety of road users.

Miscellaneous amendments

38. The Bill makes a number of minor amendments to clarify the intent of the legislation, correct errors, remove inconsistencies, and cater for advances in technology. These include:

- enabling automated enforcement of variable message signs and illuminated road closure signs
- making electronic forms of displaying a vehicle licence lawful
- clarifying the service and content of stationary vehicle infringement notices
- allowing the recovery of bank charges associated with payments by credit card.

PART 2 – OUTSTANDING POLICY ISSUES FOR THE BILL

Further issues regarding small passenger services

39. There are five matters relating to small passenger services that I seek the Committee's agreement to. These are broadly consistent with the overall intent of the previously agreed changes and will help to implement the new system more effectively.

Proposal 1: Third party facilitated carpooling operators and drivers

40. In April 2016, the Committee agreed a range of changes to the small passenger services regulatory system (CAB-16-MIN-0145). However, I advised the Committee that we intended to give further consideration to the regulation of carpooling, and have now developed a revised regulatory approach.

Traditional carpooling

41. Traditional carpooling is where friends and neighbours share rides with each other. The key features of traditional carpooling are that the driver was going to make the trip for their own purposes and that the driver is only recompensed on a cost-sharing basis (they can not be paid for their time as a driver). An example of carpooling is where a commuter driving from Upper Hutt to Wellington takes their neighbour as a passenger, and the neighbour gives them \$5 towards their petrol and maintenance costs.
42. The only existing regulatory requirement for traditional carpooling is that drivers can only be recompensed on a cost-sharing basis. Cabinet agreed that this should continue and I am not proposing any changes to the regulation of traditional carpooling.
43. There are also a range of other carpooling services that are exempt under the existing regulatory framework⁶ where specific requirements are met. This includes, for example, an exemption for carpooling services arranged by local authorities. I am not proposing any changes to these exempt services.

Third party facilitated carpooling

44. Third party facilitated carpooling is where a third party (e.g. a company) connects a driver and a passenger who are travelling from and to a similar destination. The key features of third party facilitated carpooling are that driver was going to make the trip for their own purposes and that the driver is only recompensed on a cost-sharing basis (they can not be paid for their time as a driver). The company that connects the driver and passenger may charge a fee for its services.
45. Chariot⁷ is an example of a third party carpooling facilitator. Drivers can register with Chariot and post details of a future trip through the Chariot app. Registered passengers who are travelling to a similar destination can connect with the driver through the app. The passenger pays Chariot (Chariot passes on the cost-sharing amount to the driver, less a percentage for Chariot's costs).
46. The key difference between Chariot and a normal taxi company or Uber is the amount of money that drivers receive. Chariot drivers can only be recompensed on a cost-sharing basis for their operating costs (they can not be paid for their time). Taxi drivers can be paid for their time and the operating costs for their vehicle.

⁶ Rule 12.1 of the Land Transport Rule: Operator Licensing 2007 provides that a range of specified services are exempt.

⁷ See www.chariot.co.nz

47. Under our revised approach:

- Third party carpooling facilitators (whether or not they are paid) will be required to hold a small passenger service licence.⁸ To obtain this licence they will (like all small passenger service operators) have to satisfy the NZ Transport Agency that the licence holder or person in control of the operation is a fit and proper person. The third party facilitator will also have to maintain and provide financial records to the NZ Transport Agency when requested. These records include all revenue received from passengers, distance travelled on each trip, and all payments made to its drivers and the third party facilitator.
- Drivers for third party facilitated carpooling services will not have to meet any specific regulatory requirements under transport law (other than the limitation that they can only be recompensed on a cost-sharing basis).

48. This revised approach aligns carpooling facilitators with other small passenger service operators under the new single class by requiring them to hold a small passenger service licence. It also aligns drivers under traditional and facilitated carpooling (they do not have to comply with any specific regulatory requirements under transport law).

49. The table below shows how the key regulatory requirements will apply across small passenger service operators and their drivers.

Table 1: Key regulatory requirements

Type of small passenger service Requirement on:	Traditional Carpooling (and exempted passenger services)	Revised approach to Third Party Facilitated Carpooling	Other small passenger services (e.g. taxi or private hire)	Cabinet's original April 2016 decisions for Third Party Facilitated Carpooling
Operator • Must hold a Small Passenger Service Licence (be a fit and proper person)	N/A	Yes	Yes	Yes
Driver • Must hold a P endorsement	No	No	Yes	Yes
• Must comply with worktime limits	No	No	Yes	Yes
• Vehicle must have a Certificate of Fitness	No	No	Yes	Yes
• Can only be recompensed on a cost-sharing basis (driver can not be paid for their time)	Yes	Yes	No	Yes

⁸ Unless they are exempt as discussed in paragraph 42 — for example, traditional carpooling between friends and family, and those arranged by local Councils.

Why change to the revised approach to third party facilitated carpooling?

50. The key difference between the revised approach, and the treatment of other small passenger services, is that three regulatory requirements will not apply to third party facilitated carpooling drivers. These requirements are the need to have a P endorsement, to comply with work time limits and for the driver's vehicle to have a certificate of fitness.
51. I want to ensure that the small passenger services regulatory system provides the right incentives to ensure the benefits of third party facilitated carpooling, can be fully realised. This type of carpooling has the potential to contribute to reducing traffic congestion and vehicle emissions by utilising what are otherwise empty car seats. This has the greatest potential in busy urban areas, particularly Auckland. But if the regulatory burden on drivers is too great (relative to the benefit that they receive from cost-sharing), then the potential benefits for reduced congestion and vehicle emissions are unlikely to be realised.
52. The revised approach involves a trade-off between the lower cost of third party facilitated carpooling on the one hand, and enhanced safety through a more highly regulated system on the other. However, this trade off already exists between unregulated carpooling, and regulated taxi and private hire services. Safety issues associated with third party facilitated carpooling will also be mitigated to a certain extent as it is expected that third party facilitated carpooling trips will be pre-booked (with a record of the driver, passenger and trip being created). Individual third party facilitators will also be able to implement other safety initiatives.

Proposal 2: NZ Transport Agency oversight of third party facilitated services

53. The Act currently requires some transport service operators to hold certain records. The NZ Transport Agency has the power to inspect these records to ensure compliance with the relevant legislation.⁹ Consistent with that approach, it is proposed that facilitators who operate a small passenger service under a facilitated cost-sharing arrangement be required to hold certain records. These records will assist the NZ Transport Agency in determining whether a facilitator is operating under a genuine facilitated cost-sharing arrangement.
54. Records required to be kept are:
 - all payments made by passengers to the facilitator
 - all payments to the driver (not just payments related to vehicle running costs)
 - a record of the distance travelled on each trip.

⁹ For example, a person that employs someone to drive a transport service vehicle is required to hold specified records under section 30ZD of the Act to ensure compliance with worktime requirements.

55. One of the issues to be managed is the potential for some operators to move from providing a small passenger service with the normal requirements to a third party facilitated carpooling service with different requirements. In doing so, they may seek to make payments to a driver outside of the cost-sharing limits through other arrangements.
56. The proposed approach will enable the NZ Transport Agency to develop a fuller understanding of payments that are being made between passengers, operators and drivers. The NZ Transport Agency would be able to inspect those records and form a view on whether they are complying with the regulatory requirements or not.

Proposal 3: New offence when a driver fails to present vehicle for inspection

57. The Act currently holds a transport service licence holder responsible, and liable to a fine upon conviction, for failure to present a vehicle for inspection when required to do so by the NZ Transport Agency. The NZ Transport Agency requests such inspections when it has reasonable cause to suspect the vehicle is unsafe.
58. To future proof the system, this requirement should be extended to drivers of small passenger service vehicles. This is because it would be impractical for the licence holder to be responsible for presenting a vehicle that is operating in a different city from where the operator is based. I propose a fine not exceeding \$10,000 upon conviction for drivers of small passenger service vehicles who fail to present a vehicle for inspection. This is the same penalty as for transport service licence holders.

Proposal 4: New offence for drivers who fail to drive under a transport service licence holder

59. Cabinet agreed in April that a driver would have to drive under a small passenger service operator. This improves the efficiency of the regulatory system by enabling the NZ Transport Agency to focus its compliance activity at the operator level, in the first instance. This requirement has been reflected in the draft of the Bill. However, to give effect to Cabinet's decision and to promote regulatory compliance, I propose that there be a corresponding offence for failing to comply. The proposed penalty would be a fine not exceeding \$10,000 upon conviction.
60. This proposed offence and corresponding penalty is similar to that of a person who carries on a transport service without an appropriate current licence. The penalty for failure to do so is a fine not exceeding \$10,000 upon conviction.

Proposal 5: Extension of current prohibition from smoking in operating taxis to all operating small passenger services

61. Officials have identified the need for an amendment to the Smoke-free Environments Act 1990. This Act makes reference to taxis and currently prohibits smoking in an operating taxi. However, the prohibition does not apply to smoking in all other small passenger service vehicles. For all other small passenger service vehicles, smoking is allowed where there is agreement from both the driver and passenger(s).

62. Extending this prohibition to all operating small passenger services (including third party facilitated carpooling vehicles) is consistent with the Government's objective for New Zealand to be smoke-free by 2025.
63. I propose the current prohibition on smoking in operating taxis be extended to all operating small passenger services (including third party facilitated carpooling services) in the future system.

Other matters

Report back on benchmarking of service levels

64. In April 2016, Cabinet directed transport officials to report back in 2016 on initiatives to better understand the existing levels of services provided for people with disabilities, to ensure that officials can identify and respond to any impacts resulting from the wider changes to the market.
65. Transport officials have identified a variety of initiatives that provide some base level information that could be used to measure current service levels for people with disabilities. These initiatives include:
 - The Disability Action Plan – presents priorities set by the Ministerial Committee on Disability Issues for actions that advance implementation of the UN Convention and the New Zealand Disability Strategy. This plan includes a specific action “to understand the issues with accessibility for disabled people of transport services”. Recommendations flowing from a report on this action investigating data and access for users of public transport with disabilities are underway, led by both the Ministry of Transport and the NZ Transport Agency.
 - The Ministry of Transport's Household Travel Survey – the 2015 iteration included questions specific to people with disabilities. The responses to these questions are not yet available, but this data will form part of a baseline when it is available.
 - The Total Mobility Scheme (the Scheme) “assists eligible people with impairments¹⁰ to access appropriate transport to enhance their community participation. This assistance is provided in the form of subsidised door-to-door transport services wherever scheme transport providers operate”¹¹. The NZ Transport Agency have access to annual data, including total trips taken by region, total cost of the Scheme by region, and people registered per region. A new system, Ridewise, is being implemented for the Scheme, which offers more accurate data collection than previous systems.
66. Officials are working to determine whether any additional measures are necessary to support monitoring and evaluation.

¹⁰ These are serious mobility constraints that prevent them from using PT unaccompanied and in a safe and dignified manner.

¹¹ This purpose statement was agreed nationally after a 2005 review of the scheme, carried out by the Ministry of Transport.

Removal of the P endorsement course for small passenger services

67. The April 2016 Cabinet decisions authorised us to make further changes to the future small passenger services system to ensure the lowest reasonable compliance costs. In light of this, I subsequently decided to remove the requirement for a P endorsement course for small passenger services.
68. The current P endorsement course has been removed as a requirement for the future system as most of the current driver knowledge component of the course will disappear. This is because the rules covered by the required unit standard for the P endorsement course are being removed under the future system. There will also be significant cost savings as it currently costs between \$400 and \$700 to complete a P endorsement course. The costs vary as these are set by individual course providers.
69. The P endorsement course requirement is only being removed for small passenger services and will still apply to large passenger services, as they were not within the scope of the review of small passenger services.

Further issues regarding alcohol interlocks

Access to a vehicle

70. In May 2016, Cabinet agreed that an exception to the alcohol interlock sentence should be available if the offender did not have access to a vehicle to which an alcohol interlock could be fitted. However, Cabinet also sought clear statutory guidance on the meaning of “access to a vehicle”.
71. There is a risk that the exception could allow offenders to circumvent the mandatory alcohol interlock sentence by sham sales transactions. For example, the offender might transfer ownership of a vehicle to a spouse, partner, friend or relation in the period between committing a qualifying offence and being sentenced and yet still retain access to and use of the vehicle.
72. To reduce this risk, the Bill has been drafted to give courts some discretion to look at whether an offender is “likely” to have access to a vehicle in the future, as well as whether an offender currently has access to a vehicle. A court will need to consider whether or not it is likely the offender would have lawful possession of a vehicle to the extent of being able to use it and fit it with an alcohol interlock device. The use of the term “lawful possession of a vehicle” covers less straightforward ownership arrangements, such as where an offender may not be the registered owner of a vehicle but they are entitled to use the vehicle. An offender might qualify for an exception if the vehicle might not technically be able to be fitted with an alcohol interlock device.
73. The offender will receive an alternative sentence if he or she qualifies for an exception. The alternative would be mandatory disqualification, and potentially a term of imprisonment or a fine. The disqualification would be followed by a 3-year zero alcohol licence.

Policy change for alcohol interlock offenders who commit subsequent offences not involving alcohol

74. Cabinet has agreed that, where offenders who are subject to an alcohol interlock sentence are later convicted of other offences to which a mandatory disqualification applies, a court must terminate the existing alcohol interlock sentence and impose a new one. The offender forfeits any period he or she has already served on the interlock sentence.
75. However, if the new offence is not a drink-drive offence, the forfeiting of any period already spent on the alcohol interlock sentence may raise a potential issue concerning consistency with the New Zealand Bill of Rights Act 1990. That forfeiture could be seen as disproportionate in light of the new offending. To avoid this concern, I recommend that such offenders be allowed to resume the alcohol interlock sentence after they serve the disqualification applying to the new offence.
76. I also recommend that discretionary disqualifications are catered for. If an offender who is subject to an alcohol interlock sentence is later convicted of another offence not involving alcohol to which a discretionary disqualification applies, a court will have the option of imposing a term of disqualification before allowing the offender to resume the alcohol interlock sentence.

Matters likely to be contentious

77. The Bill contains a number of proposals that have attracted media attention and may be considered contentious.

Small passenger service vehicles

78. The taxi industry has previously indicated safety concerns about the exceptions to the in-vehicle camera requirement. The in-vehicle recording camera requirement and exceptions will be canvassed as a part of consultation on the draft Operator Licensing Rule, since the in-vehicle camera requirements are in the Rule.
79. The Act currently requires mandatory Braille signage in taxis. This requirement will no longer apply. This is likely to be contentious with disability and vision impaired advocacy groups.
80. Uber does not consider that the P endorsement requirement is necessary for its partner-drivers.

Mandatory alcohol interlocks

81. The low uptake of alcohol interlocks has been raised in the media as a concern. The Automobile Association of New Zealand has been lobbying strongly for a mandatory alcohol interlock programme. Overall, the new policy is likely to be received positively.
82. Some may argue the policy does not go far enough. The Automobile Association advocates making alcohol interlocks mandatory for all drink-drive offenders. Others may argue that it is a “soft option” for drink-drivers because they remain able to drive. There may be a concern that the mandatory sentence will reduce judicial discretion.

83. There could also be a concern over affordability issues for low-income offenders. Cabinet has agreed to a subsidy scheme to support the sentence but the scheme is not included in the Bill as it does not require legislation to implement it. At the time the Bill is introduced the detail of the proposed subsidy scheme will not have been finalised.

PART 3 – APPROVING THE BILL FOR INTRODUCTION

Need for legislation

84. A Bill is required to give effect to the policy outlined above because changes are needed to primary legislation.

Regulatory Impact Analysis

85. Regulatory impact statements (RISs) were prepared by the Ministry of Transport and the New Zealand Police¹² and were submitted at the same time as Cabinet approvals of the policy relating to the Bill were sought.
86. The RISs for the mandatory alcohol interlocks and miscellaneous amendments papers met quality assurance criteria. The information and analysis summarised in the RISs for the heavy vehicles, small passenger services, and fare evasion papers partially met quality assurance criteria. The fleeing drivers paper was not formally assessed for quality assurance.
87. The Regulatory Impact Analysis requirements apply to the third party facilitated carpooling proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached. The Regulatory Impact Analysis Team at the Treasury has reviewed the draft RIS prepared by the Ministry of Transport and considers that the information and analysis summarised in the RIS *does not meet* the quality assurance criteria.
88. URL links to these regulatory impact statements will be provided when the Bill is ready for introduction.

Compliance

89. The Bill complies with:
- 89.1. the principles of the Treaty of Waitangi
 - 89.2. the rights and freedoms in the Human Rights Act 1993
 - 89.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper)
 - 89.4. the principles and guidelines set out in the Privacy Act 1993

¹² The New Zealand Police prepared the regulatory impact statement for the fleeing driver proposals

- 89.5. relevant international standards and obligations
- 89.6. the Legislation Guidelines on the Process and Content of Legislation (2014 edition), a publication maintained by the Legislation Design and Advisory Committee.
90. The Bill raises issues of consistency with rights and freedoms contained in the New Zealand Bill of Rights Act 1990, in particular the right to be secure against unreasonable search and seizure.
91. On 5 May 2016, officials met with members of the Legislation Design and Advisory Committee to canvas the main issues in the Bill identified by the Committee and officials. Subsequently, the Committee advised it did not need further involvement with the Bill, unless further assistance was required.

Consultation

92. The following government departments and agencies have been consulted on relevant parts of the Bill and their comments have been incorporated: the New Zealand Police, the Ministry of Justice, the Department of Corrections, the Department of Internal Affairs, the Ministry of Education, the Ministry of Business, Innovation and Employment, Inland Revenue, the Treasury, the Ministry of Social Development, the Commerce Commission, the Office of the Privacy Commissioner, the New Zealand Transport Agency, Local Government New Zealand, WorkSafe New Zealand, the Ministry of Defence, and the New Zealand Defence Force.
93. The Department of the Prime Minister and Cabinet has been informed.

Treasury comment

94. The Treasury has concerns with the proposal related to third party facilitated carpooling operators and drivers as it represents a significant shift from the previous Cabinet decision to remove regulatory distinctions between the different types of services by establishing a single class of 'small passenger service'. In particular:
- the original cost benefit analysis undertaken has not been updated to incorporate the proposed change and, as a result, the potential impact of this change on the future regulatory system is not well understood
 - the limited detail provided on the process that will be adopted for determining and monitoring appropriate cost-recovery of third party operators and drivers, which makes it difficult to assess how this will be managed
 - public consultation has not been undertaken on the proposed change, and therefore the identified impacts of this proposal on the industry and individual operators may not be comprehensive.
95. Given the above concerns, the Treasury considers further work on the third party facilitated carpooling operators and drivers proposal is required ahead of decisions being made.

Binding on the Crown

96. The Bill amends the Land Transport Act 1998, which binds the Crown.

Creating new agencies or amending law relating to existing agencies

97. The Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

98. The Bill allocates decision-making powers between the executive and the courts. The Bill allocates powers to road controlling authorities, the NZ Transport Agency, and the Police.

Associated regulations

99. Some changes to regulations are made as consequential amendments in the Bill.

100. The Bill adjusts the regulation-making provisions of the Act to allow the NZ Transport Agency to recover bank charges associated with payment of fees by credit card.

101. The Bill also adjusts regulation-making powers in the Act so that the maximum level of infringement fee that can be set for an overloading offence can be increased from \$10,000 to \$15,000.

Disallowable instruments which are not legislative instruments

102. Some changes to land transport rules are made as consequential amendments in the Bill.

103. The Bill makes changes to the empowering provisions for rules to allow the Minister of Transport to make rules to allow for the appropriate management of infrastructure, including management of damage to roads and bridges.

Definition of Minister/department

104. The Bill does not contain definitions of a Minister, department, an agency, or a chief executive. These definitions are already contained in the Act.

Commencement of legislation

105. The Bill is expected to be enacted in the first quarter of 2017.

106. The provisions relating to small passenger services and to alcohol interlocks, and any consequential amendments associated with these provisions, will be brought into force by Order in Council¹³. For the small passenger service changes, amendments to rules and regulations will need to be brought into force at the same time as changes to the Act. For the interlock programme, there needs to be a sufficient time allowed for providers to ensure interlock supply, and for the subsidy scheme to be in place.
107. The explanatory note to the Bill sets out the reasons for commencement of provisions by Order in Council.
108. The remaining provisions will come into force on the day after the date of Royal assent.

Parliamentary stages

109. The Bill should be introduced in September 2016 and passed, if possible, before 1 April 2017.
110. It is proposed that the Bill be referred to the Transport and Industrial Relations Committee.
111. The Minister responsible will be the Minister of Transport.

Recommendations

112. I recommend that the Committee:
1. **note** that the Land Transport Amendment Bill has been accorded priority 3 on the 2016 legislation programme
 2. **note** that the Bill:
 - i. makes the alcohol interlock sentences mandatory for repeat and high-level first offenders
 - ii. increases penalties for fleeing drivers
 - iii. deregulates the small passenger service regime, while preserving essential safety requirements
 - iv. gives enforcement officers increased powers to manage fare evasion on public transport
 - v. refines enforcement measures to manage heavy vehicles on New Zealand roads
 - vi. makes minor amendments to clarify some Act provisions

¹³ For the alcohol interlock provisions, it is anticipated that the latest commencement date will be 1 April 2018, although the provisions may be brought into force earlier by Order in Council. For the small passenger services changes, it is anticipated that the commencement date will be by Order in Council or no later than 1 July 2017.

Small passenger services

3. **note** that the following issues to be agreed flow from Cabinet decisions made in April 2016 (CAB-16-MIN-0145)
4. **agree** that, in relation to small passenger services, whether or not a third party is paid for connecting a driver and a passenger under a carpooling arrangement:
 - the third party must hold a small passenger service licence
 - the driver will not be required to hold a P endorsement, comply with worktime requirements, have an in-vehicle camera or an exemption, or have a certificate of fitness for the driver's vehicle
5. **agree** that to ensure that third party facilitated carpooling operations comply with the regulatory requirements and do not seek to circumvent them, operators be required to hold the following information:
 - i. records of payments made by passengers to third party facilitators
 - ii. all payments to the driver (not just payments related to vehicle running costs)
 - iii. a record of the distance travelled on each trip
6. **agree** that the requirement for a transport service licence holder to present a vehicle for inspection be extended to apply to all drivers of small passenger service vehicles, and that the existing penalty of \$10,000 that is in the Act be extended to apply to all small passenger service drivers
7. **agree** that the current penalty of \$10,000 for those who carry on a transport service without an appropriate current licence be extended to cover those who do not drive under a transport service licence holder or, in relation to a small passenger service, those who have not been facilitated to connect with passengers by the holder of a small passenger service licence
8. **agree** that the current prohibition on smoking in all operating taxis under the Smoke-free Environments Act 1990 be extended to cover all small passenger services.
9. **note** that transport officials have identified initiatives to better understand existing service levels for people with disabilities and are working to determine whether additional measures are necessary to support monitoring and evaluation
10. **note** the passenger endorsement course is being removed for small passenger services

Alcohol interlocks

11. **note** that Cabinet agreed to an exception to the mandatory interlock sentence where offenders do not have access to a vehicle to which an interlock can be fitted, subject to the Bill containing clear statutory guidance on the meaning of “access to a vehicle”
12. **agree** that the Bill give the courts discretion to assess the likelihood of an offender having vehicle access, based on whether or not the offender would be likely to have lawful possession of a vehicle to the extent of being able to use it and fit it with an alcohol interlock device, or that is technically able to be fitted with an alcohol interlock device
13. **agree** that a person on a mandatory alcohol interlock sentence who commits a further offence not involving the use of alcohol should be able to resume their existing alcohol interlock sentence at the end of serving the mandatory disqualification period associated with their new offence
14. **agree** that the Bill also cover subsequent offences not involving the use of alcohol to which a discretionary disqualification applies, so that a court will have the option of imposing a period of disqualification before the existing alcohol sentence resumes

Other matters associated with the Bill

15. **authorise** the Parliamentary Counsel Office to make further minor drafting changes of a proofreading nature before the Bill is introduced
16. **approve** for introduction the Land Transport Amendment Bill, subject to the final approval of the government caucus and sufficient support in the House of Representatives
17. **agree** that the Bill can be introduced on or after 13 September 2016
18. **agree** that the government propose that the Bill be
 - i. referred to the Transport and Industrial Relations Committee for consideration
 - ii. enacted by 1 April 2017.

Hon Simon Bridges
Minister of Transport

Dated: _____