



SUBMISSION

Submission: Regulatory Systems (Transport) Amendment Bill

To: Transport and Infrastructure Committee

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About Ia Ara Aotearoa Transporting New Zealand

Ia Ara Aotearoa Transporting New Zealand (Transporting New Zealand) is a national membership association representing the road freight transport industry. Our 1,200 members (with a combined fleet of 14,000 heavy vehicles) operate urban, rural and inter-regional commercial freight transport services throughout the country.

As the peak body and authoritative voice of the road freight sector, Transporting New Zealand helps trucking operators drive successful, safe, sustainable businesses. Our strategic priorities are:

- Providing one industry voice for advocacy
- Promoting the road freight transport industry
- Attracting talent and promoting workforce development
- Supporting our members and customers
- Sustainability, safety and responsible emissions reduction

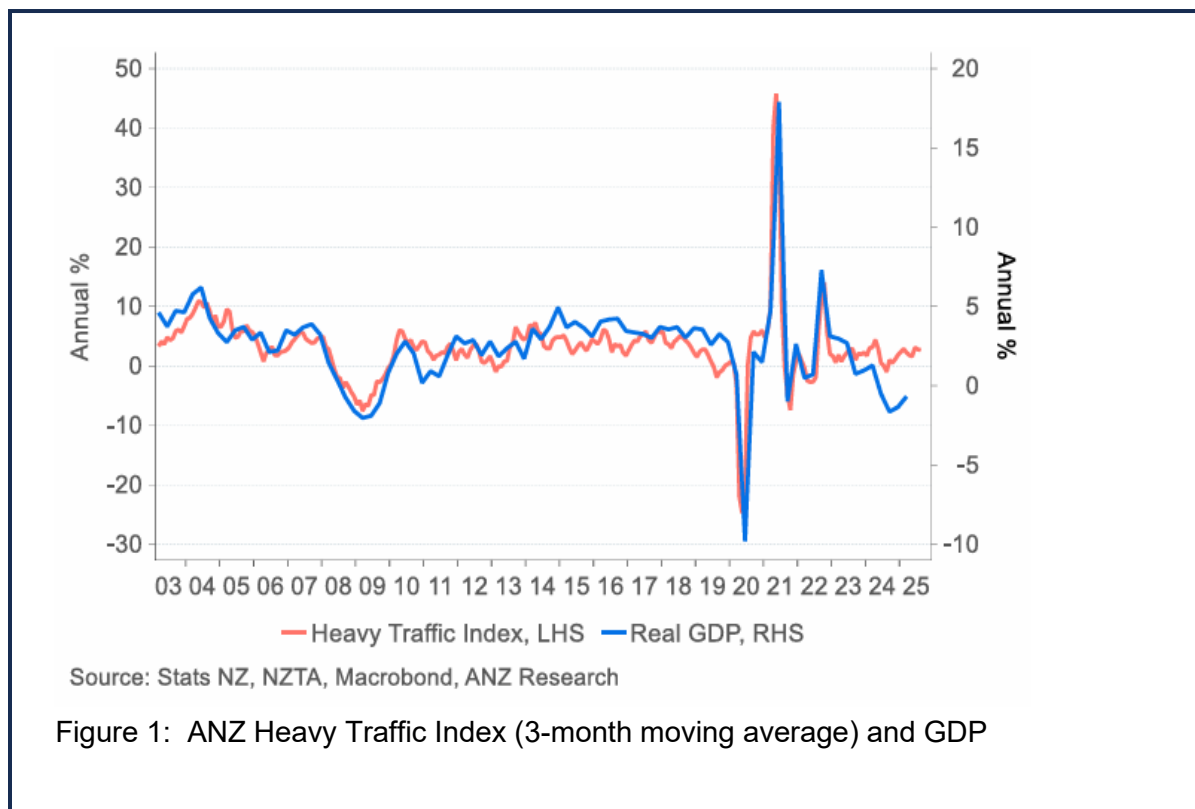
New Zealand's road freight transport industry employs 33,000 people (1.2% of the total workforce), and has a gross annual turnover in the order of \$6 billion. This is part of a wider transport sector that employs 108,000 people and contributes 4.8 percent of New Zealand's GDP. Road freight transport accounts for 93% of the total tonnage of freight moved in New Zealand (MoT National Freight Demands Study 2018).

Transporting New Zealand submission on the Regulatory Systems (Transport) Amendment Bill

- 1 Transporting New Zealand appreciates the opportunity to make a submission to the Transport and Infrastructure Committee on the Regulatory Systems (Transport) Amendment Bill (the Bill).
- 2 Transporting New Zealand's submission focuses on sections amending land transport legislation, namely Part 1, Part 2, Part 3 and Part 6. This submission is predominantly based around our experience with goods service licences, as opposed to the other transport service licences (TSLs), i.e. passenger service vehicles, rental vehicles and vehicle recovery services.
- 3 There is nothing confidential in our submission and we permit it to be published in full.
- 4 We would like to speak to this submission in hearings conducted by the Transport and Infrastructure Committee on this Bill.

Industry context

- 5 Transport is largely undertaken in a public environment and licensing plays an important role in keeping the participants in that eco-system safe. The tough economic climate over the last few years has been particularly challenging and one of the indicators that is causing Transporting New Zealand concern is a divergence over the last couple of years between the heavy traffic index and real gross domestic product (GDP) as shown in Figure 1 below.



- 6 Figure 1 shows that typically there is a reasonable correlation between GDP and heavy vehicle traffic. However, over the last year or so, despite the softening economy, truck traffic has not reduced as much as would normally be expected. This would tend to indicate that trucks are carrying less payload and therefore also likely receiving less income relative to the distance travelled. Profit margins are highly likely to be under increased pressure and consequently there is higher risk of operators cutting costs in areas like vehicle maintenance and other safety related management activities. Transporting New Zealand believes now more than ever, it is important that the TSL regime works effectively and efficiently.
- 7 Fundamentally, licensing serves as a legal framework that enables parties to undertake certain activities, typically under specific conditions. Therefore, when NZTA grant a licence, in Transporting New Zealand's view, that should be accompanied by a reasonable expectation and degree of confidence that the licensed party can operate safely and will not put the public and others they interact with at undue risk.
- 8 Transporting New Zealand regularly receives feedback from NZTA that when considering new transport service licences applications its assessment is constrained by the "fit and proper person" criteria. There is no scope for NZTA to take into consideration the size of the business or the trucking service that the licence applicant is intending to operate and therefore this is no consideration of whether the party being licensed has the capability, experience, knowledge and skills to manage a transport operation.
- 9 While in service, licensed operators are audited by NZTA. Its audits are centred around a set of risk criteria to assess how operators manage their compliance under the land transport legislation with things like: regular vehicle inspection (CoF) pass rates, traffic offending history, RUC debt, weight and permit compliance and vehicle maintenance systems.
- 10 Transporting New Zealand believes it should be incumbent on NZTA that the agency only issue licences when it is clear and confident that the party it has licenced has the appropriate capability, experience, knowledge and skills to manage the service it provides. However, because that cannot be done at entry level and audits can only take place after the service has been operating for some time, an issue with the current approach is that it is inherently reactive. The current TSL system suffers from the dilemma often described by the adage "shutting the gate after the horse has bolted".
- 11 Transporting New Zealand believes NZTA should provide clear transparent guidance on what it expects from its licensed transport service providers at both entry and in-service stages. Currently NZTA's in-service assessment of good service licensed operators is not prescriptive or check-list-based, rather it relies on the professional judgement of its compliance staff to determine if the operator is managing compliance effectively. Given that an operator's livelihood is likely to be severely impacted if their licence is removed, Transporting New Zealand would like to see some reduction in the current qualitative approach and a greater consideration given to quantitative metrics as that would increase fairness and integrity of the NZTA assessments.

- 12 Transporting New Zealand also believes that the current criteria enabling NZTA to suspend a TSL is too constrained. Section 30UA provides for the Director to suspend a TSL if the Director is satisfied that doing so is necessary for significant health and safety reasons. Transporting New Zealand would like that criteria to be extended to include the licenced party meeting their financial responsibilities to pay Road User Charges. RUC typically represents about 10 percent of road freight transport costs and Transporting New Zealand believe this Bill provides an ideal opportunity to reduce the risk of unscrupulous operators gaining a commercial market advantage by electing not to pay RUC.
- 13 Typically the State highway carries higher traffic volumes than local roads therefore when road closures are required on State highways the adverse impacts on those affected are more significant.
- 14 Examples of adverse impacts on transport operators during unscheduled road closures and the resultant indefinite delays while trucks are queued or detoured include:
- a. stress on the driver and logistics team from uncertainty of how their journey is being impacted
 - b. animal welfare suffering, particularly in hot ambient conditions
 - c. perishable freight wilting
 - d. driver welfare and fatigue from the delay
 - e. trucks being detoured onto unsuitable routes
- 15 Transporting New Zealand believe this is an ideal opportunity to ensure that as the manager of the State highway, NZTA manage those impacts in a much better way.

Submission Summary

- 16 Transporting New Zealand notes Part 1 of the Bill provides NZTA with broader powers to close parts of the State highway network due to safety concerns. This change aligns road closure powers with those that local road controlling authorities currently have on the rest of the network. We support this change with the following caveat.
- 17 Transporting New Zealand's caveat is that in parallel with empowering NZTA to close parts of the State highway, an obligation on NZTA should be introduced requiring it to consider and appropriately manage the safety and welfare of the parties/other road users being impacted.
- 18 Transporting New Zealand understands that the amendments in Parts 3 and 6 of the Bill, regarding payments of tolls and RUC respectively, are largely of administrative and process nature. We have no issues with these changes and Transporting New Zealand supports them.
- 19 Transporting New Zealand supports amendments to the Land Transport Act 1998 (LTA) which will enable the alternative use of electronic labels in the place of paper labels for things like vehicle licences and Certificates of Fitness or Loading.

- 20 Transporting New Zealand supports changes to the LTA and other Acts that provide an additional way to deliver warning notices (electronically) with the caveat that a “delivered” receipt should be required as proof the notice has been served, if delivered by email.
- 21 The Bill’s explanatory note regarding Part 2 includes the reference “modernising the enforcement regime for transport service licences” and the Problem Definition in the Regulatory Impact Statement refers that the Bill would ensure the framework is effective, fit-for-purpose, and up-to-date”. Given that context, while many of the changes are relatively non-contentious, Transporting New Zealand is concerned that the Committee may miss this opportunity to make more meaningful improvements to the efficacy of the transport service licence (TSL) system.
- 22 Transporting New Zealand supports the main changes in the Bill that relate to enabling stricter enforcement of Transport Service Licences (TSL). While it is not a matter for inclusion in the Bill, Transporting New Zealand would like to take this opportunity to record its desire that NZTA undertake an education campaign to help ensure that transport service operators understand the new offences (and penalties), as some may be unaware they don’t have valid TSLs due to historic arrangements of passing businesses (and TSLs) onto younger generations.
- 23 Transporting New Zealand recommend the Committee direct the Bill to be extended to include further changes that remedy the short-comings of the TSL system.

Comments on specific clauses in the Bill

Part 1: Amendments to the Government Roading Powers Act 1989

- 24 Clause 4: New section 61AA inserted (Agency may close State highways)

With the caveat in paragraph 25, Transporting New Zealand supports Clause 4, creating new section 61AA, as this gives NZTA the same powers for State Highways that other road controlling authorities have for their road networks.

- 25 Transporting New Zealand’s caveat is that in parallel with empowering NZTA to close parts of the State highway, an obligation on NZTA should be introduced requiring it to consider and appropriately manage the safety and welfare of other road users impacted.

Part 2: Amendments to the Land Transport Act 1998

- 26 Clause 7: Section 2 amended (Interpretation)
Clause 8: Section 6 amended (Vehicles to be safe and operated in compliance with rules)
Clause 59: Section 242 amended (Motor vehicles must be registered and licensed)

Transporting New Zealand supports Clause 7 which enables that a driver licence could be provided electronically. Similarly, we support Clause 8 which enables evidence of a vehicle inspection (Warrant or Certificate of Fitness) and a Certificate of Loading to be provided electronically, along with Clause 59 which enables a vehicle licence label to be displayed electronically. For heavy vehicles which also have to display RUC labels, there can be a

preponderance of labels displayed on the left-hand side of a windscreen, and while this placement is so they are not directly in the drivers' vision, these can partially obscure some vision for left-turning manoeuvres. It is also an offence not to display a current label, but there is a risk that an expired label is not replaced even when a new label has been obtained (or is mistakenly placed behind the old one). It's likely that an electronic format will be updated promptly (such as when a new CoF has been obtained), and these amendments will help eliminate such human errors if electronic options are utilised by operators.

- 27 Clause 17: New section 30LA inserted (New person in control of licensed transport service must be fit and proper person)

Clause 27: New section 79EA inserted (Contravention of section 30LA)

Clause 17 inserts a new section 30LA which in essence states that a TSL holder must not permit a new person to have control of the transport service unless approved by the Director (with limited exceptions). This seems to be a mechanism to ensure that a 'new person' added to a TSL has undergone (and passed) a fit and proper person check, and that seems reasonable, in fact almost a necessity to maintaining the integrity of the TSL regime.

Transporting New Zealand supports the change. Given it is a new requirement, Transporting New Zealand would like clarification on whether NZTA intend this requirement to be retrospectively applied at any stage as there will be cases where people may not comply, such as when a business has passed from one generation to another, and along with it the TSL, without the new generation obtaining the fit and proper person check.

Transporting New Zealand recommends an education campaign be undertaken to ensure the transport industry is made aware of the new requirements and would be happy to work with the NZTA on such a campaign.

Concurrently, the NZTA is in the process of contacting TSL holders to request they check and update or surrender their TSLs. This is an opportunity to ensure that the business is operating under someone listed on a TSL who has passed a fit and proper person check, so we request that there is sufficient time for NZTA to complete this process before this amendment is enacted.

- 28 Clause 18: Section 30N amended (Transfer, assignment, or lease of transport service licence prohibited)

Transporting New Zealand supports section 30N being amended to clarify that TSLs cannot be sold, exchanged, granted, loaned, or conferred to another person (whether permanent or temporary).

This amendment may require a change in practice by some transport service operators involved in third-party contracts for service, or when leasing or selling businesses. This may include changing contract terms so that any lease or sale etc. is subject to evidence of a valid TSL, or the procurement of one.

Transporting New Zealand submits that there be a relatively short but reasonable transition period for this amendment to be enacted in order for transport operators to acquaint themselves with the new law and adapt their business processes accordingly.

- 29 Clause 21: New section 30UA inserted (Immediate suspension of transport service licence for significant health and safety reasons)

The reasons for immediate suspension include driver breaches or impairment.

- 30 Transporting New Zealand supports the changes that enable the Director of Land Transport to immediately suspend a TSL for significant health and safety reasons on the proviso that NZTA provides clear transparent guidance around the systems and compliance rates that it expects from operators and it has a robust, rigorous and high integrity process to manage such an event.

It is important to our industry that if this power is exercised it is consistently applied across New Zealand. Transporting New Zealand's agreement is also made under the presumption that NZTA, at its discretion, is still able to provide a period of time, such as the current 28-day delay before any suspension taking effect.

With more widespread adoption of telematics, visibility of driver breaches is improved but it is not universal and the TSL holder (or dispatcher) that may not have visibility of these breaches until they are notified of the TSL suspension. Furthermore, telematics do not capture all breaches like overloading or unsecure loads.

Whilst operators are responsible for ensuring their drivers understand the rules and their obligations, an immediate suspension without warning due to the actions of one driver seems harsh (noting that the operator can appeal it after the fact).

Transporting New Zealand recommend NZTA provide a hierarchy or scale of offending before an immediate suspension applies, such as after a warning(s) to the TSL holder for previous breaches (including by its drivers).

- 31 Clause 29: Section 91B amended (Ways in which warning notice or driver licence stop order or details of related fines must be served)
Clause 36: Section 96A amended (Impoundment of vehicle used in transport service)
Clause 46: Section 139 amended (Issue of infringement notice)
Clause 57: Section 210 amended (How notices and requests are given, served, or made)

Transporting New Zealand supports Clause 29 (and similar Clauses 36, 46 and 57) which provides for an additional way to deliver warning notices or driver licence stop orders (by electronic notification) – if a person has agreed to be notified of electronic service in that way. The clauses also amend the Act such that notifications sent electronically are deemed to have been delivered. However, if persons have elected email as this method, the onus is on them to maintain the electronic address, or notify NZTA if it changes. Therefore, we recommend the latter amendments (new sections 91B(5), 139(3)(d) and 210(3)(c)) are revised so that the notification is only deemed to have been served if a “delivered” email receipt is received (where served by email).

32 Clause 51: Section 168A amended (Agency may declare that vehicle is mobility device or is not motor vehicle)

Transporting New Zealand does not consider Clause 51 should proceed without complementary policy measures to improve the safety of e-mobility users. We are concerned this proposal will enable ever more powerful vehicles to be declared not to be motor vehicles, and that this will inevitably have a detrimental impact on road safety, primarily at the cost to e-mobility users and pedestrians. We do however support the Act providing clarity on the process to declare vehicles not to be motor vehicles, along with the inclusion of a formula (new s168A(4A)), and the requirement for NZTA to consult on and publish its declaration proposals and seek feedback.

Essentially this amendment will legalise what is currently happening with higher-powered e-scooters and e-bikes not being registered (and unable to comply in any case), but simply increasing the wattage threshold for a vehicle not to be a motor vehicle is not the answer. We receive complaints from members about near misses between truck drivers and e-mobility users, which is not helped by the fact they don't have front or rear lights to make them more visible. Accidents involving e-mobility vehicles have been on the rise and this proposal will only exacerbate this.

Transporting New Zealand recommends other policy measures need to be adopted in order to improve the safety of e-mobility users before this amendment can proceed. These include amending rules so that e-mobility users can use cycle lanes (and they and cyclists also be required to use them where available), to reduce conflict with larger vehicles. They should also contribute directly to ACC by imposing a one-off levy at the point of import, and the devices should be required to have speed limits set at the factory, with certification provided by the importers before they can be sold.

33 Clause 52: Section 198 amended (Inspections and audits)

Transporting New Zealand supports Clause 52 which will give NZTA the power to inspect and audit companies that purport to operate a transport service but in fact do not have a TSL. It is anomalous that this power is currently only limited to investigating TSL holders. But ultimately, upon identifying such businesses, NZTA should have the ability to close them down until they obtain a TSL.

Part 3: Amendments to the Land Transport Management Act 2003

34 Clause 63: Section 52 amended (Who is liable to pay toll)

As noted above, Transporting New Zealand also supports Clause 63 which enables electronic notification of toll notices (if the person has agreed to be notified that way), but with the same caveat in that new section 52(3C) also be revised so that an email notification is only deemed to have been served if a "delivered" email receipt is received.

Part 6: Amendments to the Road User Charges Act 2012

35 Clause 115: Schedule 2 amended

Similarly to above, clause 115 is supported for adding a new means of serving RUC notices, but again, these should only deem to have been served via email if a “delivered” email receipt is received (amended Schedule 2, clause 2(4)).

ENDS