

Regulatory Impact Statement: Land Transport (Speed Limits Validation) Bill

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs.

It provides an analysis of options to validate speed limits set by bylaws by road controlling authorities (RCAs¹).

The analysis compares the risks associated with the uncertainty of having possibly invalid speed limits on some roads, with the certainty arising from clarifying that all speed limit bylaws are valid. It concludes that using legislation to validate all speed limit bylaws is the appropriate option. It would not be possible to achieve the objective of providing certainty for road users and road safety without legislative change.

The proposals have been prepared without precise information about how many speed limit bylaws might be invalid, although it is accepted that a number could be. In addition, in order to reduce road safety risks from motorists deliberately ignoring speed limits they suspected may be invalid, discussion on the issue and possible solutions was deliberately restricted to central government departments and officials.

Despite this limitation, in developing the regulatory response proposed, there is little likelihood that the legislative changes considered necessary will make the current situation worse.

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¹ Road controlling authorities are primarily territorial authorities in respect of local roads, the New Zealand Transport Agency (NZTA) in respect of State Highways, Airport authorities and relevant Ministers in respect of roads on Crown land (for example, Defence, Corrections and Conservation land).

Executive summary

1. Approval is sought for the urgent introduction and enactment of the Land Transport (Speed Limits Validation) Bill (the Bill).
2. The proposed Bill is required to remove uncertainty concerning the validity of speed limits set by bylaws by road controlling authorities (RCAs²). This includes speed limits relating to State Highways and local roads.
3. The possible invalidity of speed limits has significant legal, financial and reputational risks to the Crown, in particular the New Zealand Police (NZ Police).
4. Uncertainty concerning the validity of speed limit bylaws appears to result from confusion following significant changes to the speed limit framework in 2003 and 2011.
5. The issue was discovered after a council advised NZ Police that its speed limit bylaw may have expired. A desktop analysis indicates that up to 25 councils may have similar issues.
6. Further investigation has revealed significant uncertainty about the legislative authority to make speed limit bylaws and the processes for doing so.
7. Preliminary Crown Law advice supports urgent retrospective legislation to confirm the validity of speed limits. The proposed Bill would apply retrospectively and provide a clear mechanism and process for making speed bylaws to ensure similar issues will not occur in the future.
8. The intention is to pass the proposed Bill under urgency.

Status quo and problem definition

Background

9. Speed limits provide road users with a clear message as to a road's maximum safe speed. Speed limits compliance is an important road safety-promoting role for NZ Police. The Land Transport Rule: Setting of Speed Limits 2003 (the Speed Limits Rule), sets a default speed limit of 100km/h for all roads unless this has been reduced by the relevant RCA.
10. There is a RCA for every road. The RCA determines the road's speed limit using the Speed Limits Rule. If the RCA is a territorial authority, the New Zealand Transport Agency (NZTA), or an Airport Authority, it sets the speed limit using its bylaw-making powers.

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Initial problem

11. On 27 May 2015, a council advised NZ Police that its speed limit bylaw appeared to have been inadvertently revoked in 2012 under the Local Government Act 2002 (LGA02) because it had not been reviewed as required.
12. Sections 158 and 159 of the LGA02 state that bylaws made under the LGA02 must be first reviewed after five years, then every 10 years thereafter. If they are not reviewed within the specified time, the bylaw is automatically revoked two years after the date it is due to be reviewed (under section 160A).
13. Preliminary Crown Law advice indicates that all speed limit infringement notices issued relying on that council's bylaw since 2012 (and any consequential actions such as the issuance of demerit points etc.) may be invalid.
14. A desktop analysis by the Department of Internal Affairs has been unable to confirm that current territorial authority speed limit bylaws have been reviewed as required in 12 cases. Up to another 12 councils may have failed to meet review deadlines in the past but have since taken corrective action.

Underlying problem

15. While investigating the initial problem above, it emerged that there has been considerable confusion about the legislative framework for setting speed limits by bylaw (including those for State Highways as well as local roads), following significant changes to land transport legislation that took effect from 5 April 2004. This placed greater responsibility on RCAs, in particular territorial authorities, for managing speed limits on roads under their control.
16. Territorial authorities already had general bylaw making powers for the purposes of regulating roads (under section 684 of the Local Government Act 1974) and for protecting the public from nuisance, protecting, promoting and maintaining public health and safety, and minimising the potential for offensive behaviour in public places (under section 145 of the LGA02).
17. In 2003 when the Speed Limits Rule was being developed, territorial authorities expressed a preference for verifying existing speed limits and creating new ones using local government legislation. Hence transport legislation only provided a specific power to Ministers of the Crown. The Rule assumed that the LGA02 would be used by RCAs for setting bylaws.
18. Subsequently, by 2007 uncertainty had arisen concerning the extent to which territorial authorities could make use of the provisions of LGA02 to create speed limits. Recent research has revealed judicial decisions that cast doubt on the use of the Local Government Act 1974 provisions to set a speed limit.
19. In 2007, after a review, Cabinet agreed to consolidate traffic bylaw making powers from both the Transport Act 1962 and Local Government Act 1974 into the Land

Transport Act 1998. This Policy was not implemented at the time, but was confirmed by the new Government in 2010 [CAB Min (10) 21/1C and CAB Min (10) 7/8 refers].

20. When legislation was drafted as a result, it did not appear to be realised that section 684 of the Local Government Act 1974 was being relied on by some RCAs to create speed limits. The ensuing legislation resulted in a conflict between the general section 684 power and the specific power, limited to Ministers, coming over from section 72(j) of the Transport Act 1962. The specific power overrides any general power.
21. Therefore, a RCA could not continue to depend on section 684, or its Land Transport Act substitute provision, for the purposes of making speed limit bylaws. Consequently, there is considerable uncertainty concerning the validity of all speed limits set by RCA bylaws, stemming from both the statutory authority relied on and the processes under which they were made.

Objectives

22. The objective is to ensure the historical and ongoing validity of speed limits, validate past speed limit enforcement actions and preserve public safety by enabling ongoing enforcement.

Options and impact analysis

23. There are six options:
 - a. Cease enforcing speed limit bylaws that are known to have expired, pending RCAs setting them validly.
 - b. Continue enforcing uncertain speed limits until either a Court determines them to be invalid or RCAs are given and use new bylaw powers which could be included in forthcoming Transport legislation (not expected until late 2016).
 - c. Either (a) or (b) but expedite new Transport legislation. This would follow a normal legislation process and not be retrospective.
 - d. Option (c) but allowing for retrospective validation.
 - e. Introduce urgent retrospective validating legislation, without new bylaw powers.
 - f. Introduce urgent retrospective validating legislation with new bylaw powers **[preferred]**.
24. The following risks result from public knowledge about the possible invalidity occurring before, or well before, valid speed limits are put in place. The degree of risk/harm is proportional to length of time that the public uncertainty/invalidity persists. Options (a) to (d) are most exposed to these risks:

- a. Risk to road safety:
 - i. if motorists perceive that speed limits do not apply or are unenforceable, some motorists are likely to deliberately speed, putting themselves and other road users at risk.
- b. Risks to individuals rights:
 - ii. where NZ Police may have enforced invalid speed limits, a person might have received enough demerit points to lose their driver licence. A person might also lose their employment, be disqualified from driving, and/or be imprisoned if they continue to drive while disqualified (while the last scenario is unlikely, it is possible).
- c. Financial risks to the Crown:
 - iii. if NZ Police is required to undo, to the extent possible, the consequences of the issuing of invalid speed notices, this will result in major expense for NZ Police and possibly for the Courts; and
 - iv. individuals may seek compensation for loss of employment, disqualification or imprisonment.
- d. Reputational risk to NZ Police:
 - v. it is likely that the media will criticise NZ Police for enforcing invalid bylaws.

25. Options (e) and (f) largely mitigate the above risks, but have the disadvantages associated with urgent/retrospective legislation. Generally, retrospective legislation is not advised, however in this case, it is considered justified on the following grounds (based on Legislation Advisory Committee guidelines):

- a. “it validates matters that were generally understood and intended to be lawful, but were in fact unlawful as a result of a technical error;” or
- b. “it address a matter that is essential to public safety.”

Consultation

26. Because of the need to mitigate the risks outlined in paragraph 24, consultation on this matter was minimised. The Department of Internal Affairs and the Ministry of Transport have consulted with NZ Police, as well as Crown Law, the Parliamentary Counsel Office and the Ministry of Justice. The Department of the Prime Minister and Cabinet has been informed.

Conclusions and recommendations

27. The preferred option (**option f**) is to introduce urgent validating retrospective legislation by way of a Land Transport (Speed Limits Validation) Bill, which will:
- a. Validate speed limits created since 2004, regardless of whether they may have been set under potentially invalid bylaws;
 - b. Validate enforcement action in relation to speed limits set by bylaws since 2004;
 - c. Ensure there is a clear power for territorial authorities to make a speed limit bylaw; and
 - d. Clarify the procedural requirements for territorial authorities to make a speed limit bylaw.

Implementation plan, monitoring, evaluation and review

28. It will be important that the legislation is passed under urgency, without a Select Committee process, and preferably in one sitting. This will need to be undertaken at the earliest opportunity to avoid precipitating a rush of challenges about speeding infringement notices and prosecutions. Urgency is also required to protect the public as some motorists are likely to react to the knowledge that speed limits, other than 100km/h speed limits, may be unenforceable and deliberately speed, putting themselves and other road users at risk.
29. The intention is to pass the Bill under urgency. The legislation will be enacted and implemented immediately.
30. The Department of Internal Affairs and the Ministry of Transport will work together to explain the legislation to RCAs and ensure they are aware what the new legislative authority is for speed limit bylaws and the processes for making them.
31. The Ministry of Transport will review legislation around use of the Land Transport Act speed limit bylaw-making power by RCAs, including territorial authorities and airport authorities. These are subject to specific procedural requirements and further work may be needed to ensure that the relevant legislation is coherent and aligns with the Government's previous policy decisions to locate all traffic related bylaw making requirements in land transport legislation.
32. Although the validating legislation removes the requirement for review of speed limit bylaws via the disconnect from the provisions of the LGA02, the Department of Internal Affairs will work with the local government sector to improve legislative compliance including active stewardship of bylaws.