

**In Confidence**

Office of the Minister of Transport

Cabinet Legislation Committee

**Temporary extension of driver licensing and vehicle certification documents - Proposed regulatory amendments and approach to re-compliance**

**Proposal**

- 1 This paper:
  - 1.1 seeks agreement to regulatory amendments specifying when temporarily extended vehicle certification documents and driver licensing documents must be renewed
  - 1.2 recommends that the Cabinet Legislation Committee authorise the submission to Executive Council of the Land Transport Rule: COVID-19 Response (No 1) Amendment 2020 (Amendment Rule) to:
    - 1.2.1 remove Waka Kotahi NZ Transport Agency's (Waka Kotahi's) delegated authority to set statutory dates for renewal
    - 1.2.2 confirm 10 October 2020 as the cut-off date by which all expired documents affected by the Land Transport Rule – COVID-19 Response (No 1) (the Rule) must be renewed.

**Executive Summary**

- 2 On 7 April 2020, the COVID-19 Ministerial Group (CVD) with Power to Act agreed to legislative changes which temporarily extended some expired vehicle certification and driver licensing documents for a period of up to six months. Within that six month period, Waka Kotahi could set earlier statutory dates for renewing expired documents.
- 3 The Regulations Review Committee subsequently raised concerns about the lack of certainty created by the Rule. To address these concerns, I am seeking Cabinet's authorisation to submit to the Executive Council the Amendment Rule to:
  - 3.1 remove Waka Kotahi's delegated authority to set dates
  - 3.2 confirm 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed.
- 4 This is the most straightforward option and will ensure:

- 4.1 public communications remain consistent with previous messaging, therefore minimising the likelihood of creating confusion if dates were subsequently changed
  - 4.2 the financial burden some people may already be experiencing as a result of COVID-19 is minimised.
- 5 I also considered setting earlier statutory dates for renewal, as this could lead to fewer vehicles and drivers on the road that are uncertified. However, on balance I do not consider setting earlier dates to be necessary for the following reasons:
- 5.1 The proportion of crashes in which a warrantable vehicle fault was a contributing factor has historically been small (and will likely remain small). The safety benefits of setting earlier dates are therefore likely to be small.
  - 5.2 The vast majority of people are continuing to get documents renewed on time even with the temporary extension in place. As at 22 June 2020, 71 percent of vehicles due for inspection have already been inspected, and demand for inspections has remained high since Alert Level (AL) 3. Driver licence renewals during May and June 2020 are close to typical application volumes in preceding years.
  - 5.3 Modelling from Waka Kotahi suggests that the expected differences in the demand for renewal month-to-month does not vary much between setting earlier statutory dates and retaining the six-month extension.
- 6 Once in force, the Amendment Rule will continue to be supported by a strong communications approach from Waka Kotahi:
- 6.1 encouraging vehicle owners to renew documents as soon as possible
  - 6.2 emphasising the importance of complying with the existing and separate legal requirements to keep vehicles up to a safe standard
  - 6.3 complying with driver licence conditions (which will continue to be enforced).

**In April 2020, legislation was introduced to temporarily extend some expired transport documents**

- 7 On 7 April 2020, in response to New Zealand entering AL4, the CVD agreed to a temporary extension of some expired transport documents through:
- 7.1 the Land Transport Rule – COVID-19 Response (No 1)
  - 7.2 the Land Transport (Motor Vehicle Registration and Licensing) (COVID-19—Extension of Duration of Motor Vehicle Licences) Amendment Regulations 2020 (the Amendment Regulations).

- 8 Under the Rule, the following documents were deemed valid from 10 April 2020 for a period of up to six months:
- 8.1 Warrants of Fitness (WoFs) and Certificates of Fitness (CoFs), and driver licences that expired on or after 1 January 2020
  - 8.2 other vehicle certifications which expired on or after 1 January 2020 (including alternative fuel inspection certificates, permits authorising use of vehicles with conditions, and heavy vehicle specialist certifications)
  - 8.3 driver licence classes that expired on or after 1 January 2020 and endorsements that expired on or after 1 March 2020 (including for drivers of small and large passenger services, and dangerous goods endorsements held by some truck drivers).
- 9 Under the Amendment Regulations, the requirement to display valid vehicle licences (commonly known as “rego”) was also temporarily suspended, if the vehicle licence expired on or after 1 January 2020.

**The Regulations Review Committee raised concerns that the flexibility in the legislation creates uncertainty**

- 10 At the time the legislation was introduced, there was considerable uncertainty around how long New Zealand would remain in higher Alert Levels, and what restrictions would be in place. This is why the legislation provided a blanket temporary extension of up to six months.
- 11 Within that six month period, Waka Kotahi could set earlier statutory dates for renewing expired documents, taking into consideration the status of any regional or national COVID-19 restrictions. This was intended to provide for an orderly renewal of documents once New Zealand moved into lower Alert Levels.
- 12 In May 2020, the Regulations Review Committee raised concerns that the flexibility in the legislation creates uncertainty. They also considered that this was an unauthorised sub-delegation of power to Waka Kotahi. To address these concerns, I intend to amend the Rule to provide certainty around dates for renewal, and to remove Waka Kotahi’s role in setting dates.

**The vast majority of people have continued to renew their documents, even with the temporary extension in place**

- 13 Under AL4, vehicle inspection sites were open on a restricted basis to repair or maintain a vehicle and issue a new WoF or CoF for essential services. The inability for inspections to be operating at full capacity during this time created a backlog of documents that have expired.
- 14 Since coming into effect, Waka Kotahi has communicated the Rule extensions to the public. It has also provided guidance on the application of the Rule. This includes:

- 14.1 encouraging vehicle owners to renew documents as soon as practicable (in spite of the extension)
  - 14.2 emphasising the importance of complying with other existing legislative requirements (eg ensuring that vehicles with expired WoFs/CoFs continue to be maintained to a safe standard at all times).
- 16 This approach is proving to be effective as 71 percent of vehicles due for an inspection between 1 January 2020 and 22 June 2020 have already been inspected. This indicates that many vehicle operators and owners are continuing to seek certifications on time – even with the temporary extension in place. Figures for June 2020 have shown that the rate of inspections continues to remain high. For example, the rate of vehicle inspections in the week ending 22 June 2020 exceeded the weekly average in November 2019 (the busiest month in 2019) by 8 percent.
- 15 Based on historical data, variations in monthly inspection rates can differ by over 120,000 inspections month-to-month. This illustrates that there is ample capacity in the system to deal with spikes in demand, and that it will take a relatively short time to resolve any spikes. Critically, the current rate of high demand reduces the likelihood of a sudden increase in demand of vehicle inspections later in the year once expired documents must be renewed.
- 16 The data above has also been shared with the industry, which has alleviated some of their concerns about a surge in demand later in the year.
- 17 Waka Kotahi's data shows that the renewal rate for CoFs is not occurring as quickly as the rate of renewals for WoFs, particularly for CoF-A<sup>1</sup> vehicles which are primarily issued to rental vehicles and taxis. This is not surprising given the impact COVID-19 has had on the tourism sector and on people's reluctance to use passenger service vehicles to travel.

**The ability to renew driver licences and endorsements has resumed, and the rate of voluntary renewals are high despite the temporary extension**

- 18 At the beginning of AL4, data indicated that around 40,000 driver licences and 12,500 endorsements were expected to expire between 24 March 2020 and 17 May 2020.
- 19 Under AL4 and AL3, no face-to-face driver licensing or driver testing transactions were able to be provided by Waka Kotahi's two service delivery providers ('driver licensing agents') – New Zealand Automobile Association and Vehicle Testing New Zealand Limited. Due to the requirement for photo and signature capture, eyesight checks and medical certificates, as well as tests, in-person sessions are the only way available for customers to complete their applications.
- 20 Driver licensing agents resumed services at AL2, and the available data indicates that the rate of voluntary renewals are high, even with the temporary extension in place. Driver licence renewals during May 2020 were close to

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<sup>1</sup> CoF-A are to all passenger service vehicles (ie taxis, rideshares, and shuttles).

typical application volumes in May 2018 and May 2019, and driver licensing agents have advised that driver licence application demand is high in general (based on their queue management data).

- 21 Encouraging licence holders to renew documents despite the extension has been successful as it has resulted in high rates of voluntary renewals.

**I now propose to confirm 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed**

- 22 This means that all documents<sup>2</sup> that were eligible for the temporary extension will remain valid until 10 October 2020, at which point the extension of their validity ends.
- 23 This amendment would not alter the separate legal requirement that a vehicle must be safe to operate. Drivers will also continue to be expected to be medically fit to drive, comply with relevant restrictions and conditions on their licence and comply with all other road rules. Any licence suspensions and disqualifications will also continue to apply. These requirements will be enforced by NZ Police.
- 24 This amendment would also not alter vehicle insurance conditions. The Insurance Council of New Zealand is advising people to get their vehicle certification documents renewed as soon as possible, as some insurance companies have said they might not accept insurance claims if a vehicle does not have an up-to-date WoF or CoF. This is more likely to be the case if the cause of the crash was something that would have caused a vehicle to fail a WoF or CoF (eg worn out brake pads).

**I considered a range of other legislative options for ensuring that remaining documents are renewed**

- 25 I am aware that there could be safety benefits to requiring documents to be renewed earlier than 10 October 2020. NZ Police supports establishing an earlier renewal date for this reason. This approach is also supported by some parts of the vehicle inspection industry, due to the greater certainty of workflow an earlier date would potentially provide.
- 26 One way of setting an earlier date would be to set an eligibility cut-off date for the extension of documents (eg 31 July 2020). This would mean that any documents expiring after the cut-off date would not be deemed as current and would not be eligible for the temporary extension after that date.
- 27 However, on balance I do not consider setting earlier dates to be necessary as:
- 27.1 the proportion of crashes in which a warrantable vehicle fault was a contributing factor has historically been small (and will likely remain

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<sup>2</sup> This includes vehicle certification documents, driver licences and endorsements.

small) and is difficult to estimate in practice. The safety benefits of setting earlier dates are therefore likely to be small

27.2 the vast majority of people are continuing to get documents renewed on time even with the temporary extension in place

27.3 modelling from Waka Kotahi suggests that the expected differences in the demand for renewal month-to-month does not vary much between setting earlier statutory dates and retaining the six-month extension (refer to figures 1 and 2 below).

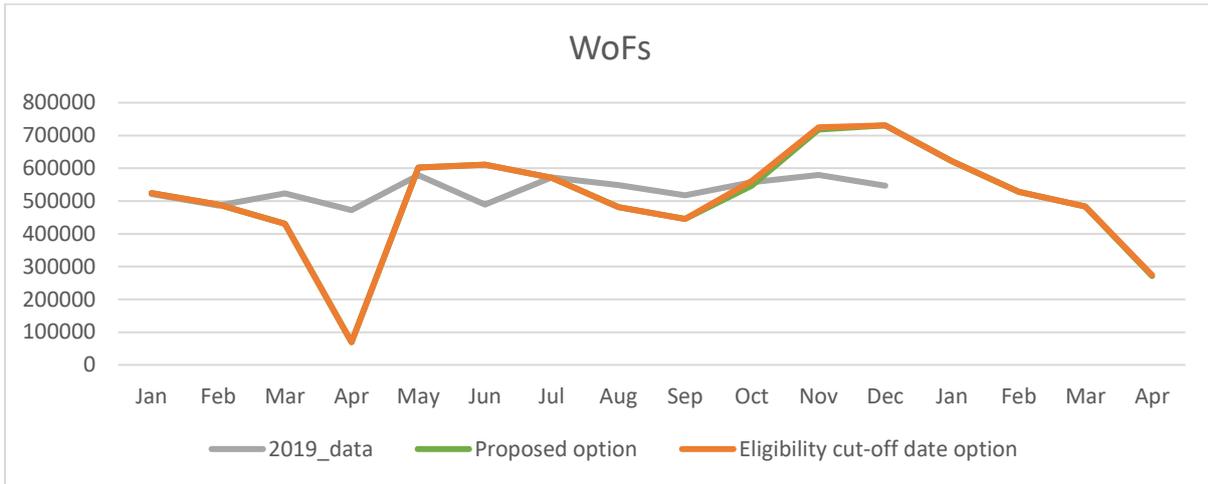


Figure 1: Actual and forecasted numbers of WoF inspections per month under the proposed option and the option of setting an eligibility cut-off date of 31 July 2020

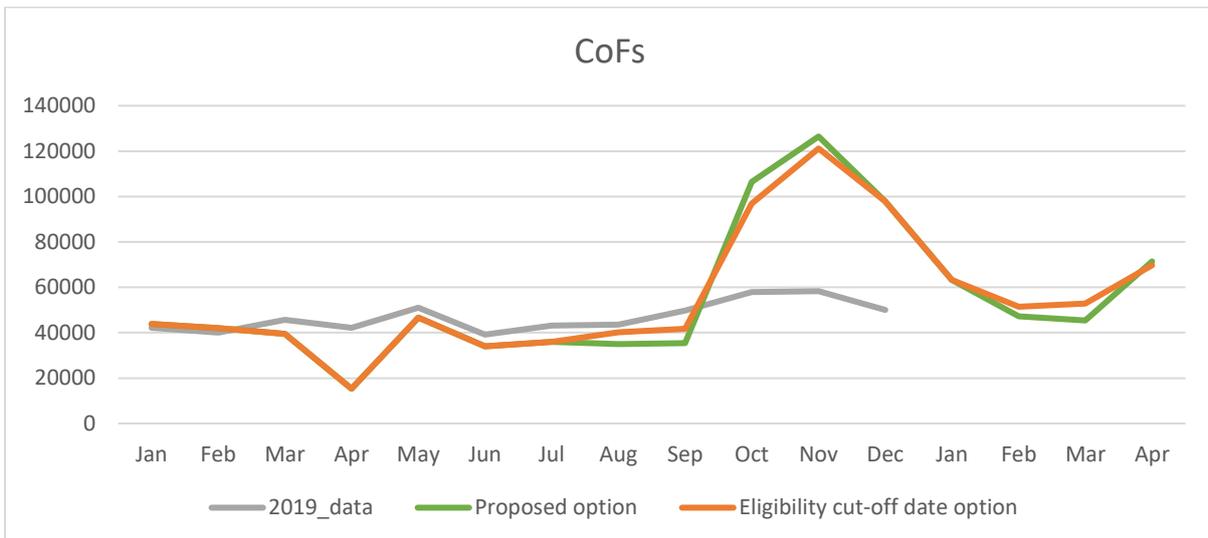


Figure 2: Actual and forecasted numbers of CoF inspections per month under the proposed option and the option of setting an eligibility cut-off date of 31 July 2020

- 28 I also considered other options, such as setting staggered dates for renewal. However, I do not support a staggered approach because it adds greater complexity, is harder to communicate, and does not smooth the demand curves any more than the proposed option, or setting a single eligibility cut-off date. Targeted engagement also indicates that the vehicle inspection industry does not support a staggered approach.
- 29 Confirming the existing cut-off date is the most straightforward option, and will ensure:
- 29.1 public communications remain consistent with previous messaging, therefore minimising the likelihood of creating confusion
  - 29.2 the benefits conferred to the public continue to be in place, and everyone who was originally eligible for the temporary extension continues to remain eligible
  - 29.3 the financial burden some people may already be experiencing as a result of COVID-19 is minimised.

### **Financial Implications**

- 30 There are no additional financial implications to this proposal for the Crown.
- 31 Because vehicle licensing is continuous<sup>3</sup>, the licence expiry date will not be altered by the extension, even if the vehicle is not being used between now and 10 October 2020.
- 32 This means owners will still need to pay for their licence including for the period of the extension, but do not need make the payment (or display an up-to-date label) until after 10 October 2020.
- 33 The proposal will lead to deferred collection of land transport revenue until after 10 October 2020, but there will not be an overall drop in revenue over the longer term. This situation will also affect the collection of ACC levies, which make up the bulk of the costs of a vehicle licence (rego).
- 34 Both Waka Kotahi and ACC are aware of the potential for delayed revenue and do not anticipate any concerns with cash flow under current expectations.

### **Legislative Implications**

- 35 Under section 152A of the Land Transport Act 1998 (LTA), ordinary land transport rules may be made, amended or revoked by the Governor-General by Order in Council, on the recommendation of the Minister of Transport.

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<sup>3</sup> Continuous licensing means that vehicles are licensed from and to a specific date, usually annual. These dates remain constant regardless of when the fee is paid.

### **Timing and the 28-day rule**

- 36 The Amendment Rule will come into force on 31 August 2020 which, assuming they are made on or before 3 August 2020, will be at least 28 days after notification in the *New Zealand Gazette*.

### **Compliance**

- 37 The Amendment Rule complies with:
- 37.1 the principles of the Treaty of Waitangi
  - 37.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
  - 37.3 the principles and guidelines set out in the Privacy Act 1993
  - 37.4 relevant international standards and obligations
  - 37.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 38 Section 152A(2) of the LTA requires me to have regard to the criteria specified in section 164(2) of the LTA before making a recommendation that the Governor-General amend a rule under section 152A(1). I can confirm that I have had regard to, and have given such weight as I considered appropriate to, that criteria in recommending that the Governor-General make the Amendment Rule.

### **Regulations Review Committee**

- 39 Under section 152A(6) of the LTA, ordinary rules are disallowable instruments for the purpose of the Legislation Act 2012 and, under section 41 of that Act, must be laid before the House of Representatives not later than the sixteenth sitting day after they are made.
- 40 I have not referred a draft of the Amendment Rule to the Regulations Review Committee under Standing Order 318(2).
- 41 There are no substantial grounds for the Regulations Review Committee to draw the Amendment Rule to the attention of the House of Representative under Standing Order 319.

### **Certification by Chief Legal Adviser**

- 42 The Amendment Rule was drafted by Waka Kotahi in consultation with the Ministry of Transport. The Chief Legal Adviser, Ministry of Transport, has certified the Rule as being in order for submission to Executive Council.

## Impact Analysis

### *Regulatory Impact Statement*

- 43 The Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement because they are intended to manage the direct actions taken to protect the public in response to the declared emergency event of the COVID-19 outbreak. The Amendment Rule is required urgently to implement changes recommended by the Regulations Review Committee, and to clarify the end of the temporary extension of licencing and certification documents.

### *Population Implications*

- 44 There are no specific population implications from the proposal in this paper.

### *Human Rights*

- 45 The proposal in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Consultation**

- 46 Waka Kotahi and the Treasury, NZ Police, Ministry of Business Innovation and Employment (Accident Compensation Policy) and ACC were consulted in the development of the paper. The Department of Prime Minister and Cabinet has been informed.
- 47 NZ Police understands the rationale for proposing 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed. However, it is concerned that vehicle defects can sometimes be a contributing factor in road incidents, particularly with heavy commercial vehicles.
- 48 There was no public consultation on any aspects, but the proposal was discussed with the New Zealand Automobile Association, Vehicle Testing NZ, Vehicle Inspection NZ and the Motor Trade Association. All groups preferred an alternative option but are aware that the proposed changes were being considered.

### **Communications and Publicity**

- 49 The Amendment Rule will be communicated directly to the public, NZ Police and Local Government New Zealand. Waka Kotahi will publish the Amendment Rule on its website and provide guidance on the application of the Rule.
- 50 Waka Kotahi will also ensure its communications on the changes emphasise the importance of complying with driver licence conditions throughout the temporary extension period, and the need to keep vehicles up to standard, including through its existing vehicle safety check material.

51 The Amendment Rule will be notified in the *New Zealand Gazette*.

**Proactive Release**

52 I intend to proactively release this paper and associated papers within 30 days of the Cabinet Legislation Committee decision.

## Recommendations

The Minister of Transport recommends that the Cabinet Legislation Committee:

- 1 **note** that on 7 April 2020, the COVID-19 Ministerial Group agreed to a temporary extension of some expired transport documents through:
  - 1.1 the Land Transport Rule – COVID-19 Response (No 1) (the Rule)
  - 1.2 the Land Transport (Motor Vehicle Registration and Licensing) (COVID-19—Extension of Duration of Motor Vehicle Licences) Amendment Regulations 2020 (the Amendment Regulations)
- 2 **note** that under the Rule, the following documents were deemed valid from 10 April 2020 for a period of up to six months:
  - 2.1 Warrants of Fitness and Certificates of Fitness, and driver licences that expired on or after 1 January 2020
  - 2.2 other vehicle certifications which expired on or after 1 January 2020 (including alternative fuel inspection certificates, permits authorising use of vehicles with conditions, and heavy vehicle specialist certifications)
  - 2.3 driver licences that expired on or after 1 January 2020 and endorsements that expired on or after 1 March 2020 (including for drivers of small and large passenger services, and dangerous goods endorsements held by some truck drivers)
- 3 **note** that under the Amendment Regulations, the requirement to display valid vehicle licences was also temporarily suspended, if the vehicle licence expired on or after 1 January 2020
- 4 **note** that in May 2020, the Regulations Review Committee raised concerns that the flexibility in the legislation creates uncertainty, and is an unauthorised sub-delegation of power to Waka Kotahi NZ Transport Agency (Waka Kotahi)
- 5 **note** that to address these concerns, the Minister of Transport agreed to amend the Rule to provide certainty around dates for re-compliance, and to remove Waka Kotahi's role in setting dates
- 6 **note** that of the vehicles due for an inspection between 1 January and 22 June 2020, 71 percent had been inspected by 22 June 2020, and the rate of delivery in the week ending 22 June 2020 exceeds the weekly average of the busiest month in 2019 by 8 percent
- 7 **note** that Waka Kotahi and NZ Police will continue monitor the outcomes of these extensions to assess whether road safety outcomes are affected
- 8 **agree** to make amendments to the Rule via Order in Council to:
  - 8.1 remove Waka Kotahi's delegated authority to set dates

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- 8.2 confirm 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed

Land Transport Rule: COVID-19 Response (No 1) Amendment 2020

- 9 **note** that the Land Transport Rule: COVID-19 Response (No 1) Amendment 2020 (the Amendment Rule) gives effect to recommendation 8
- 10 **note** that under section 152A of the Land Transport Act 1998 (LTA) ordinary land transport rules may be made, amended or revoked by the Governor-General by Order in Council, on the recommendation of the Minister of Transport
- 11 **note** that section 152A(2) of the LTA requires that the responsible Minister have regard to the criteria specified in section 164(2) of that Act before recommending the amendment to a rule, by Order in Council, under section 152A(1)
- 12 **note** the advice of the Minister of Transport that this requirement has been met
- 13 **authorise** the submission of the Amendment Rule to the Executive Council.

Authorised for lodgement

Hon Phil Twyford

Minister of Transport