



REGULATIONS REVIEW COMMITTEE

1 May 2020

Peter Mersi
Chief Executive
Ministry of Transport – Te Manatū Waka
PO Box 3175
Wellington 6011

Dear Mr Mersi

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

Under Standing Order 318(1), all regulations are subject to examination by Parliament's Regulations Review Committee. As part of the committee's scrutiny of the use of delegated legislation to respond to the current epidemic, we examined the above transport rule at our meeting on 29 April 2020.

The committee has two specific concerns about this rule that we wish to draw to your attention.

This rule provides that driver licences, vehicle certifications, endorsements, and driver identification cards that expire from 1 January 2020 until a "cut-off date" are valid until the "new expiry date". The rule provides for both the "cut-off date" and "new expiry date" to be determined by NZTA (within certain specified limitations). This rule came into force on 10 April and, at the time of drafting, the NZTA has not determined a cut-off date or new expiry date.

We are concerned that, by leaving the cut-off date and expiry date to be determined, the effect of this legislation is uncertain. This is an unusual mechanism for dealing with the uncertainty of lockdown. We note that the same problem in respect of motor vehicle licences was dealt with in recent regulations by providing that licences expiring between commencement of the regulations and six months later have effect until six months after commencement. That mechanism is preferable because it provides certainty.

Further, we consider that this rule is an unauthorised sub-delegation of the power to make secondary legislation. The rule describes itself as being made under section 152, 152A, 154, and 158 of the Land Transport Act 1998. While the rule does not appear to rely on section

159 of the Act (Rules concerning land transport documents), we note that section 159(4) states that the rules may provide for the issue, expiry, suspension, and revocation of land transport documents. It is clear from this section that Parliament's intention is that the rules would determine the expiry date, not that the expiry date should be determined by the NZTA, as is provided for in the rule.

The general principle is that a power to make delegated legislation cannot be sub-delegated unless the empowering provision expressly permits that. While we acknowledge that section 160(4)(a) authorises an ordinary rule to provide for a matter to be determined by NZTA, we do not read this as authorising sub-delegation of the power to make secondary legislation itself, rather, that ordinary rules may provide for NZTA to make determinations in respect of individual cases. We consider that the Act does not permit sub-delegation as it has been used in the case of this rule.

We are concerned that the matters outlined above mean that the rule is in breach of Standing Order 319(2)(a)—that the regulation is not in accordance with the objects and intentions of the empowering Act.

Conclusion

We suggest that the Ministry of Transport consider our concerns and let the committee know how it will address these concerns.

Your response

Please email your response to the Clerk of the Committee, Tara Elmes at regulations.review@parliament.govt.nz by Friday 15 May. If meeting this timeframe will not be possible due to the impact on the Ministry of the outbreak of COVID-19, please let the Clerk of the Committee know.

Yours sincerely



Alastair Scott
Chairperson

Regulations Review Committee