SUBMISSION TO THE MINISTRY OF TRANSPORT

ON THE DISCUSSION PAPER

ROAD MANAGEMENT: OPTIONS FOR REFORM

NEW ZEALAND BUSINESS ROUNDTABLE
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CONTENTS

Submission to Ministry of Transport on *Road Management: Options for Reform*

1 Introduction

This submission on *Road Management: Options for Reform* (the Discussion Document) is presented by the New Zealand Business Roundtable (NZBR). The NZBR is an organisation of chief executives of major New Zealand business firms, whose purpose is to contribute to the development of sound public policies reflecting overall national interests.

The NZBR welcomes the Ministry of Transport's Discussion Document and the opportunity to comment on regulatory options for road management. The Discussion Document focuses on options for managing road safety, including the appropriate rights of road owners to control access to their assets. It does not consider whether regulation is required to constrain market power in the roading industry.

The NZBR supports the Ministry's efforts to simplify existing road management legislation and to develop a neutral regime which does not discriminate between public and private sector providers. We also support the Ministry's focus on evaluating the costs and benefits of safety initiatives. We agree that it is timely to review the law governing road management as part of the broader reform of institutional arrangements in the roading industry.

The larger issues of road pricing, industry structure and funding are the subject of the recently released discussion document *Options for the Future: Land Transport Pricing Study*. The NZBR strongly supports moves toward commercialisation of the road network and increased private sector participation. The appropriate form of road management regulation will depend on the outcome of this reform process.

The regulatory regime should be flexible enough to accommodate a more commercialised industry structure as well as the current one in which all providers are government agencies, face minimal competition, and derive revenue from administered levies.

The rest of this submission is structured as follows. Sections 2 to 4 analyse the optimal regulatory framework in a commercialised roading industry. In Section 2, we briefly outline the framework we use to consider possible justifications for regulating road safety. Section 3 examines whether commercialised operators would have incentives to provide the level of road quality preferred by road users. We also examine the incentives to provide the optimal road quality under the current institutional arrangements. Section 4 examines whether there should be government regulation of road user behaviour. We comment on the options for reform presented in the Ministry's report in Section 5. In Section 6, some of the questions relating to specific powers and duties of road controlling authorities are examined. Section 7 provides concluding comments.

2 Safety Regulation

In this section we present briefly a framework for reviewing whether regulation is required in the current environment and in a commercialised roading industry. By 'commercialised', we mean that property rights are clearly defined so that road operators can:

- decide how the network assets might be used, and who has access to them;
- establish the mechanism for charging road network users, set the prices for road use, and keep any income derived from the road network, assuming it is technically and economically feasible to charge for road use; and
- sell parts of the road network, retain and use the proceeds from the sale of assets for any purpose, and assign the use of the network to other private individuals or firms.

In a commercial environment, regulation of road safety should only be considered if market failures are identified. Even if there are market failures, regulation itself is costly. It should be imposed only if its benefits outweigh its costs.

In determining whether a market problem warrants a regulatory solution, the constraints of alternative options must be considered. It is not enough to show that market processes may not produce an ideal outcome, since government regulations are inevitably less than perfect. Justifying a particular intervention therefore requires comparing two flawed alternatives. The net effect of regulation can be positive or negative, depending on whether it is likely to improve outcomes in the presence of political forces that influence the design and operation of regulation.

The fact that road accidents occur, due to driver behaviour or road conditions, does not in itself imply market failure. Individuals face risks voluntarily in a wide range of circumstances. Unfavourable outcomes do not necessarily justify government regulation, nor do they justify setting an absolute risk level. As officials acknowledge, the socially optimal level of road accidents is not zero: this would eliminate all driving at high speeds. When assessing how much risk to take, individuals trade off safety, cost, and other benefits such as reduced travel time. The question is whether a commercialised roading market would produce the levels of road safety and quality desired by road users, taking into account all the costs, or whether government regulation could improve outcomes.

The discussion in Sections 3 and 4 considers what regulations would be required in a commercial operating environment, and compares this with the current institutional environment.

3 Road Infrastructure Quality

3.1 Introduction

Responsibility for safety is currently shared by a number of central and local government agencies. As well as community-based development of road safety objectives through the Safety (Administration) Programme, central planning

exercises such as the National Land Transport Strategy and the National Road Safety Plan are undertaken. Accountability for safety outcomes is unclear, as the Ministry acknowledges in Section 2.3 of the Discussion Document.

Complete removal of current road safety regulation, in the absence of structural industry reform, would be unlikely to improve road operators' incentives for safety. Unless the roading industry is restructured into a commercial framework, road operators will have no incentives to discover road users' preferences for different combinations of road price and quality, including behavioural standards and engineering features.

We examine first how, in a commercial framework, market forces deliver safe road infrastructure. We note why these forces will be weaker with the existing institutional arrangements. We then consider possible 'market failures' that might justify government intervention.

3.2 Market Provision

3.2.1 Private Contracting

Safer products usually sell for higher prices. If road owners could charge for road use, they could differentiate roads by the level of quality provided. For example, an investor might build a road designed for high-speed travel using state-of-the-art technical standards. The operator might ban alcohol use by drivers, require evidence of a high level of technical driving ability, and prohibit heavy vehicles. The investor might set a higher charge for the use of such a road than for an alternative road of lower quality. A decision to build the road would be based on the expected costs and revenue from the project. Other operators may choose to provide a lower quality, lower priced road. Road users could make their own decisions based on the road quality they prefer. They will make greater use of those roads that best match their preferences. Producers have incentives to respond to these market signals.

In general, we can expect individuals to make choices on the basis of the costs and benefits of different options (for example, the degree of care taken on the road). This

does not mean that individuals make detailed calculations using complex computational methods every time they make a decision, but that they act *as if* they make such calculations. In the absence of a market failure, i.e. when private costs and benefits approximate the costs and benefits to society, welfare will be greatest when individuals are left to themselves to determine outcomes through private contracting.

Contractual solutions allow for greater flexibility than centralised regulation. Road users have information about their preferences for risk and willingness to pay for road quality that is not available to regulators. Fully commercial road operators would have strong incentives to discover the level of safety or other features of roads which users are prepared to pay for.[1]

In the current environment, road operators do not receive income directly from road users and therefore have relatively weak incentives to respond to road user preferences. Preferences are reflected indirectly through an administrative process rather than directly through a market transaction, weakening the signals received by operators. In addition to contracting for road safety, road users could contract for the assignment of liability for harm caused by roads which did not meet the agreed standards of quality. Assignment of the liability to road operators would provide them with greater incentives to maintain roads, but road user charges would be higher than if the road operator bore no liability for breaches of safety. Road safety regulation is designed to prevent the reassignment of liability to road users. Liability law is of limited applicability in New Zealand in this context, due to the operation of the Accident Rehabilitation and Compensation Insurance Scheme, which limits the rights of individuals to sue for personal injury caused by accident.

3.2.2 Reputational Factors

In a competitive roading industry with repeated interaction between road users and owners, road owners would have strong incentives to provide roads of the standard preferred by users and to develop a reputation for quality. Over time, operators that provided overpriced lower quality roads would lose patronage as road users made

different locational choices and, where available, switched to alternative operators providing higher quality roads for the same price. In a monopoly environment, the incentives to invest in reputation may be weaker. In the current environment, in which operators do not benefit from increased revenue if they invest in road quality, and responsibility for safety is shared between a number of agencies, reputation is unlikely to be an effective mechanism for ensuring that road owners take account of consumers' preferences for lower risk, higher quality roading.

3.2.3 Independent Audits and Certification of Practices/Standards

Private sector monitoring of safety and quality levels is common in a number of markets, including *Consumer* magazine for a range of consumer goods, specialist car magazines, and the use of motel brand names to certify chain members. Consumer groups such as the Automobile Association could monitor road safety performance and provide information to their members. In addition, a road provider may have incentives to contract with an independent agency to audit performance. Third party monitors could provide important constraints in both the commercialised and the current environment. However, in the current environment, the many public sector agencies providing oversight may crowd out private monitoring efforts.

3.3 Possible Market Failures

The Discussion Document does not clearly identify the market failure problems that the regulation is designed to address. Without a clear understanding of the problems, it is difficult to choose a regulatory solution. We consider below potential market problems that might justify regulation.

3.3.1 Market Power

The Report does not discuss the issue of market power in the roading industry and its implications for road pricing and safety. If the roading network were operated commercially, market power could be constrained by competition, but it is likely to remain significant. Inter-modal competition (e.g. rail and air) would constrain the

1. A state-owned enterprise which received funding based on shadow tolling would have some

market power held by operators of intercity highways. In some locations, competing motorways bypassing the existing network might be constructed. The degree of network bypass would depend, among other things, on the constraints of the Resource Management Act. Resource consents may not be granted for projects involving significant duplication of the existing roading network.

For local roads, market power would be a more serious problem since inter-modal competition is limited. Given the investments in suburban development and the lack of long-term contracts protecting those investments, local road operators will have opportunities to increase road charges above the level which would occur in a contestable market.[2]

As well as affecting the price of roading, the extent of market power in a commercialised roading industry may affect the level of road quality selected by road operators. In the extreme case of a monopoly roading operator, where the operator responds to the road safety level preferred by the marginal user, the monopolist may set the wrong level of safety, either too low or too high.[3] However, road user groups such as the Automobile Association which are well organised will monitor safety and lobby for the safety standards preferred by the average Association member. In these circumstances, road operators are likely to be cautious in exercising market power to reduce or increase road quality.

The preferred approach in New Zealand to dealing with market power is to rely on the Commerce Act, and to require disclosure of information. Some industries with natural monopoly characteristics, such as TransPower and the electricity distribution businesses, are subject to price regulation based on the optimised deprival value of their assets. If the roading sector's ownership and funding structures are commercialised, the Commerce Act would apply to road management practices as well as to road pricing and road access.

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incentives to discover road user preferences, although it could not vary price.

2. This section draws heavily on Section 4.2 of *Options for the Reform of Roading in New Zealand* (1993), prepared by CS First Boston for the New Zealand Business Roundtable.

3. Berg, S V and Tschirhart, J (1988), *Natural Monopoly Regulation: Principles & Practice*, Cambridge University Press, pp. 491-493.

Most monopoly industries are subject to an information disclosure regime. This could be adopted for roading operators, if there was concern that they would not produce information on prices, accident rates and road quality voluntarily.

3.3.2 Information Problems

The discussion above noted that a monopoly road operator might have incentives to over- or under-provide safety. A related problem is that road operators may have better information than consumers as to the safety of their roads in terms of construction and operation. They may have weak incentives to voluntarily disclose this information if it reflects adversely on them. If this is a concern, it reinforces the suggestion made above that road operators should be required to disclose information about accident rates, causes of accidents, and so on. Information disclosure allows consumers to make their own decisions on the basis of the information provided. As a form of regulation it is generally less costly than heavy-handed alternatives. However, asymmetric information is not a major issue for road quality. Most aspects of road quality are visible to road users, and there is a high level of repeated use of certain roads.

The standardisation of road signs is identified as a possible problem in Section 2.3 of the Discussion Document. Road users are likely to prefer standardisation of road signs to provide greater predictability and consistency. Confusion could arise if different road signs were used in different parts of the network.

One solution to this problem would be to have a single network owner, since the problem is one of coordination among road operators. However, this might be inefficient for other reasons, such as market power. Consumer groups such as the Automobile Association may lobby network owners to coordinate signage, or may assume some responsibility for providing standardised signs. The diverse owners may themselves agree to coordinate signage or jointly contract for it with a third party.

3.4 Summary

The forces which would work to deliver safety in a commercialised roading industry are unlikely to have the same effects in the current environment. Road operators currently have little incentive to discover user preferences for road quality.

In Section 3.3 we considered possible market failures that might justify regulation of road infrastructure quality. The main issue with private arrangements is that of market power, which is likely to be significant for local roads. The standard approach in New Zealand is to rely on the Commerce Act and disclosure of information, which in the case of roads should include road safety statistics.

4 Regulation of Road User Behaviour

4.1 Introduction

In this section we compare the option of giving road operators the responsibility for setting and enforcing user behaviour standards with existing institutional arrangements.

4.2 Incentives of Road Operator to Set Road User Standards

Road users face risks from other drivers, and because of transaction costs they cannot negotiate individual agreements with other road users. This does not necessarily mean that the government needs to regulate road user behaviour in a commercialised industry, since road operators would have strong incentives to regulate conduct on their roads. Road users would prefer to use lower risk roads, holding other features equal, and would be willing to pay the road operator to enforce a code of conduct. If road users reduced their use of a road following a deterioration in safety, this would be reflected in road operators' profits. If there was competition between road networks, more information on accident rates and road safety would be likely to be made available to road users, since safety would be one feature used to attract customers.

A code of conduct by road users could be enforced through the contractual terms of access to the roading network, as it is currently. For example, the operator of a road could ban any driver with a certain number of prior traffic offences, or could allow repeat offenders to continue to use the road, but at a higher price than other users. The operator should be able to use its own enforcement staff or contract with private suppliers of enforcement services, or with the NZ Police. Options should be neutral between private and public road operators.

Having the road operator responsible for setting and enforcing driving standards ensures that accountability for road safety rests with one agent, increasing the incentives for that agent to produce the safety outcomes preferred by road users.

As noted earlier and in the Discussion Document, the current regime spreads accountability for safety outcomes between a number of different agencies, and the road operators are not responsible for setting speed limits or enforcing behaviour. This is likely to weaken safety outcomes.

4.3 Summary

Giving road operators the responsibility for setting standards of behaviour for road users and the ability to enforce these standards would make road owners fully accountable for road safety, instead of having a number of government agencies and road controlling authorities nominally accountable. In a commercialised roading industry, if road owners had such powers, they would have incentives to choose technical road quality and road user behaviour standards in such a way that overall road safety was at the level preferred by the marginal road user.

5 Ministry of Transport's Report

The Ministry's Report has been written to "stimulate debate on how to improve the way in which we manage our roads". It acknowledges the importance of treating all road owners consistently, and overall it recognises the trade-off between road safety and cost.

Before analysing alternative regulatory options, it is important to have a clear understanding of the problems that the regulation is designed to address. In the case of road management, the incentives faced by industry participants are likely to change significantly, depending on the outcome of the current reform process. Changes to road management regulation need to develop in tandem with changes in industry structure. In Sections 3 and 4 we discussed the optimal regulation of road infrastructure quality and road user behaviour in a fully commercialised industry. In addition we examined how, in the current environment, road operators have fewer incentives to test user preferences for different safety levels and set road quality at the level preferred by users. In this section we consider the five options in the Discussion Document and conclude that Option Three is adequate for dealing with the existing situation.

Section 2.1 Delivery of Safe Roading

A number of the initiatives considered in the Discussion Document involve collection of data which is given to roading managers. It is not clear whether this information is also published. Requiring the collection and publication of information on road quality, accident locations and causes could, as we have discussed,[4] provide valuable information to road users and improve road managers' incentives to provide the level of safety preferred by road users. The road owners could be responsible for collecting and publishing such information.

Section 2.2 Performance of the Existing Regime

The statistics listed in the Discussion Document do not provide useful information for deciding whether New Zealand roads are delivering anywhere near the optimal safety level. In particular, it is not clear that comparing New Zealand road fatalities with other countries is useful. Increasing safety has costs. It is possible that the United Kingdom's rate of 1.3 deaths per 10,000 vehicles is lower or higher than road users would prefer, given the different costs and benefits of achieving a particular accident rate, and differences across countries between incomes and preferences.

4. Above, p. 7.

The Discussion Document (p. 15) suggests that "road crash statistics can provide an indication as to whether the road management regime, and in particular the measures above, are successfully delivering a fair level of safety". Standard economics textbooks[5] argue that examining accident rates alone cannot show how regulation has affected safety. Technological improvements also tend to deliver increased safety (or reduce the cost of a particular level of safety). Viscusi, Vernon and Harrington argue that "because of the greater affluence of society, consumers have demanded greater safety from their products throughout this century. This wealth effect alone should lead to safety improvements."

Section 2.3 Shortcomings of the Existing System

Section 2.3 of the Discussion Document (p. 10) states that "these [good safety and traffic management practices] are vulnerable to future structural changes. There would be clear benefits in 'locking in' these initiatives". The Discussion Document appears to overlook the existence of costs as well as benefits from locking in behaviour. In an environment with clearly defined property rights, where road owners could charge for the provision of roading services on a fully commercial basis, managers would not need to be 'locked in' to safety management practices. They would voluntarily adopt such practices. A regulatory requirement for detailed information disclosure would avoid the imposition of an inflexible standard that could not readily be changed over time or varied according to road users' preferences.

One of the desired outcomes from the reform of funding and ownership arrangements currently being discussed is an increase in private sector investment in roading. The Ministry needs to take care not to deter entry into the industry by codifying safety practices which may not be appropriate for future roading projects, or which protect incumbents. If engineering standards are set out in legislation, this may prevent socially desirable roads of lower quality being built. For example, the cost of achieving a particular technical standard for a ski road could be quite different from the cost of achieving the same standard on flat land. Suppose that a group of road users prefers to pay lower road charges in return for access to a road

5. See, for example, W Kip Viscusi, John M Vernon & Joseph E Harrington, *Economics of*

with higher risk than the risk implied by legislative standards, and that in the absence of the regulation an investor could make a return adequate to justify building such a road. Once the regulatory standards are imposed, however, costs will increase, and the group of road users will either pay these higher costs - and be forced to have a more expensive, higher quality road - or decide that the higher costs are not worth it, in which case the project may not go ahead.

The NZBR agrees with the comment on page 11 of the Discussion Document that "provisions governing safety standards and traffic management practices on our roads are a mixture of statutory requirements, regulations, rules, non-binding guidelines and informal requirements tied to funding … . The fragmented and incomplete nature of these provisions contains certain risks". The Ministry's comments that "decision makers may not always take into account the safety implications of a decision or a course of action", and "without a specific obligation, it may not always be possible to defend standards against conflicting interests", illustrate problems with the existing incentives for road operators.

Currently, the involvement of many government agencies with different objectives reduces accountability significantly. The Minister of Transport, the Land Transport Safety Authority, Transit New Zealand, the NZ Police and territorial authorities all have duties related to road safety. The National Land Transport Strategy, the National Road Safety Plan, and the Safety (Administration) Programme cover road safety. The Discussion Document notes (p. 10) that the legislation fails "to place a clear duty on managers involved in infrastructure management (or offer incentives to them) to give priority to safety and good traffic management practices". The NZBR agrees that the lack of accountability for performance means it is unlikely that road managers will deliver the quality of road preferred by users. With so many agencies involved in safety regulation, it would be impossible to hold anyone accountable, with or without a legislative duty.

The Discussion Document notes (p. 11) that "a single, comprehensive set of provisions would clarify the duties of participants in the sector, and highlight accountabilities more effectively". However, if responsibilities continue to be shared,

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Regulation and Antitrust, 2nd edition, MIT Press, Cambridge, p. 772.

clarification of legislative provisions will not solve problems of assigning accountability.

The NZBR strongly supports the development of a single non-discriminatory regulatory regime for road management on the grounds of competitive neutrality. Reforming the road management regime to align it with the approach taken in rail or aviation should increase competition within the transport sector.

Section 2.3.4 Inadequate Provision for Private Sector Roading

The Discussion Document reviews the benefits of private sector involvement in roading, as set out in the discussion document *Roading as an Economic Good*. The NZBR agrees with the Discussion Document that the lack of clarity in roading regulation "is not conducive to the promotion of private sector involvement". However, the following sentence, "it is not clear what powers if any presently exist to impose safety standards on a privately owned road", seems to presume that the existence of such powers is desirable. As long as road users have access to information about the risks they face from using the private road, prescribed safety standards should not be required. Road users will make their own trade-offs between the risk of using the private road, the benefits in reduced travel time and congestion, and the cost of the private road compared to any alternative public roads. The government has less information than potential users to make this trade-off. Imposing standards means that consumers cannot choose the risk level that they prefer.

Section 3.1 Principles for Road Management Practice

The principles set out for road management practice are useful in that they recognise the trade-off between safety and cost, and acknowledge the importance of the regulatory regime treating all road users consistently. The goal of "safety at reasonable cost" should be interpreted as meaning that where the marginal benefit of increasing safety is greater than the marginal cost, safety should be increased.

The NZBR does not regard it as necessary or desirable that road safety decisions, or other transport decisions, must fit within a central planning framework such as the National Land Transport Strategy. This goal ('Compatibility with National Land Transport Strategy') conflicts with the earlier goal of flexibility.

The 1995 National Road Safety Plan focuses on international comparisons, and sets out a long-term goal of achieving by 2001 "a level of safety on our roads equivalent to the safest countries in the world, (Norway, Sweden, USA) driven by a firmly established safety culture".[6] This central planning goal is arbitrary. New Zealanders may prefer a less ambitious or a more ambitious target. Road safety policy would be more likely to enhance the welfare of New Zealanders if it focused on putting in place sound institutional arrangements rather than setting targets for outcomes.

Section 4.1 Option One: Detailed Legislative Prescription and Inspection

This option has little to recommend it, and the Report provides a useful summary of problems with this approach. It would be a backward step to regulate road management with detailed legislative prescription of engineering standards and government inspections. Regulatory lags impose significant costs, as the Report notes: road owners "may find themselves locked in to outmoded technologies and practices". More subtly, managers have no incentive to develop innovative safety management techniques.

A prescriptive legislative approach focuses on inputs into safety, not outputs. Managers are not accountable for safety outcomes. The high costs of compliance with a legislative regime and the reduction in road owners' control over the conditions of use of their assets might raise costs undesirably. The only advantage of this regime is the certainty of the rules.

The NZBR concurs with the Ministry's view that a prescriptive, inspection-based regulatory framework is undesirable.

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6. Quoted on p. 2, Hutt City Council Road Safety Action Plan Reference Document.

Section 4.2 Option Two: Licensing

Licensing is more flexible than legislative prescription of road safety standards, since it gives the road owner an opportunity to negotiate with the regulator. However, it shares a number of the problems with the legislative approach. It is often used when it is very difficult to observe a product's quality. As long as road owners are required to disclose information on road safety, verification of road quality should not be difficult.

To detect breaches of licence conditions, significant resources would need to be devoted to inspection. Although road operators could negotiate terms with the regulator to suit the type of road, there is a risk that inflexible prescriptive standards would be imposed. Managers would still have little incentive to work out innovative road safety techniques and would continue to have difficulty in ascertaining users' willingness to pay for increased road quality. For licensing to act as a signal to the public of road safety, the threat of revoking a license would have to be credible. It is unclear what is gained from this option over a framework of information disclosure in which road users can make their own decisions about safety risks.

Section 4.3 Option Three: Road Safety System

This option is the one favoured by the NZBR. It has a number of advantages. By requiring the roading operator to establish its own system for recording details of road accidents and having independent auditors verify actual safety practices, managers face increased accountability for safety outcomes and road users have more information than under inspection-based frameworks. The approach is flexible enough to accommodate the current institutional framework and a commercialised industry.

This option would harmonise the safety regulations across transport modes. Air traffic service providers and railway operators are required to develop safety systems and have well-documented procedures and internal audits. Under the Civil Aviation Act 1990, the Civil Aviation Authority (CAA) may issue non-binding

guidelines on the safety procedures. The CAA may conduct an external safety audit to check that the safety system is being properly followed by the holder of the safety certificate.

There is potential for private road owners to choose their own safety standards under this option. It is not clear why a private road operator should be required to meet non-negotiable standards. If some safety features were critical, private users would not want to pay for a road lacking such attributes, and road operators would invest in quality accordingly. If the road operator fails to deliver the quality it has contracted to provide, road users (or their insurance companies) must have a right to sue for breach of contract.

Section 4.4 Option Four: Performance Based Funding Contract

It is difficult to imagine implementation of this option if the roading industry is commercialised and private sector investment occurs. It would only make sense if direct charging for road use was not feasible, the petrol tax was retained and road funding was provided by a central agency. The motivation for performance based funding contracts in other sectors is that some of the benefits of commercialisation can be captured by having one Crown agency, the purchaser, determine priorities for services, and other agencies, the providers, supplying them at a negotiated price. It is not clear why the purchaser/provider split would be useful in a deregulated roading environment. Private suppliers would gain information about road users' willingness to pay for road quality from direct billing. A performance based contract for state-owned road controlling authorities only could put them at a disadvantage relative to private firms using a safety system and information disclosure approach, especially if the contracts did not permit state-owned road suppliers to vary enforcement standards and speed limits.

Section 4.5 Option Five: Health and Safety in Employment Act Approach

Although the Health and Safety in Employment Act approach is flexible, the issue of codes of practice and a general duty on road controlling authorities to "take all practicable steps to ensure the safety of road users" is likely to rigidify safety

standards. It would unnecessarily discourage experimentation with road pricing and quality to discover road users' preferences and their willingness to trade off safety and costs.

As stated above, the NZBR does not regard the existence of "ample scope to reflect changing priorities of a National or Regional Land Transport Strategy" as an advantage.

6 Comments on Powers and Duties of Road Controlling Authorities

Our responses to the questions in Section 6 of the Discussion Document are guided by the following general principles.

The assignment of powers and duties to road controlling authorities involves examining the existing set of property rights, assessing whether the rights are already clearly defined, and whether there is a good reason to alter them. Property rights are most valuable when the holders of the rights have the ability to trade them, or decide how to spend income accruing from the property right. A number of the property rights discussed in Section 6 of the Discussion Document are not tradeable.

The initial allocation of property rights will not affect the allocation of the resource, in the absence of transaction costs. However, once property rights have been assigned, changing their allocation will lead to arbitrary value transfers. For example, someone who buys a house on the understanding that she could add an extra storey or subdivide the section would suffer a reduction in the property's value if legislation were passed banning all subdivision and multi-storied houses. The government should be cautious about reallocating property rights without compensating affected parties.

We comment below on the questions raised in Section 6 of the Discussion Document.

Section 6.1.2 Requirement to provide for the needs of pedestrians with disabilities

This is an example of a non-tradeable property right which may not provide the best way of meeting the needs of the intended beneficiaries. If the government wants to help disabled people because they tend to have lower incomes it should give them money rather than in-kind benefits that they cannot trade. If there are good reasons to give benefits in kind, the subsidy should be transparent. The Crown should contract with road operators to modify the road design so that the costs can be paid for out of general taxation, rather than imposing them on road operators.

Section 6.1.3 Requirement to provide safe and physically separate access for specific groups, e.g. pedestrians, cycle users, motor vehicle users

Any new legislation should enable road operators to provide separate access, as opposed to requiring them to do so. If the road operator finds it profitable to provide separate facilities for different modes of transport, it will do so. Otherwise, central or local government could contract with road operators for provision of separate facilities.

Section 6.1.4 Access to properties for safety e.g. trees, lights

The existing property rights appear to be well defined. They should apply to private road operators. It is possible that the property rights currently held by land owners should be reallocated so that road operators have the right to require removal or trimming of trees for public safety reasons. As stated above, such reallocation without compensation is generally undesirable. However, the current arrangement leaves road operators vulnerable to hold-out problems from land owners, and may involve higher transaction costs than the alternative allocation. If road operators held the rights, land owners who valued the overhanging trees highly could pay the road operator not to have the offending branches removed. Without further information on the scope of the problem it is not clear whether a reallocation of property rights is justified.

Section 6.1.5 The power to declare roads limited access

The only concern with allowing road owners to control access to their roads relates to the exercise of market power. All road operators should be able to declare roads to be limited access roads. If the exploitation of monopoly power is at issue, the Commerce Commission should play a role.

Section 6.1.6 Police access for enforcement of road safety

Legislation should not presume that the NZ Police will be the sole enforcer of road safety laws. Private provision of road safety enforcement services might be desired by road operators. There will be issues to work through concerning the rights of private enforcers. For example, a private operator would need to involve police if a road user needed to be held in custody.

Section 6.2.1 Restricting access to roads by weight or dimensions of vehicles

Road operators should be able to determine the terms of access to their roads. This includes provisions for restricting vehicles which do not fit certain weight or dimensional criteria. It is not clear why the NZ Police should be involved in issuing permits for 'over-dimension' vehicles.

The powers in section 72 of the Transport Act should be extended to all road operators.

Section 6.2.2 Provide reasonably appropriate infrastructure for public transport

The current detailed provisions in the Local Government Act and Transit New Zealand Act seem unnecessarily complicated. It might be simpler to give all road operators the power to erect bus shelters, approve bus routes, and approve siting of stops, stands, etc. Since bus operators currently have established routes and bus stops, they should be protected from changes to such facilities by a long-term contract with an appropriate transition period.

Section 6.2.3 Designation and the compulsory acquisition of land for roads

The Public Works Act and Resource Management Act already provide a neutral framework for public and private road operators, as is desirable.

Section 6.2.4 Action for damage to roads and for disruption to the public

The existing powers of road operators in relation to utility access are clearly defined. There is nothing preventing road operators from negotiating with the utilities not to dig up the road, or not to erect structures on footpaths. Changing the existing allocation of property rights would give road operators a windfall gain in value. Operators of new roads should have the right to decide whether other parties could have access.

Section 6.3.1 Powers to remove abandoned vehicles

These powers should be extended to all road operators to ensure neutrality between private and public road operators.

Section 6.3.2 Limited enforcement activities

Road operators should have full property rights relating to offences involving stationary vehicles. No criminal law issues arise which might justify police involvement. Road operators should be able to decide how much they want to spend to enforce the contractual terms of road users' access to the road. There should be no distinction in the property right held by privately or publicly owned road operators.

Section 6.3.3 Information requirements

Information on road safety statistics such as location, frequency and causes of crashes would be a crucial part of the Road Safety System (Option Three) approach. It is important that road users have full access to this data to enable them to assess the risk of using the roads. If roading becomes more commercialised, road operators

are likely to use their road safety records as one of the features of their network. If market power is a concern, an information disclosure regime similar to that in the electricity distribution industry could be introduced. This should be administered by one government agency, presumably the Ministry of Commerce.

7 Summary

The NZBR supports the Ministry's focus in the Discussion Document on the trade-offs between the costs and benefits of road safety initiatives. Changes to road management regulation should be flexible enough to accommodate a more commercialised industry structure and should be neutral between privately and publicly owned roads.

Of the options described in the Document, the NZBR supports the introduction of the Road Safety System (Option Three). In the current environment with central and local government provision of roading, accountability for road safety outcomes is fragmented and focused on inputs and engineering standards. As a result, road operators have weak incentives to build and maintain roads of the socially optimal quality. Option Three would improve accountability for safety. It could facilitate inter-modal competition by harmonising the safety regulations across air and rail operators. In a more commercial roading industry, clarification of property rights would improve the incentives for private provision of road safety. In such an environment, Option Three appears to be flexible enough to allow road operators to choose higher or lower safety standards, selected to maximise profits in response to road user preferences.