



1 February 2024

OC231157

Hon Simeon Brown
Minister of Transport

Action required by:
As soon as practicable.

GOVERNMENT RESPONSE TO THE REGULATIONS REVIEW COMMITTEE REPORT ON THE COMPLAINTS ABOUT THE E-SCOOTERS (DECLARATION NOT TO BE MOTOR VEHICLES) NOTICE 2018

Purpose

Provide you with a draft Government response, and associated Cabinet paper, to the Regulations Review Committee report on complaints about the E-Scooters (Declaration not to be motor vehicles) Notice 2018.

Key points

- In 2019, the Regulations Review Committee (the Committee) received three complaints about the E-scooters (Declaration not to be motor vehicles) Notice 2018. The complaints argued that the process undertaken by the NZ Transport Agency (NZTA) in making the declaration was rushed, not carefully evaluated, and contrary to the purposes of the Land Transport Act 1998 (the Act). The complainants expressed concern about the safety impacts of the declaration as it allowed e-scooters to be ridden on footpaths.
- The Committee released its second interim report in May 2023. The government's response was due with the Committee by 1 September 2023. As this deadline has passed, we recommend the Government responds to the Committee as soon as practicable.
- We have prepared a draft Cabinet paper and Government response for your consideration. The response notes your focus on progressing the Government's 100-day commitments and that you will consider issues relating to e-scooter regulation in line with your ministerial priorities.
- The response also notes the 2018 declaration was renewed for a further five years in September 2023. As part of the renewal, NZTA undertook safety, compliance, effectiveness and compliance reviews and conducted public and stakeholder engagement. The process followed by NZTA was in line with proposed changes the Committee had supported in its first interim report.
- Earlier responses to the Committee from officials and previous Ministers of Transport largely focused on changes proposed in the Accessible Streets regulatory package as a resolution to these complaints. Accessible Streets was primarily a package of land transport rule changes, including a proposed national framework for the use of devices

such as e-scooters. The previous government consulted on Accessible Streets but it was not progressed.

- We have included a full list of Accessible Streets proposals in Annex 3. Should you wish to progress any or all of the components of the package, we recommend you consider this as part of your overall road safety prioritisation. We will be seeking direction on your priorities through the road safety objectives briefing due to your office in mid-February.
- Additionally, Accessible Streets proposed to amend section 168A of the Act through the Regulatory Systems (Transport) Amendment Bill No 2 (RSTA 2). RSTA bills support effective regulatory stewardship, providing a vehicle for several smaller regulatory fixes to be made in a timely and cost-effective manner.

s 9(2)(f)(iv)

Recommendations

We recommend you:

- | | | |
|---|--|----------|
| 1 | agree to lodge the Cabinet paper and Government response for consideration by the Cabinet Business Committee | Yes / No |
| 2 | agree, subject to Cabinet confirmation, to provide the Government response to the Regulations Review Committee | Yes / No |



 Bronwyn Turley
Deputy Chief Executive, Regulatory
 ..01... / ..02.... / .2024....

 Hon Simeon Brown
Minister of Transport
 / /

- Minister's office to complete:**
- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Seen by Minister | <input type="checkbox"/> Not seen by Minister |
| <input type="checkbox"/> Overtaken by events | |

Comments

Contacts

Name	Telephone	First contact
Bronwyn Turley, Deputy Chief Executive, Regulatory	s 9(2)(a)	✓
Joanna Heard, Manager, Safety		

GOVERNMENT RESPONSE TO THE REGULATIONS REVIEW COMMITTEE REPORT ON THE COMPLAINTS ABOUT THE E-SCOOTERS (DECLARATION NOT TO BE MOTOR VEHICLES) NOTICE 2018

The Government is required to respond to the Regulations Review Committee

- 1 In 2019, the Regulations Review Committee (the Committee) received three complaints about the E-scooters (Declaration not to be motor vehicles) Notice 2018.
- 2 The Committee released a second interim report in May 2023 and the government's response was due by 1 September 2023. As this deadline has passed, we recommend the Government responds to the Committee as soon as practicable. A draft response and associated Cabinet paper are in Annex 1 for your consideration.
- 3 This briefing also includes a summary of e-scooter regulation as requested by you at officials meeting. It outlines the current approach and changes that were considered by the previous government. When considering the regulation of e-scooters, officials have sought to balance the economic benefits of innovation and new technologies with the safety of all road users.

Use of e-scooters is regulated by the Land Transport Act 1998 and the Land Transport (Road User) Rule 2004

- 4 The Land Transport Act 1998 (the Act) defines motor vehicles as vehicles drawn or propelled by mechanical power except where the NZ Transport Agency (NZTA) declares a vehicle not to be a motor vehicle under section 168A of the Act. As such, e-scooters would be motor vehicles in the absence of a declaration.
- 5 Declaring e-scooters not to be motor vehicles means they are not required to meet motor vehicle certification standards or be registered or licenced to be used on a road. A driver licence is also not required. The definition of *road* under the Act includes streets, footpaths, or any place to which the public has access whether as a right or not. Essentially, without a declaration, e-scooters would only be allowed on private property (land not accessible to the public) and shared e-scooter schemes would not be viable.
- 6 A *wheeled recreational device* under the Land Transport (Road User) Rule 2004 (the Rule) includes a vehicle with one or more auxiliary propulsion motors with a combined maximum power output not exceeding 300 watts. Most rental scheme e-scooters fit in this category and users must adhere to the requirements of the Rule, which provides that users of wheeled recreational devices must:
 - operate the device in a careful and considerate manner;
 - not operate the device at a speed that constitutes a hazard to other footpath users; and
 - give way to pedestrians and drivers of mobility devices.

In addition to the Rule, local authorities have mechanisms to influence operators of e-scooter sharing schemes, who in turn can monitor e-scooter users

- 7 Local authorities may use council bylaws to regulate on-street commerce in their areas and some use this power to regulate companies operating shared e-scooter schemes (for example, Lime or Flamingo).
- 8 The main means of regulation for local authorities is to set parameters, through contracts and codes of practice, which operators must comply with. Through these, councils can set time of use restrictions, parking requirements, and set no-go and go-slow zones through geo-fencing technology.
- 9 Some operators also use their terms of service to monitor and manage rider behaviour. For example, encouraging considerate parking practices by requiring photos of the parked scooter and offering incentives. These operator systems can be used to demonstrate compliance with local authority requirements.

Accessible Streets proposed a national framework for e-scooter use

- 10 While there are some controls available to councils to manage rider behaviour of rental e-scooters, there is no national consistency in the regulatory approach to e-scooter operation, beyond the requirements of the Rule. Accessible Streets proposed a national framework for the use of devices on footpaths, shared paths, cycle paths and the roadway.
- 11 Proposed rules included introducing speed limits on footpaths, ensuring pedestrian priority, and introducing lighting and reflector requirements.
- 12 The package included other rules relating to road use, such as setting a minimum overtaking gap for motorists passing vulnerable users and allowing e-scooters to use in-road cycle lanes.

The package intended to simplify and clarify the definitions of devices such as e-scooters

- 13 Accessible Streets proposed to replace the definition of *wheeled recreational device* with *powered transport device* (such as e-scooters and e-skateboards) and *unpowered transport device* (such as push scooters). This would allow these devices to be regulated separately and would allow for an enduring legislative solution. It also proposed changes to section 168A of the Act to clarify and strengthen the process that NZTA must follow in declaring vehicles not to be motor vehicles.
- 14 Vehicle classification issues raised by Accessible Streets are the consequences of a vehicles regulatory system that is increasingly out of date. Though not directly related to this government response, we are preparing advice on a proposal for a vehicle system reform programme as part of our road safety objectives briefing.

ANNEX 1

Draft Cabinet paper and draft Government response

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OFFICIAL INFORMATION ACT 1982

ANNEX 2

Regulations Review Committee second interim report

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ANNEX 3

List of Accessible Streets proposals

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In Confidence

Office of the Minister of Transport
Chair, Cabinet Business Committee

GOVERNMENT RESPONSE TO THE REPORT OF THE REGULATIONS REVIEW COMMITTEE ON THE COMPLAINTS OF BARRY PREDDLE, JANE CARRIGAN AND THE DUNEDIN PEDESTRIAN ACTION NETWORK ABOUT THE E-SCOOTERS (DECLARATION NOT TO BE MOTOR VEHICLES) NOTICE 2018

Proposal

- 1 I am seeking approval of the Government's response to the Regulations Review Committee's (the Committee) second interim report on the complaints about the E-Scooters (Declaration not to be motor vehicles) Notice 2018 (the declaration).
- 2 The previous government was required under Standing Order 256 to respond to the Committee's report by 1 September 2023. It did not do this. As such, I am proposing that the Government responds now.

Background

- 3 In 2019, the Committee received complaints from Barry Preddle, Jane Carrigan and the Dunedin Pedestrian Action Network about the declaration. The Committee resolved to consider the complaints together.
- 4 The New Zealand Transport Agency (NZTA) made the declaration on 18 September 2018 under section 168A(2) of the Land Transport Act 1998 (the Act). This section provides a power for NZTA to declare that a vehicle or type of vehicle propelled by a motor with a maximum power output not exceeding 300 watts is not a motor vehicle for the purposes of that Act.
- 5 Declaring e-scooters not to be motor vehicles means they do not have to be registered before operating on a road, and a person does not need to hold a driver licence to ride on a road. It also allows them to be ridden on footpaths. E-scooter users must follow the requirements of the Land Transport (Road User) Rule 2004, including that they must use the device in a careful and consideration matter, give way to pedestrians and must not travel at a speed that constitutes a hazard.
- 6 The concerns of the complainants centred on a perceived lack of transparency in the declaration process, a lack of consultation by NZTA before making the declaration, and safety concerns about the use of e-scooters on footpaths.

The Regulations Review Committee findings

- 7 The Committee considered the complaints and published a first interim report in November 2021. This report:
- expressed concern that regulating the use of e-scooters solely through the Land Transport (Road User) Rule 2004 was inconsistent with promoting safe road user behaviour and may not be in accordance with the intentions of Standing Order 327(2)(a);
 - supported changes to section 168A of the Act and the introduction of stricter requirements for declaring vehicles to not be motor vehicles;
 - expressed concerns about the delays to the Accessible Streets package which was intended to address some of these issues.
- 8 The Committee published a second interim report in May 2023. This report:
- noted the Committee's disappointment with the lack of progress on Accessible Streets and resolution of the issues raised in the previous report;
 - recommended that the Government progress changes to section 168A of the Act swiftly to improve the regulation of e-scooters.

NZTA renewed the declaration in September 2023

- 9 The 2018 Notice expired on 30 September 2023. On 28 September 2023, NZTA renewed the declaration for a further five years. I am advised that as part of the renewal, NZTA undertook safety, effectiveness, compliance and enforcement reviews, and conducted public and stakeholder engagement. The process followed by NZTA was in line with proposed changes the Committee had supported in its first interim report.
- 10 In its decision to renew the declaration, NZTA noted it considered a range of factors to balance the contribution of e-scooters to an effective and efficient land transport system with safety concerns. It concluded that e-scooters continue to make a useful contribution to the land transport system, and e-scooter safety is comparable to other modes such as cycling.
- 11 NZTA also noted its intention to explore improvements to existing systems and processes for ensuring the safety of e-scooter users and pedestrians. The decision and supporting documents are available on the NZTA website.

The Government's response to the Committee recommendation

- 12 I propose that the Government's response to the Committee notes my focus on progressing the Government's 100-day commitments and that I will consider these issues in line with my ministerial priorities. It also notes NZTA renewed the declaration in September 2023 for a further five years.

- 13 Following our 100-day commitments, I will be considering and determining my road safety objectives and work programme priorities, including the land transport legislative programme. As part of this process, I will consider possible changes to the Act and regulations for the use e-scooters.
- 14 I seek Cabinet agreement to submit the attached response to the House of Representatives.

Consultation

- 15 This Cabinet paper and Government response were prepared by the Ministry of Transport in consultation with NZTA. The Department of the Prime Minister and Cabinet was informed.

Financial implications

- 16 This paper has no financial implications.

Publicity

- 17 I expect this response will generate some media interest given the recent incidences of e-scooters in the news. This will be managed through my office.

Proactive Release

- 18 I intend to proactively release this paper within 30 business days of final decisions being taken by Cabinet, subject to any redactions appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Business Committee:

- 1 **note** that in early 2019 the Regulations Review Committee received complaints from Barry Preddle, Jane Carrigan, and the Dunedin Pedestrian Action Network about the E-Scooters (Declaration not to be motor vehicles) Notice 2018;
- 2 **note** that in November 2021 the Regulations Review Committee presented its first interim report to the Minister of Transport entitled “Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018”;
- 3 **note** that in May 2023 the Regulations Review Committee presented its second interim report to the Minister of Transport entitled “Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018”;
- 4 **note** that the Government is required to respond to the report in accordance with Standing Order 256;
- 5 **note** that the previous government did not respond within the timelines under Standing Order 256;
- 6 **note** that the 2018 Notice was renewed for another five years in 2023;

- 7 **approve** the Government response, attached to this submission, to the Report of the Regulations Review Committee entitled “Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018”;
- 8 **invite** the Minister of Transport to present the Government response to the House.

Authorised for lodgement

Hon Simeon Brown
Minister of Transport

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**APPENDIX ONE: GOVERNMENT RESPONSE TO THE REPORT OF THE
REGULATIONS REVIEW COMMITTEE**

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**Government Response to the
Second Interim Report of Regulations Review Committee
regarding
complaints about the E-Scooters (Declaration not to be motor
vehicles) Notice 2018**

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OFFICIAL INFORMATION ACT 1982

Presented to the House of Representatives

In accordance with Standing Order 256

Government response to Report of the Regulations Review Committee of May 2023

Introduction

- 1 The Government has considered the Regulations Review Committee's (the Committee) report (the report) on the complaints from Barry Preddle, Jane Carrigan, and the Dunedin Pedestrian Action Network about the E-Scooters (Declaration not to be motor vehicles) Notice 2018.
- 2 The response was due by 1 September 2023 but the deadline was not met by the previous government. The Government is now responding to the report in accordance with Standing Order 256.
- 3 In response to the report, the Government will explore changes to the declaration process and the regulation of e-scooters in line with its priorities. The Government also notes the 2018 Notice was renewed by the New Zealand Transport Agency (NZTA) in September 2023 for a period of five years. The Government is advised that as part of the renewal, NZTA followed a thorough process that was in line with what the Committee had previously supported in its first interim report.

Background

- 4 In 2019, the Committee received complaints from Barry Preddle, Jane Carrigan and the Dunedin Pedestrian Action Network about the E-Scooters (Declaration not to be motor vehicles) Notice 2018 (the declaration). The Committee resolved to consider the complaints together.
- 5 NZTA made the declaration on 18 September 2018 under section 168A(2) of the Land Transport Act 1998 (the Act). This section provides a power for NZTA to declare that a vehicle or type of vehicle propelled by a motor with a maximum power output not exceeding 300 watts is not a motor vehicle for the purposes of that Act.
- 6 Declaring e-scooters not to be motor vehicles means they do not have to be registered before operating on a road, and a person does not need to hold a driver licence to ride on a road. It also allows them to be ridden on footpaths.
- 7 The concerns of the complainants centred on a perceived lack of transparency in the declaration process, a lack of consultation by NZTA before making the declaration, and safety concerns about the use of e-scooters on footpaths.

NZTA renewed the declaration in September 2023

- 8 The 2018 Notice expired on 30 September 2023. On 28 September 2023, NZTA renewed the declaration for a further five years. The Government is advised that as part of the renewal, NZTA undertook safety, effectiveness,

compliance and enforcement reviews, and conducted public and stakeholder engagement.

- 9 In its decision to renew the declaration, NZTA noted it considered a range of factors to balance the contribution of e-scooters to an effective and efficient land transport system with safety concerns. It concluded that e-scooters continue to make a useful contribution to the land transport system, and e-scooter safety is comparable to other modes such as cycling.
- 10 NZTA also noted its intention to explore improvements to existing systems and processes for ensuring the safety of e-scooter users and pedestrians. The decision and supporting documents are available online at <https://nzta.govt.nz/regulatory/e-scooter-declaration-renewal-decision/>.

Recommendations and Government response

- 11 In response to the Committee's first interim report, the then Minister of Transport stated his intention to make changes to section 168A of the Act to clarify the process NZTA must follow in making a declaration; and changes to the Land Transport Rules to strengthen the regulations for e-scooter use.
- 12 In the second interim report, the Committee supported the proposed changes and recommended the government progress changes to the Act to improve the regulation of e-scooters.
- 13 The Government is focusing on the implementation of its 100-Day Plan. Following this, it will be considering and determining its road safety objectives and work programme priorities, including its land transport legislative programme. As part of this process, the Minister of Transport will consider changes to the Act and regulations for e-scooter use to encourage innovation and emerging technologies while ensuring the safety of all road users.

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