



SUBMISSION

To the Transport & Industrial Relations Committee

On the Land Transport Management Bill

Introduction

The Cycling Advocates Network (CAN)¹ is pleased to present this submission on the above draft Bill. The national committee of the group has prepared this submission, with feedback from CAN members. CAN has based its submission on reviews of the relevant draft Bill and background research material. CAN's membership includes a number of nationally regarded transportation professionals and their knowledge and experience has been a key input into this submission. If you require any clarification of the points raised by us, please feel free to contact us as detailed at the end of our submission.

We would like to present our submission in person to the Select Committee

General Comments

CAN supports the general intent of this Bill. In particular we welcome the enshrining in legislation of the new direction taken by Government to encourage all modes of travel, the change of emphasis from "roading" to "land transport", and the commitment to longer-term planning. The accompanying New Zealand Transport Strategy (NZTS) has also provided a suitable context for understanding where this Bill is heading.

Needless to say, we feel that the intention to "create an integrated, safe responsive and sustainable land transport system", and to "improve social and environmental responsibility in land transport funding, planning and management" is to be applauded. We continue to be wary, however, of how well this will be translated into practice and into a true shift away from the road-dominated thinking of old. Experience both here and overseas has shown that there are a large number of "integrated transport" proposals and strategies that have failed to deliver a truly changed transport system.

We are also concerned about the implications of creating a "responsive" land transport system. The idea of responsiveness sends a mixed message, and the Bill needs to be clear about what the land transport system is "responding" to. If it is simply responding to demand (e.g. to build more roads), then we do not support the inclusion of that word. If it is responding to genuine need (e.g. to get everyone from A to B more efficiently),

¹ More information about CAN can be found at the end of our submission.

and it is clear that such a need can be addressed in the most appropriate way (rather than by whatever method is demanded), then we support its inclusion.

We note that the Land Transport Act 1998 makes reference to the development of a "national land transport strategy" (NLTS) and its subsequent effect on regional activities. The NZTS would not appear to fulfil the role of such a strategy, yet parts of this Bill (and the Road Traffic Reduction Bill being reviewed in parallel) make reference to a NLTS. We urge the Government to develop such a strategy as soon as possible. Alternatively the relevant parts of this Bill could be reworded to refer to "national transport strategies" (with the term defined in the Interpretation Section). In this way, the NZTS could suffice as the base document and other national strategies, such as the forthcoming National Walking & Cycling Strategy, would also be given legislative significance.

The Land Transport Safety Authority is noticeably absent from the revised requirements of national transport agencies under this Bill, yet there are a number of programmes and policies under their control that have an impact on land transport in general as well as on the aims of the recent NZTS. Walking and cycling usage, for example, are particularly affected by the perceived relative safety of these modes, as well as speed management in general. We ask that the existing requirements of the LTSA (Part 14 of the Land Transport Act 1998 - particularly Sections 189 and 190) are amended in light of the Government's new transport direction.

Clearly cyclists would like to feel safer when biking around, but we also have a concern that safety goals can take over from equally important goals and produce perverse results. An example of this is the attitude of some safety professionals, who imply that it would be 'safer' if no-one cycled because the cyclist crash rate would go down - an absurd argument which ignores the health, environmental, economic and social benefits which come from more people cycling. While that is fortunately not the official policy of the LTSA, some elements of that attitude creep into policy, and will continue to do so until the mandate of the LTSA is changed to include balancing safety goals with social and environmental goals.

The introduction of legislation to allow tolling has been hailed as the means to get some "much needed" roading projects underway. We do not believe that road-building is a successful long-term strategy, and we are concerned about the effects of new toll-roads on the rest of the transport system. However, if such roads are going to be allowed, we support the principle at least of having road users pay for the privilege (and social costs) of these facilities. While the Government has been at pains to point out that such tolling would only occur where a free alternative route existed, this should not prevent them from considering the possibility of other charging mechanisms to both reduce traffic congestion and better reflect the true cost of motor traffic. For example, the area-wide charging systems in Singapore and (more recently) London could be equally applied to central Auckland, given its limited number of entry points.

This is a fairly long and multi-faceted Bill and in some ways it may have been prudent to develop it as a number of Bills. Clearly there are some contentious issues such as tolling provisions, and we would hate to see the entire Bill (which contains many very sensible and practical changes) held up because of the difficulties of a small part of it.

Specific Clauses

The table below outlines our comments on particular clauses within the draft Bill. Where a particular clause has not been commented on, then it can be assumed that there is tacit support by CAN.

Section	Comment
Explanatory Note: Economic costs	<p>We contest the point that <i>"allocating funding to particular types of transport may result in less economically efficient expenditure than common ranking across all types of land transport"</i>. The implication that could be inferred is that the newer non-roading outputs are less efficient than traditional roading projects they may be replacing. While this may seem evident using traditional project evaluation methods, it is very apparent that the existing methods are poorly suited to evaluating all of the benefits stemming from non-roading projects. Overseas experience suggests that it is just as likely that the new method of allocating funding may lead to expenditure that is <i>more</i> economically efficient.</p>
3: Purpose	<p>Clearly the phrase "an integrated, safe, responsive and sustainable land transport system" ties in with the discussion on these elements in the recently released New Zealand Transport Strategy. However it would seem prudent to define these terms in the Interpretation section of this Bill. See our earlier general concerns about the term "responsive".</p> <p>We note that, to be truly integrated, land-use planning should also be tied in with transport planning. This does not appear to be addressed by this Bill and continues to be poorly addressed by other legislative instruments such as the Resource Management Act 1991. Many of the inefficiencies we see in our transport systems today are largely the result of poor planning by local councils and developers (e.g. large separation of different land uses).</p> <p>We would like to see explicit in this Section a statement to the effect that <i>"nothing in this Act shall be read as favouring the funding of roading over any other form of land transport."</i></p>
10: National land transport account	<p>We are pleased to see the list of project types that can be funded by Transfund, and are particularly pleased to note the legitimising of the use of funds to get freight off roads, and to encourage the use of ferries, cycling and walking as alternatives to private car use. It may seem unnecessarily basic to include them all, but the very fact that they are mentioned indicates that there is still doubt by some about their role.</p> <p>However, sub-section (2) implies that the primary role of</p>

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	<p>funding territorial authorities (TAs) is for roading purposes, leaving regional councils to provide for public transport, walking & cycling, transport strategies, etc. Although paragraph (d) does allow for these functions to be carried out by each other, it does so only via legislative authorisation from the Local Government Act 2002. Clearly there is no reason why TAs can't plan and develop infrastructure for all modes of travel (as they already do currently); this sub-section suggests that they shouldn't normally be funded nationally for such projects. We recommend that this be changed.</p> <p>One area that does not appear to be included in the funding categories is the promotion of travel reduction, including techniques such as trip-chaining, ridesharing, telecommuting, home deliveries and internet services. While there is some cross-over with EECA's programmes under the National Energy Efficiency & Conservation Strategy, it seems perfectly reasonable that if such programmes contribute to Transfund's aims then they should be eligible for Transfund funding. Adding this category would also align this Bill with the intents of the parallel Road Traffic Reduction Bill.</p> <p>We are pleased to see research and training stipulated as an output class. They are particularly critical for the development of sensible programmes for cycling and walking, which are less well understood by many transport professionals than traditional road-building programmes.</p>
12: Consultation (long-term financial forecasts)	<p>While we are please to see the new term "representatives of land transport users", we still have concerns that consultation with such "representatives " will be taken to mean the old standards of the Automobile Association and the Road Transport Forum. Neither group is able to adequately represent the concerns of other land transport users such as cyclists, pedestrians, and public transport users. We suggest that a more specific phrase than this be used, or a more specific definition be provided in Section 5 (Interpretation).</p>
14: Minister may give instructions relating to land transport funding	<p>This clause would appear to allow the Minister to direct Transfund and Transit in a manner that is politically expedient, irrespective of the prevailing national land transport strategy or expert advice. It could also make a nonsense of the new requirements to plan for up to 10 years ahead, if a new Minister can significantly change transport policy direction overnight.</p> <p>Giving the Minister powers to set the <i>"method of assessing activities in different groups of activity classes"</i> puts an</p>

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	<p>unwarranted confidence in any Minister's ability to judge the best methods of assessment in a technical and specialised field. It would be very beneficial (and meet the NZTS's stated objective of being "responsive") to require consultation with relevant public organisations and land transport user groups in order to determine the <i>"specification of minimum or maximum amounts of funding in various output classes"</i> for example, rather than having them subject to the whims of the Minister of the day.</p> <p>As a minimum we suggest that this clause requires any instruction by the Minister to be consistent with the NLTS (or "any national transport strategies"). In that way, a proper consultation process is still required to change the thrust of this strategy and subsequent Ministerial directions.</p>
15: Consultation (land transport programmes)	<p>We are pleased to see the wide range of parties listed for consultation by transport bodies. However, see our comments under Section 12 regarding the definition of "representatives of land transport users".</p> <p>We note that no similar consultation requirements are imposed upon the Land Transport Safety Authority during the development of their safety administration programme (SAP), other than consultation with Maori under Section 16 and the Police under Section 36. This is anomalous and should be rectified. Although many items in the SAP will be derived from the land transport programmes of various approved organisations, there are a number of national safety programmes that will be proposed by the LTSA itself and which should be subject to the normal consultation process. Regional programmes may also require some coordination and agreement between various local agencies in the area.</p>
18: Needs of transport disadvantaged must be considered	<p>The term "transport disadvantaged" is obscure and should be specifically defined in Section 5 (Interpretation). To different people, it could mean disabled people, children, low-income people, cyclists and walkers, etc. Clearly all of these groups need consideration of some sort.</p>
19: Land transport programmes	<p>Regarding paragraph (2)(d), land transport programmes should also be assessed by the submitter against the objectives in Section 23(3) and a statement provided of how they meet the criteria.</p>
20: Duties of organisation responsible for preparing	<p>We have significant concern about the legal nicety of being "not inconsistent with" relevant transport strategies. To date this</p>

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programme	<p>has allowed road controlling authorities and other relevant bodies to virtually ignore non-roading aspects of such strategies. We contend that all such instances of this phrase should be changed to "consistent with", to ensure that the spirit of the strategies is complied with. In the case of sub-section (1), we note that a more positive version of this appears to be given in sub-section (3) anyway.</p> <p>Regarding sub-section (2), it is unclear why Transit is singled out for taking into account the items under paragraph (a), when these objectives have presumably been prescribed for all parties in Section 23(3), as well as in the NZTS. The wording appears to give the impression that Transit may operate under a different set of objectives to everyone else (such as those outlined in Section 3). We note that Transit's own list of priority areas for its current roading programme (e.g. "statutory responsibility", "protection against catastrophic events", "travel quality") appear to be somewhat different to those outlined in national government statements and subsequently in Transfund's new funding allocation framework.</p> <p>The wording in sub-section (3) appears to allow regional or local councils to ignore their own regional land transport strategy on the grounds of "impracticability". This calls into question the whole purpose of such strategies if they are not enforceable. We recommend that everything after the comma in this sub-section be deleted.</p>
23: Transfund may approve activities	<p>Paragraph (2)(a) highlights our concern about the power that Section 14 gives to the Minister of the day in determining whether a particular type of project is funded.</p> <p>The term 'cost-effective' in paragraph (2)(b) needs to be defined in this context. It is unclear whether it means the benefit/cost ratio just within the transport system, or whether it must take into account the wider costs or benefits to New Zealand. We believe it should be the latter. It might, for example, be cheaper for transport authorities to discourage or ban cyclists from a particular piece of road (to save the cost of providing facilities or a good hard shoulder, or to save the cost of crashes), but that solution would not be cheaper from a public health perspective.</p> <p>We welcome the intent of paragraph (2)(d) to ensure that other land transport options and alternatives have been practically assessed before national funding is provided. We are concerned about how well this clause will be implemented by approved</p>

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	<p>organisations, given the poor track record of many organisations in contemplating non-riding solutions to some problems. The words "to the extent practicable" do not help here and should be removed as they send a very negative signal to anyone implementing this Bill.</p> <p>Regarding paragraph (2)(e), see our previous comments regarding the term "not inconsistent with" (Section 20), particularly given the use of "consistent with" in the following paragraph (2)(f).</p> <p>We strongly support sub-section (3), as it builds the objectives of the NZTS into legislation, which we consider is essential to give effect to the strategy.</p> <p>We also strongly support sub-section (4) allowing different assessment methods. Cycling infrastructure projects have fared very badly in the past because the funding evaluation system was set up with motor vehicle use in mind. Since cycling is the most efficient mode of travel and relatively cheap to use, it did not gather the same 'benefits' in time savings as inefficient motor vehicles, therefore the ratio of benefits to costs (of providing the infrastructure) were not as good and frequently fell below the cut-off point for funding. In addition, it is difficult to predict future usage for cycling because the current numbers are relatively low and cycling networks generally not very comprehensive. Individual projects therefore often do not make a significant difference over an entire (typical) journey by bike. It is essential that the assessment methods used to decide whether cycling projects get funded take account of these inequities.</p>
26: Approval of public organisations	<p>We strongly support the introduction of means for traditionally non-transport public organisations to obtain funding for land transport purposes. Organisations like the Department of Conservation and the NZ Railways Corporation have the potential to provide for significant safe walking & cycling routes on land controlled by them, away from roading corridors. Such developments have a significant potential for tourism promotion, given the growing level of "active tourism" evident here (e.g. cycle touring).</p>
31-35: Public transport operations, services and infrastructure	<p>We welcome the freeing up of the rules for passenger transport funding and operation. In order to promote the use of cycling and walking as a way of accessing passenger transport, it is essential to have better integration of the modes and greater attention to facilities (both of which are mostly not</p>

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	being provided by private operators, who actually often hinder their provision).
36: Safety administration programme	<p>See our earlier comments regarding the level of consultation during the development of the SAP (Section 15).</p> <p>Paragraph (1)(b)(v) is meaningless when we have no NLTS. An alternative is to say <i>"will assist the implementation of any national transport strategies that are in force"</i>.</p> <p>Regarding paragraphs (2)(c) & (d), see our previous comments regarding the term "not inconsistent with" (Section 20).</p>
37: Approval of safety administration programme	<p>It is not clear why the annual SAP requires Ministerial approval, when the national land transport programme is allowed to be determined independently by Transfund. This appears to go against the principle of limiting Ministerial intervention in the implementation details, lest they be accused of political manipulation (see sub-section 191(3) of the Land Transport Act 1998 for example). The LTSA is already bound to the Minister by policy directions and a performance agreement (Land Transport Act 1998, Sections 191-194) and this should be sufficient. These concerns also apply to Section 41 (Minister may approve supplementary safety administration programme).</p>
38: Agencies must adhere to safety administration programme	<p>Regarding sub-section (2), it would seem prudent that the various transport organisations should also consult with land transport users about how best to comply with the obligations imposed upon them.</p> <p>Sub-section (3) appears to allow transport organisations to ignore the wishes of the SAP by not seeking funding for it. Surely sufficient advance communication between the various parties should ensure that adequate funding is provided to fully implement all that is proposed in the SAP. One can only assume that this section is merely intended to apply to situations when a safety programme or policy is changed and creates an unexpected extra cost of compliance, in which case this should be made clear.</p>
42: Reports on outputs and programmes	<p>To maintain a good overall perspective on the purpose of safety work, the annual reporting requirements should also include a statement outlining how the achieved safety administration outputs in that year contributed to the objectives of any national transport strategies. Although the relevant performance measures agreed to will partly achieve that, we are concerned that they will be used simply as "book-keeping"</p>

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	tools (e.g. "x out of y reports completed") rather than addressing the real question of whether safety has been improved.
44: Provision of information	Although the provision of information to the public has been included in some other Sections, and is somewhat addressed by the Official Information Act 1982, it would be desirable to include a sub-section here stating that <i>"any member of the public or other body may require Transfund, the Authority, or an approved organisation to provide information regarding expenditure of land transport funds or for the purposes of establishing compliance with this Act."</i>
46: Grants from Infrastructure Auckland	<p>It is not clear what the requirements are of approved organisations other than Transit in regards to receiving grants from Infrastructure Auckland. For example, while sub-section (4) directs Transit to include the expenditure in its land transport programme, there is evidently no such requirement of other organisations.</p> <p>Although money granted by Infrastructure Auckland to approved organisations does not meet the definition of "land transport revenue" as used in Sections 6-9, it clearly has an effect on land transport infrastructure in the Auckland region and can contribute significantly to the desired objectives of this Bill and the NZTS. Therefore, such expenditure should be reported as part of the national land transport programme, and sub-section (5) should be deleted.</p>
52: Establishment of tolling schemes by Order in Council	<p>We have reservations about tolling schemes, and believe that there needs to be a more rigorous assessment of their effect on the entire system before they are permitted. New privately-funded roads impose costs on the rest of the country by putting an extra burden of enforcement on the NZ Police, and by the need to alter existing infrastructure at the points of contact with the new roads, and where there are changes in network flows. They are also likely to increase the numbers of motor vehicles in the entire system, by making driving a more attractive option for those using the toll road.</p> <p>It is not in the interests of cyclists to have an increase in motor vehicle numbers, and such an increase is unlikely to work in the favour of the Government's stated intention to 'promote cycling'. Cyclists are also unlikely to benefit directly from tolled roads, since cycle facilities are unlikely to be provided by private funders and the proposed legislation only covers motor</p>

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	<p>vehicles.</p> <p>We note that sub-section (1) only allows for tolling schemes for "the purpose of funding new land transport infrastructure", which would appear to exclude the possibility of congestion tolling on existing routes. Provided that other constraints still applied (e.g. the presence of a feasible alternative route), we see no reason why tolling of existing facilities can't be considered as a demand-management tool.</p>
<p>53: Procedure for recommending making of order under section 52</p>	<p>If tolled roads are allowed, then we strongly support the procedures set out in this and subsequent sections that address the need to take account of alternative travel options and to consult with communities and road users, including cyclists.</p> <p>Regarding paragraph (3)(c), see our previous comments regarding the term "not inconsistent with" (Section 20).</p> <p>Paragraph (3)(e) should be reworded to require an "alternative feasible <i>transport</i> route". Under the existing provisions it could be argued that previously tolled routes like the Auckland Harbour Bridge had no feasible alternative roading routes and would not have complied. However harbour ferries did provide a feasible alternative.</p>
<p>61: Concession agreements</p>	<p>We fail to see how a tolling project involving the construction of a new road that leads to additional induced traffic can ever meet the requirements of paragraph (2)(e) to "ensure environmental sustainability".</p> <p>Regarding paragraph (2)(g), see our previous comments regarding the term "not inconsistent with" (Section 20). We note that the preceding paragraph (f) already uses the term "consistent with".</p>
<p>62: Terms of concession agreements</p>	<p>Paragraphs (1)(d) & (e) relating to provisions covering the consequences of a concessionaire defaulting or ceasing work should be mandatory in any agreement. The consequences of this happening are too great to leave it optional. Either the local community would be left with a "white elephant" on its doorstep, or the publicly-funded transport system would have to pick up the cost of finishing the project. Concessionaires should be required to post a bond to cover either the cost of finishing the project or of returning the environment to its original state.</p> <p>It is not clear whether Transfund would provide emergency</p>

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	works funding (e.g. for urgent safety or storm repairs) to a privately operated toll-road, as provided for under Section 23(6).
70: Objective of Transfund	<p>We suggest that the objective stated in sub-section (1) be appended by the phrase "at reasonable cost". The definition of this can be based on that used in sub-section 189(2) of the Land Transport Act 1998 for the objective of the LTSA, i.e. <i>"the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation."</i></p> <p>Aside from this, we support the objective set for Transfund, but note our earlier general reservations about the term "responsive".</p> <p>We feel that sub-section (3) should be more specific in directing Transfund to observe "<i>international</i> best practice".</p>
74: Transfund's board	<p>In line with its new objectives, the makeup of the board should be specifically directed to encompass the breadth of land transport users and affected communities (this is only partially covered by Clause 26 in Schedule 1). We note that we are unsure whether the specified maximum of only 5 Board members can achieve this (particularly when Transit's board, with its more limited transport role, is allowed up to 8 members in Section 83).</p>
79: Objective of Transit	<p>We are concerned that Transit's objectives do not direct it to consider when non-roading solutions might be a better solution than expansion of the roading network. Although the resulting solution may not fall under Transit's brief, this should not prevent them from being able to indicate to Transfund that they do not feel that State highway works would be the best option.</p> <p>Aside from this, we support the objective set for Transit, but note our earlier general reservations about the term "responsive".</p> <p>We feel that sub-section (3) should be more specific in directing Transit to observe "<i>international</i> best practice".</p>
Schedule 1: 27: Qualifications of board members	<p>We note that paragraph (2)(f) prohibits a Transit board member from also being a Transfund board member. Although there is logic in this approach, we are aware that at present some people are members of both boards.</p>
Schedule 3: Consequential	<p>We strongly support the substitute wording to replace Section</p>

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amendments to other Acts	<p>175(2) of the Land Transport Act 1998, though we note our reservations about the effect of Section 14 of the proposed Land Transport Management Act 2002.</p> <p>In addition, Section 175(4) of the Land Transport Act 1998 should be repealed - it is superseded by the new wording in Section (2)(a)(i) requiring regional councils to "take into account relevant government policy".</p>

Conclusion

In summary, CAN supports the intent of this Bill, particularly the change in emphasis from "roading" to "land transport" as outlined in the recent New Zealand Transport Strategy (NZTS). We still have some concerns about how parts of the Bill will successfully be tied to the relevant land transport strategies in practice, particularly when no national land transport strategy currently exists and there appears considerable scope for the Minister to provide separate instructions to national transport agencies (Transfund, Transit and the Land Transport Safety Authority). The inconsistencies in the operation and direction of these respective national transport agencies also need to be addressed, to ensure that they all work consistently towards the Government's stated transport objectives. Finally, we continue to have reservations about the practicality and long-term effectiveness of introducing tolling schemes here to manage motor traffic, although we support the introduction of the user/polluter-pays concept.

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The Cycling Advocates' Network of NZ (CAN) Inc is this country's national network of cycling advocate groups. It is a voice for all cyclists - recreational, commuter and touring. We work with central government and local authorities, on behalf of cyclists, for a better cycling environment. We have affiliated groups and individual members throughout the country, and links with overseas cycling organisations. In addition, several national/regional/local government authorities, transportation consultancies, and cycle industry businesses are supporting organisations.