

Regulatory Impact Statement

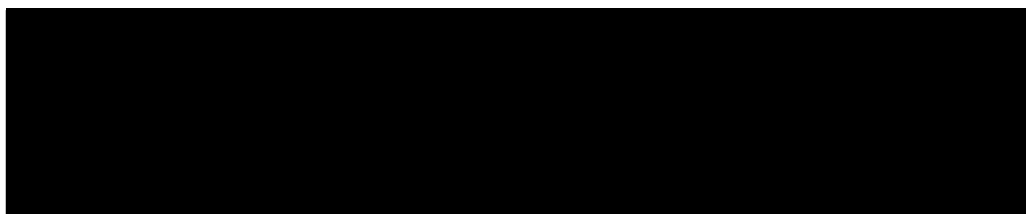
Land Transport Management Act Review

Revised purpose and provision for tolling privacy

Agency disclosure statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Transport.
2. It provides an analysis of options to:
 - 2.1. improve the efficiency and effectiveness of the proposed purpose of the Land Transport Management Act 2003
 - 2.2. provide a viable approach to maintaining privacy when using toll roads.
3. These two issues form part of a package of changes to the Land Transport Management Act. That package was subject to a Regulatory Impact Statement prepared in conjunction with Cabinet decisions made in May 2011 [EGI Mins (11) 9/8 and 9/9 refer].
4. The proposed purpose agreed in May 2011 needs to be reviewed in light of a Cabinet decision in October 2011 to change the purpose of the Local Government Act 2002 [EGI Min (11) 21/9 refers]. Both Acts deal with allocation of land transport funding and some degree of alignment in their purposes is desirable. However:
 - 4.1. the review of the Local Government Act, including its purpose, is beyond the scope of this Regulatory Impact Statement
 - 4.2. the exact framing of the Local Government Act purpose will not be known until drafting has been completed
 - 4.3. the two legislative amendments will be progressing through Parliament at about the same time and the purposes may evolve in the course of the Select Committee process.
5. The preferred framing of the Land Transport Management Act purpose will, therefore, need to be kept under review in the course of the legislative process.

6.



[Withheld pursuant with section 9(2)(h) of the Official Information Act 1982]

7. The options favoured in this Regulatory Impact Statement would improve the efficiency of land transport expenditure and reduce compliance costs without any material impact on privacy.

Greg Mossong
Principal Adviser
Ministry of Transport
April 2012.

PURPOSE OF THE LAND TRANSPORT MANAGEMENT ACT 2003

Background

8. Land transport is a joint venture between central and local government. Central government contributes about \$3 billion annually under the decision framework set out in the Land Transport Management Act. Local government contributes about \$1.5 billion annually under the decision framework set out in the Local Government Act.
9. The current Land Transport Management Act purpose is “to contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system”.
10. In May 2011 Cabinet agreed to a new purpose of the Land Transport Management Act “to contribute to an effective, efficient and safe land transport system that supports New Zealand’s economic, social, cultural and environmental wellbeing” [EGI Min (11) 9/8 refers].
11. This revised purpose:
 - 11.1. provides for a balance between decision making based on objective inputs (generally empirical and ‘economic’ in nature) and subjective inputs (generally value based and ‘strategic’ in nature)
 - 11.2. reduces the number of decision criteria to remove unwarranted complexity in assessment processes
 - 11.3. aligned more closely with the approach to the four wellbeings in the Local Government Act and the Resource Management Act 1991.
12. The Regulatory Impact Statement prepared in conjunction with that May 2011 policy package favoured the proposed Land Transport Management Act purpose.
13. In March 2012 Cabinet decided to change the purpose of the Local Government Act “to provide good quality local infrastructure, public services and regulatory functions at the least possible cost to households and business” [CAB Min (12) 9/4 refers].
14. The proposed Land Transport Management Act purpose agreed in May 2011 therefore needs to be reviewed in light of the March 2012 decision on the Local Government Act purpose.

Problem

15. The proposed changes to the Local Government Act purpose agreed by Cabinet in March 2012 do not align well with the proposed Land Transport Management Act changes agreed in May 2011.

16. Maintaining a degree of alignment between the purpose of the Land Transport Management Act and Local Government Act is desirable to maintain some consistency in decision making over national and local transport funding.
17. This factor, however, needs to be balanced alongside the need to allocate limited transport resources in a way that secures good value for money. Decision makers also need to be able to focus on the key variables that should drive decision making.

Objective

18. The objective is to establish a land transport purpose under the Land Transport Management Act that will lead to well informed decision making that:
 - 18.1. uses limited transport resources in the best available way; and
 - 18.2. recognises that land transport is not an end in its own right but an enabler of other activity.

Options and impacts

19. Officials have identified four options as follows.

Option 1: "To contribute to an effective, efficient and safe land transport system that supports New Zealand's economic, social, cultural and environmental wellbeing."

20. This is currently the proposed purpose and therefore the 'status quo' option. It identifies what is being managed (land transport), how it should be managed (efficiently, effectively and safely), and what should be achieved (support wellbeings).
21. This option recognises that a sharp focus is needed on economically efficient allocation of limited resources. It also recognising that a range of impacts on society need to be considered in making these allocations.
22. However, the values embedded in the term 'wellbeings' have proven controversial and the government is moving away from that term in the local government context.

Option 2: "To contribute to an effective, efficient and safe land transport system that supports the public interest."

23. This is a variation on option 1 that somewhat improves alignment with the proposed local government purpose by replacing the reference to the 'wellbeings' with a reference to the 'public interest'.
24. The term 'public interest' is widely used as a decision criterion in legislation, including the Public Finance Act. In the context of the Land

Transport Management Act purpose, it would have a similar meaning to 'wellbeing' in that it relates to society as a whole.

Option 3: "To contribute to an effective, efficient and safe land transport system"

25. Alternatively the reference to 'wellbeings' could be dropped without any form of replacement setting out what is to be achieved by land transport investment. References in the purpose to effectiveness, efficiency and safety should be the key influences on day-to-day expenditure decisions from the National Land Transport Fund.
26. This option would align to some degree with the proposed Local Government Act purpose to the extent that the reference to the 'wellbeings' would be removed.

Options 4: "to provide good quality land transport infrastructure, services and regulatory functions at the least possible cost to households and business"

27. This option uses the proposed Local Government Act purpose, but substituting the words 'land transport' for the word 'local'. It would align well with the currently proposed Local Government Act purpose.
28. This framing, however, does not adequately recognise the nature of the rationing decisions needed in allocating a limited pool of land transport resources. It also lacks sufficient reference to the wider impacts of land transport investment on society that should be factored into well informed decision making. Additionally, the aspect of 'safety' is overlooked.

Consultation

29. The following departments have been consulted: the Treasury, Ministry of Economic Development, Ministry for the Environment, Ministry of Justice, Ministry of Agriculture and Forestry, Ministry of Social Development, Ministry of Health, Ministry of Education, Department of Internal Affairs, the Department of Building and Housing, Te Puni Kokiri, the New Zealand Police, and the Office of the Privacy Commissioner. The Department of Prime Minister and Cabinet, State Services Commission and the Parliamentary Counsel's Office have been informed.
30. The Ministry for the Environment and Ministry of Health considers that the purpose should recognise that transport has wider impacts beyond economic efficiency, and that therefore the purpose should include reference to environmental, social and health objectives.
31. The proposed Land Transport Management Act purpose was announced shortly after the Cabinet decisions were made in May 2011. Transport stakeholders, but particularly the local authorities, have been generally

supportive of a revised purpose that captures both the 'economic' and 'enabling' aspects of land transport decision making.

Conclusions

32. Officials favour a Land Transport Management Act purpose that requires that decision makers consider economic 'efficiency' when allocating limited land transport resources and the 'enabling' nature of land transport.
33. Use of the four 'wellbeings' in option 1 has proven problematic in the local government content, while option 3 lacks sufficient reference to the 'enabling' role of transport. Option 4 does not provide clear 'economic' or 'enabling' decision criteria.
34. Officials, therefore, consider that Option 2 is preferable to the other options as it would cover-off both economic efficiency and the enabling nature of land transport, and do so using well established legal terms.
35. The preferred option will, nevertheless, need to be kept under review as the final framing of the Local Government Act purpose is not yet known.

TOLLING PRIVACY

Background

Legislative provisions

36. The Land Transport Management Act makes provision for approval and operation of road tolling schemes. There must be at least one method of payment offered as part of a tolling scheme that does not record personal information in relation to the person paying the toll (Section 51(3) refers). Any scheme must also provide for an untolled alternative route.
37. This contrasts with the Privacy Act 1993, which allows personal information to be recorded and retained for lawful purposes.

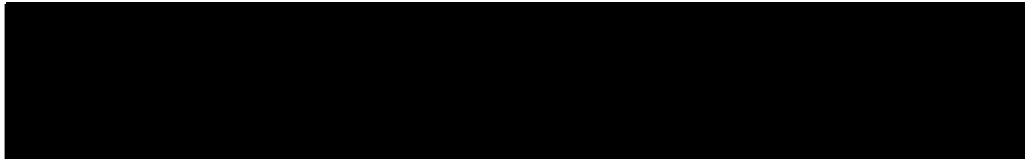
Current practice

38. There are currently two operational tolling schemes in New Zealand, the Northern Gateway Toll Road north of Auckland, operated by the NZ Transport Agency, and Route K in Tauranga, operated by the Tauranga City Council.
39. The Northern Gateway Toll Road uses gantry mounted cameras to record the number plate, the make, model and colour of the vehicle, and the time of use. Payment can be made in cash at roadside kiosks by entering the vehicle registration plate electronically before or after use or on account by regular users.

40. The vehicle's registration plate number is used to ensure the correct payment has been made. The registration plate number is then used as part of the unique identifier within the NZ Transport Agency's financial records system and as such, it is retained for seven years.
41. Route K was established under its own Act and is not subject to the tolling provisions of the Land Transport Management Act. Our understanding is that Route K payments are mainly cash based at staffed toll-gates.

Legal advice

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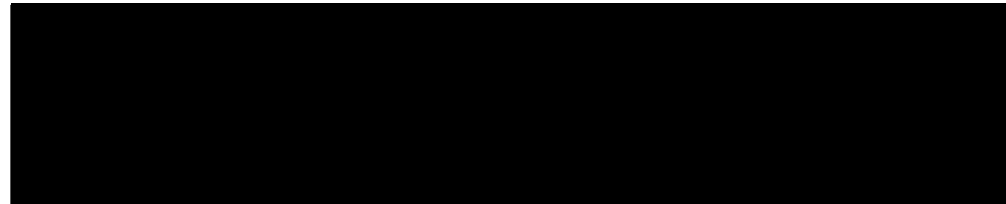


[Withheld pursuant with section 9(2)(h) of the Official Information Act 1982]

Problem

43. To be efficient and effective in the context of New Zealand's modest traffic volumes and relatively short alternative routes, toll schemes need to provide for free-flow tolling that avoids delays and minimises transaction costs compared to on-road toll-booth options. Free-flow systems characteristically need to record and reconcile the vehicle trip and the payment in order to establish that the correct payment has been made.

44.



[Withheld pursuant with section 9(2)(h) of the Official Information Act 1982]

Objective

45. To enable road tolling schemes to operate in a way that maintains personal privacy in an effective and efficient way.

Options

46. Officials have identified three principal options:
 - 46.1. Option A: repeal Section 51(3) and rely on the provisions of the Privacy Act and requirement for an untolled alternative route
 - 46.2. Option B: amend Section 51(3) and allow use of personal information for a limited time
 - 46.3. Option C: no legislative change

Option A: Repeal Section 51(3) and rely on the provisions of the Privacy Act

47. Under option A there would be no specific restriction on recording and retaining personal information provided this was done for a lawful purpose in connection with tolling. It would also be possible to use the information for another purpose, including for audit and accounting purposes, if used in a form that did not actually identify individuals.
48. Option A can be implemented without incurring any additional costs.
49. This option relies primarily on the provisions of the Privacy Act. It may make future schemes slightly more attractive to operators and allow a greater range of tolling technologies to be used. Users concerned about their information being recorded would be able to use the free alternative route.

Option B: Amend Section 51(3) and allow use of personal information for a limited time

50. Under option B a toll scheme operator could record personal information, but one of the payment forms could not retain that information for longer than necessary to confirm payment. The Ministry considers that, unlike option A, this is not a significant change in policy.
51. Option B has been assessed by the NZ Transport Agency as involving a one-off cost estimated at between \$500,000 and \$2 million to reconfigure the existing toll collection systems to delete number plate information once payment has been verified.
52. Under this option existing tolling systems would need to be amended to purge the vehicle number-plate information from transaction records once payments for this payment method had been reconciled. Any future tolling systems would need to be designed to achieve a similar result with respect to at least one payment option. This test could be met without any on-road cash payment option.

Option C: No legislative change

53. Under option C a toll system operator must have a method of payment available that neither records nor retains personal information.
54. The NZ Transport Agency estimates that it would cost between \$20 million and \$50 million to construct on-road toll booths and associated slip lanes for the Northern Gateway tolling scheme to provide a payment option that records no personal information. Operating costs or the costs of toll booths in future tolling schemes have not been included.
55. Adding tollgates would be expensive and would reduce the effectiveness of electronic free-flow toll systems. It is also likely that some form of camera surveillance would be needed at staffed or automated tollgates for security purposes. If that was the case, then

this option would still record number plate information, and therefore personal information.

Impacts

Privacy

56. All of the options are likely to deliver a similar level of privacy.
 - 56.1. Option A represents a base level of privacy that must be provided by any toll collection method.
 - 56.2. Option B will not provide a significantly greater level of privacy than option A.
 - 56.3. Option C would not record personal information for the purposes of toll collection. However, surveillance cameras would almost certainly be required at staffed or automated tollgates for security purposes and would record vehicle information for these purposes.

Financial Cost

57. Option A would be the least expensive option as no change to existing systems would be needed (no cost).
58. Option B would incur additional costs to change existing back office systems (NZ Transport Agency estimate \$500,000 to \$2 million).
59. Option C incurs significant additional costs to provide a cash-based payment system that records no personal information (NZ Transport Agency estimate \$20 million to \$50 million in capital costs for the Northern Gateway tolling scheme).

Economic Cost

60. In addition to their financial costs Option C would impose economic costs equivalent to the time savings lost as a result of stopping at toll gates to pay cash.
61. Costs of a similar order of magnitude to the time lost paying tolls at the roadside kiosks on the Northern Gateway Toll Scheme could be expected. The economic cost of toll collection at the roadside kiosks has been assessed by the NZ Transport Agency as \$570,500 annually.¹

¹ Assuming 320,000 kiosk transactions a year, which take five minutes per transaction (decelerate-pay-accelerate) at a value of time of \$21.59 an hour (based on NZTA's project evaluation manual), the gross economic cost to users associated with collection through the Northern Gateway toll kiosks is about \$575,000 annually (Note: This cost does not allow for the time taken to pay through other means, such as on account or electronically).

Consultation

62. The following departments have been consulted: the Treasury, Ministry of Economic Development, Ministry for the Environment, Ministry of Justice, Ministry of Agriculture and Forestry, Ministry of Social Development, Ministry of Health, Ministry of Education, Department of Internal Affairs, the Department of Building and Housing, Te Puni Kokiri, the New Zealand Police, and the Office of the Privacy Commissioner. The Department of Prime Minister and Cabinet, State Services Commission and the Parliamentary Counsel's Office have been informed.

Office of the Privacy Commissioner Comment

63. The Office of the Privacy Commissioner considers that an anonymous method of payment is desirable, but agrees that this may not be achievable at reasonable cost. Instead, we recommend that the new legislation should expressly require personal information to be deleted once payment has been made.
64. The conclusions in this Regulatory Impact Statement would allow personal information to be retained for as long as the toll operator can lawfully use it. This is an unhelpfully unclear limitation in this particular context - it does not provide strong enough protection for the public, nor does it give agencies the certainty they need.
65. If personal information is able to be retained at all once payment has been received, there is a risk that any future expansion of tolling in New Zealand could enable widespread monitoring of New Zealanders' internal travel. This is highly undesirable from a privacy perspective. The best and simplest protection against this risk is to have a specific legislative provision requiring deletion of the information once payment has been made.
66. As well as protecting the public, such a provision will provide relevant agencies with greater certainty about when they have to delete personal information.

Conclusions

67. Officials, on balance, favour relying on the Privacy Act (Option A). The Ministry considers that the difference in the level of privacy between option A and option B is not significant enough to justify the costs. Option C has a much higher cost and, because of the likely need for security recording, may still not deliver a truly anonymous payment method.

Implementation

68. Cabinet has agreed to include a Land Transport Management Amendment Bill in the 2012 legislative programme [REDACTED]

[Withheld pursuant with section 9(2)(f)(iv) of the
Official Information Act 1982]

[REDACTED] The Bill will be introduced in the first half of the year. [Withheld pursuant with section 9(2)(f)(iv) of the Official Information Act 1982]

Monitoring, evaluation and review

69. Officials consider that the purpose of the Local Government Act may evolve as drafting progresses. The purpose of the Land Transport Management Act will, therefore, be kept under review in the course of the legislative process.

