

Privacy Commissioner's submission to the Transport and Infrastructure Committee on the Land Transport Management (Time of Use Charging) Amendment Bill 113–1

1. I am pleased to provide a submission on behalf of the Privacy Commissioner on the Land Transport Management (Time of Use Charging) Amendment Bill (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.

Time of use and collection of personal information

3. I support the intent of the Bill to reduce congestion in our busiest areas. Time of use charging will require collection and use of large amounts of personal information relating to people's movements every single day, and it is imperative that these schemes are developed with privacy in mind. Failure to do so will undermine public trust and confidence in the scheme. Information about where individuals are driving has the potential to be very sensitive and could lead to real harms if misused or inadvertently disclosed.
4. People may feel that their personal freedoms and privacy are being impacted if their movements are being tracked, even if it is only when they enter a scheme area. Being privacy-conscious should not be an inhibitor to the movement of individuals and is not reflective of the intent of the Bill.
5. I am concerned that this Bill as it is currently drafted devolves most decision making on the operation of time of use charging schemes which means management of considerable privacy risks is deferred.
6. I do not have information about how schemes are likely to operate in practice, but I have assumed it will involve automatic number plate recognition which is likely to link with the Motor Vehicle Register (the Register) for billing purposes.
7. The Register holds personal information about the people registered (both past and present) in respect of motor vehicles. The Register is a significant database of personal information and ensuring that it is only being used for legitimate purposes is vital. I have assumed that the development of charging schemes will result in greater access and use of Register information. It is critical that additional users be appropriately trained, and their access be logged and audited.¹

The Bill provides a general framework

8. In its current form, the Bill does not clearly set out consistent time of use charging scheme criteria. Instead, it provides for local authorities to develop their own time of use

¹ An example of the risk of broad access to the Motor Vehicle Register was the breach identified in 2024: <https://www.nzta.govt.nz/media-releases/nzta-investigating-privacy-breach-following-illegal-access-of-information-held-on-driver-licence-and-motor-vehicle-registers/>

charging schemes which are then put to the scheme board for consideration by the Minister.

9. Although this means more bespoke schemes can be developed from local authority-to-local authority who will know where a scheme may work best, from a privacy perspective this can mean privacy risks are managed differently across the different schemes.
10. This lack of consistency means that one local authority may propose a scheme with greater consideration given to limiting the privacy invasiveness of the scheme while another local authority may not.
11. I note the proposed privacy clause in the Bill at clause 65ZF outlines the scheme board or enforcement authority may only use personal information for:
 - a. the purpose of collecting time of use charges; or
 - b. the purpose of enforcing this subpart [3].
11. I welcome these explicit limits on the purpose for which personal information can be used for.
12. I also note the intended retention of personal information in the Bill will only be for as long as it is reasonably necessary to:
 - a. collect the time of use charges that the personal information relates to;
 - b. enforce the provisions of this Act in relation to unpaid time of use charges that the personal information relates to; or
 - c. comply with any information retention requirements specified in any other enactment that relate to that personal information.
13. I am pleased to see the Bill addresses the retention of personal information. It will be important that this retention is consistent across each proposed scheme area to ensure appropriate disposal of personal information is carried out once it is no longer required under the purposes of the Bill.
14. I note the Regulatory Impact Statement developed for this work identifies the risk that government tracking of movements is perceived as totalitarian and a risk to personal freedom and privacy.² There is a real risk of people's daily movements being tracked going through the scheme areas which can be used to paint a clear picture of daily habits of the individual and their family.

Conclusion

15. I understand the policy rationale the Bill is attempting to address. However, as I have stated above, I do have concerns that privacy safeguards have not been adequately considered in the Bill's current form. The Bill provides a framework for the development of charging schemes. This means scheme specifics, including their privacy risks and mitigations are yet to be worked through. Given this, I make the following recommendations for your consideration.

² <https://www.transport.govt.nz/assets/Uploads/Time-of-Use-Charging-Cabinet-Material-Proactive-Release.pdf>, paragraph 75a.

16. I **recommend** clause 65Z(2) be amended to include, in the listed impact assessments, a privacy impact assessment for each proposed scheme. This could be achieved by inserting the word “privacy” in clause 65Z(2)(c). An alternative or additional way of ensuring that privacy is considered by scheme boards would be to amend clause 65D(2) to require analysis of how privacy is going to be managed in the scheme proposal.
17. I also **recommend** a provision be included in clause 65E requiring the scheme board to consult with the Privacy Commissioner before a scheme proposal is submitted to the responsible Minister. This will mean I am able to comment on each scheme proposal as it is developed to ensure appropriate privacy safeguards are considered and built in before the Minister makes their decision.
18. I suggest the Committee should also consider whether there is merit in the inclusion of a review clause in the Bill to understand if the scheme areas (once in place) lead to the intended outcomes of the Bill. If the time of use charges do not lead to a reduction in congestion in the scheme areas, then large amounts of personal information will be being collected without the policy benefits of the Bill having been obtained.
19. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Liz MacPherson
Deputy Privacy Commissioner
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