

**Land Transport Management Amendment Bill 46-1**

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**Submission by the Privacy Commissioner  
to the Transport and Industrial Relations Committee**

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2 November 2012



**1. I consider that the requirement to have an anonymous method of payment for toll roads should only be removed if new safeguards are introduced to protect New Zealanders' privacy**

- 1.1. When the Land Transport Management Act was put in place it contained several provisions to ensure that modern tolling systems would not unnecessarily infringe on New Zealanders' privacy. The requirement to have an anonymous method of payment in section 51(3) was central to these protections. This Bill proposes repealing this section.
- 1.2. My view is that removing the section will leave New Zealanders at risk, unless the Bill puts in place alternative statutory safeguards. This is because mass collection of travel information about New Zealanders creates risks of surveillance that could have serious effects on rights of privacy and freedom of movement. Current privacy rules are insufficient to protect against those risks.
- 1.3. I recognise that there are practical difficulties with providing anonymous forms of payment on some New Zealand roads. New technologies can also create opportunities for greater convenience for motorists and cost-effective collection of payments from toll roads.
- 1.4. There are therefore some arguments for amending the legislation. However, it is important to ensure that New Zealanders' rights are fully protected.
- 1.5. My recommendations therefore aim to provide appropriate safeguards against the potential for the information to be misused, while at the same time enabling our transport systems to take advantage of the benefits of new technologies.

**2. Recommendations**

- 2.1. I recommend that:
- the Bill should explicitly recognise that tolling information linked to a number plate is personal information, to which the existing protections in section 50 apply (protections against use of the information for purposes other than collecting tolls, or enforcing toll offence provisions)
  - the Bill should impose a restriction on the length of time (preferably no longer than three months) that a toll operator may retain licence plate information if questions of compliance or enforcement action have not arisen
  - the Bill should introduce a provision to require a warrant in order to access tolling information for law enforcement purposes.

**3. The current system in use by NZTA does not comply with section 51(3)**

- 3.1. There is currently one toll road operating under this legislation: the Northern Gateway. The system the New Zealand Transport Agency (NZTA) uses to administer the Northern Gateway toll road uses automatic number plate recognition to identify vehicles as they pass under a gantry at either end of the toll road. This information is

then matched against the motor vehicle register to determine the registered owner of the vehicle, and the type of vehicle. The information is retained for seven years.

- 3.2. I do not consider that the current system complies with section 51(3) of the Land Transport Management Act because it automatically captures and stores personal information about every trip. There is no anonymous method of payment available.
- 3.3. It is likely that NZTA will want future tolling to proceed on the same model since there has been considerable capital investment in the system. If it is possible to find a solution that allows for the same system to be used, but in a way that adequately protects privacy, then this is worth considering. If my recommendations are accepted, this should be sufficient to provide the necessary level of protection.
4. **I recommend that the Act should explicitly state that information stored by the tolling system linked to a number plate is personal information, to which the existing protections in section 50 apply**
  - 4.1. My view on whether NZTA has complied with section 51(3) of the Act differs from NZTA's own analysis. I understand that this is because NZTA has taken the view that number plate information is not personal information, or at least not personal information about the driver of the vehicle.
  - 4.2. However, in my view, the information collected and stored by the tolling system is clearly personal information. The Privacy Act defines personal information as "information about an identifiable individual". The tolling system stores travel information, linked to a number plate. The number plate is what allows the individual to be "identified" by linking back to the registered owner. The registered owner will either be the driver, or is likely to know who was driving the vehicle and therefore who is responsible for paying the toll. The information can be linked to an identified individual – indeed, this is the purpose of capturing the information.
  - 4.3. It is important that there should be no confusion over what is personal information in the context of tolling information. The Act's current protections against misuse of tolling information in section 50 are specifically linked to non-toll-related uses of "personal information". The Act should therefore be clarified to make it explicit that tolling information linked to a number plate is personal information. This would make sure that the protections in section 50 of the Act clearly apply.
5. **Widespread retention of travel information has the same practical effect as surveillance – so there are significant privacy risks**
  - 5.1. The current tolling system is limited to the Northern Gateway. However, other toll roads are already planned. It is possible, even likely, that the tolling network will be much more widespread in future than it is today.
  - 5.2. The more comprehensive the tolling network, the more difficult it would become for an individual to travel through New Zealand without those travel movements being recorded, and the easier it would be to locate a vehicle at any particular point in time. At a certain point the practical effect of this wide-ranging data collection will be very similar to actively tracking a vehicle.

5.3. Similar concerns about the potential for road pricing systems to constitute surveillance have been raised overseas, for instance with congestion charging based on ANPR in London.

**6. The Privacy Act does not provide strong enough protections to manage the risks created by long-term retention**

6.1. The proposed repeal of the anonymous method of payment requirement in section 51(3) of the Land Transport Management Act would leave the Privacy Act as the main means of protecting privacy on our toll road system.

6.2. However, the Privacy Act's restrictions on data retention provide too much flexibility to toll operators. It is too easy to construct a purpose for retaining travel information for long periods of time (for example for legitimate system administration purposes). The current system in use on the Northern Gateway stores information for seven years. This creates a huge repository of personal information about people's travel movements.

6.3. The fact that the Privacy Act did not provide enough protection for tolling information was the reason why section 51(3) was needed at the time that it was passed. Nothing has changed. Specific legislative provisions are still needed, so that New Zealanders are protected against surveillance of their travel movements.

**7. I recommend the Act should be amended to state a maximum three month retention period for personal information stored by any tolling system unless there are outstanding compliance issues**

7.1. I consider that NZTA's tolling system could and should be adjusted so that it stores number plate information only for long enough to ensure that the correct toll has been paid. Once the toll payment has been confirmed there is no need for the transaction information (retained for tax purposes) to be linked to licence plate information.

7.2. I am conscious that personal information may need to be retained for a short period of time in order to manage situations where it is difficult to determine whether the correct toll has been paid, or to enforce tolling obligations. For instance, I understand it is relatively easy for a driver to pay for someone else's toll, such as when two different drivers have used the road in the same rental car.

7.3. However the retention period should only be long enough to identify that a problem exists. If it does, then the information can then be retained for compliance or enforcement purposes. If it does not, the information should be deleted. The information is currently retained for seven years – a clearly excessive time.

7.4. In my view three months should be a long enough retention period to identify whether a compliance problem exists. If at the end of that time there is no compliance question relating to a particular trip, or the information is not required for enforcement action, then the information should be deleted accordingly.

**8. I recommend that access to data from tolling operations by law enforcement agencies should require a warrant**

- 8.1. I also consider that because expansion of the tolling system could result in a situation with characteristics similar to surveillance for some road users, law enforcement agencies should be required to obtain a warrant to access tolling information.
- 8.2. Currently, section 50 of the Act explicitly allows for the disclosure of information under any of the grounds of principle 11 of the Privacy Act. These grounds include public safety, and would cover emergency situations.
- 8.3. However, the requirements of principle 11(e)(i) of the Privacy Act (the broad provision relating to disclosing information for the maintenance of the law) are too easy to meet in circumstances that have characteristics similar to surveillance. Stronger safeguards are needed.
- 8.4. Requiring a warrant to access tolling information for law enforcement purposes would provide clarity both for NZTA and for law enforcement agencies about what they have to do, while still allowing for disclosure in clearly appropriate situations.