

Land Transport Management (Time of Use Charging) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

23 April 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Land Transport Management (Time of Use Charging) Amendment Bill (**Bill**). The Bill proposes a framework for administering time of use charging schemes in New Zealand, to manage traffic congestion at peak times.
- 1.2 This submission has been prepared by the Law Society's Public Law and Human Rights and Privacy Committees.¹ The Law Society has some significant concerns about the Bill and considers the Bill requires further work to address these issues if it is to proceed.
- 1.3 The Law Society **wishes to be heard** on this submission.

2 General comments

- 2.1 The Law Society supports the intention of the Bill to improve traffic congestion. The Bill provides adequately for the concept of time of use charging, and for public participation through consultation. However, the omission of important public accountability and transparency aspects is concerning, and there are gaps in some areas in setting out the 'mechanics' which are needed to operationalise the proposals.
- 2.2 Clause 65ZH(1)(f) of the Bill does contain a catch-all regulation making power. However, it would be a stretch to use this provision to address some of the most important omissions, discussed below at [3.26], which relate to the governance of scheme boards. Potentially, the regulation-making power is more appropriate to address the concerns regarding operational 'mechanics', such as administrative details of how a scheme commissioner is to be appointed: see further [3.15] below. However, in the Law Society's view it would be preferable for the Bill, or a Schedule to it, to contain these matters.
- 2.3 The gaps identified in the Bill may reflect the multiple constraints and limitations on policy analysis for this proposal, and truncated time to prepare the legislation.² The RIS notes that the compressed timeframe to develop the proposal meant there was not widespread consultation before the Bill's introduction.³ There is comparatively limited analysis of alternative options, and the Law Society notes that material provided on costs and benefits of the preferred option does not unequivocally favour the proposal.⁴
- 2.4 Poor processes have implications for good lawmaking. The Law Society's focus in this submission, however, is on addressing key privacy and public law matters to assist in upholding good legislative practice and making the Bill clear and workable. Within the individual clauses of the Bill, the three most concerning aspects are:
 - (a) Provisions containing unduly broad Ministerial powers, which the Law Society recommends should be tightened (clauses 65K and 65N).

¹ More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Branches, sections and groups](#).

² Ministry of Transport "Regulatory Impact Statement: Time of use charging" (15 May 2024) (**RIS**) at 2.

³ Above n 2 at 3.

⁴ The RIS addresses three options from [58]. It is not clear that time of use charging is the most favourable option, except for having cross party support: see above n 2 at [91]; and further at [97]-[98] providing analysis for the preferred option of costs and benefits compared to no action.

(b) Lack of clarity about the legal status of time of use charging scheme boards, and other governance matters relating to scheme boards that the empowering legislation should set out (clause 65V).

(c) Insufficient privacy protections (clause 65ZF).

2.5 These are further discussed below.

3 Individual clauses

Clause 65G: Minister's decisions concerning time of use charging scheme

Requirement for reasons for declining a recommendation

3.1 Clause 65G of the Bill provides for the responsible Minister to make recommendations, or decline to make recommendations, that a time of use charging scheme should be established.

3.2 The Law Society recommends that the Minister should be required to give reasons for a decision under clause 65G(1)(c) to “decline to recommend that the Governor-General establish a time of use charging scheme in the manner set out in the scheme proposal”. Requiring this will improve transparency and accountability. It may assist improvement in other subsequent proposals. Clause 65K(4)(d), relating to a request for a time of use charging scheme to be terminated, raises the same issue.

3.3 In the Law Society’s view, both clauses 65G and 65K should be amended to include this requirement.

Clause 65I: Notification of time of use charging area

Consultation by scheme board

3.4 Clause 65I of the Bill provides for notices to be issued describing each time of use charging area. Clause 65I(2) requires the New Zealand Transport Agency (**Agency**) to first be satisfied that the scheme board has publicly consulted on the proposed notice.

3.5 This subclause therefore includes a consultation obligation on the scheme board, while describing a notification requirement of the Agency. It is unclear if the consultation referred to is the same as the public consultation by the scheme board on a scheme proposal required under clause 65E. However, in the Law Society’s view, the wording (“publicly consulted *on the proposed notice*”) implies a second, different consultation obligation on the board. The utility of such a consultation is unclear, given there is nothing further in the Bill about how the consultation must be taken into account in preparing the final notice, and it would occur only after:

- (a) consultation has occurred on a scheme proposal in accordance with clause 65E;
- (b) consultation feedback has been considered in accordance with clause 65F;
- (c) the Minister gives a decision in clause 65G; and
- (d) if recommended by the Minister, an Order in Council is made as provided for in section 65H.

3.6 There are risks that such a consultation may not be meaningful. If genuine consultation on the notice by the scheme board is intended, the Law Society recommends that it would be clearer to include this as a section on its own between 65H and 65I, as an explicit step in the process.

3.7 Section 65Z, discussed further below, raises the same issue.

Clause 65K: Termination of time of use charging scheme

Wording of Ministerial power: consistency with clause 65G

3.8 Clause 65K of the Bill provides for a scheme board to submit to the responsible Minister a request for a time of use charging scheme to be terminated. Under clause 65K(4), the responsible Minister may, “in their complete discretion”, make one of the four decisions set out in paragraphs (a) to (d) of the clause after considering the request.

3.9 The Law Society notes the language in this termination clause differs in an important respect from clause 65G(1), which relates to establishing a scheme. While the Minister, in deciding whether to establish a scheme, has a discretion, the phrase “in their complete discretion” is not used in clause 65G(1). In the Law Society’s view, it is not consistent to provide for a significantly wider discretion for a termination decision, nor is it proportional to the nature of the decision and the subject-matter of the Bill. At a minimum, the different wording is not desirable from a statutory interpretation perspective.

3.10 The Law Society also observes that in clause 65K(4)(c), the words “as if the scheme had been initiated under section 65C(2)” appear to the Law Society to be redundant and should be deleted. Under clauses 65U(2) and 65W(c), the scheme board is the de facto operator, regardless of how a scheme is initiated. This subparagraph appears to be providing an option of the Agency taking over, to continue operation of the scheme. If that is the intention, it could be stated more clearly.

Providing for minimum period of operation

3.11 There is no provision in clause 65K, or anywhere else in the Bill, for a minimum period of operation before a termination request can be made. The Law Society recommends addressing this, as one of the missing ‘mechanics’ in the Bill earlier noted.

Requirement to give reasons

3.12 For the reasons discussed under clause 65G, the Law Society recommends that the Minister should be required to give reasons for a decision to decline to recommend that the Governor-General terminate the time of use charging scheme: clause 65K(4)(d).

Clause 65N: Responsible Minister may perform certain functions

Ministerial direction is secondary legislation

3.13 Clause 65N of the Bill provides that where the responsible Minister has concerns about a time of use charging scheme and has notified their concerns to the scheme board, further steps may be taken. Subclause (2) sets out Ministerial powers when there is scheme

board dysfunction, including the power to make a direction to a scheme board.⁵ Clause 65N(3) provides that a Ministerial direction is secondary legislation. In the Law Society's view, subclause (3) overreaches and is unnecessary.

- 3.14 The Law Society recommends deleting this subclause.

Appointing a scheme commissioner

- 3.15 Clause 65N(2)(b) says the Minister may appoint a scheme commissioner. However, nothing further prescribes the process of doing so, such as notification of appointment, terms of reference, recovery of expenses for appointment of a scheme commissioner, or duties of cooperation with a scheme commissioner (if, say, the scheme is administered on the scheme board's behalf by the staff of a local authority that is a member of the scheme).
- 3.16 The concerns with this clause are among the key gaps in the Bill earlier noted. The Law Society recommends that the legislation should address these details.

Cross-referencing correction

- 3.17 In clause 65N(2)(a), the Law Society queries whether the cross-reference should be to section 65L (proposal to vary time of use charging scheme), not 65J (notification of time of use charges).

Clause 65O: Who is liable to pay time of use charge

Billing responsibilities

- 3.18 Clause 65O of the Bill states when the registered owner of a motor vehicle is liable to pay a time of use charge. Clause 65O(2) and (3) envisage the scheme board will give notice of the need to pay a charge. However, clause 65O(5) provides that a time of use charge and the associated enforcement costs are recoverable as a debt due to the Agency.
- 3.19 The Law Society queries whether, given both subclause (5) and the Agency's billing responsibilities in clause 65ZG(1)(a) ("to collect charges and conduct billing under a time of use charging scheme"), notification ought to be by the Agency, not the scheme board. It recommends further consideration of the consistency of these clauses.

Clause 65U: Scheme boards

- 3.20 Clause 65U of the Bill provides that each time of use charging scheme has a scheme board. Local authorities may become members of a scheme.
- 3.21 In the Law Society's view, the concept of "member of a scheme" in clause 65U(3) is not particularly clear. The concept may not be well developed because, whereas the RIS refers to regional transport committees having a role, the Bill introduces the concept of the scheme board.

⁵ Clause 65N(2)(a).

Time at which local authority may become a member of a scheme

- 3.22 Subclause (3) provides that a non-proposing local authority may become a member of a scheme by giving notice before “a proposed time of use charging scheme is approved” under section 65G(1)(a). However, the word “approved” is not used in clause 65G. Under clause 65G(1)(a), the Minister makes a recommendation. Moreover, the scheme is only formally established under section 65H. As drafted, at the point at which members may join, there is still only a scheme proposal.
- 3.23 The Law Society recommends that this policy detail is clarified and the drafting corrected for consistency.

Inconsistent terminology

- 3.24 In addition, the Bill uses different terminology for membership and/or joining a scheme. Whereas clause 65U refers to scheme members, clause 65V mostly says “joined’ or “joins the time of use charging scheme” — although “members of the scheme” is also in clause 65V(1)(a)(iii).
- 3.25 For clarity, the Law Society recommends consistent terminology throughout the Bill. In likelihood, references to joining and to membership are intended to mean the same thing, unless perhaps there are circumstances where there are so many local authority members that not each local authority gets a member on the board. In the circumstances of a congestion charging scheme, this seems unlikely.

*Clause 65V: Scheme boards’ representatives and voting rights***Omission of necessary governance matters**

- 3.26 Clause 65V specifies the composition of the (maximum) six board members of a scheme board. However, a number of other important governance matters are not provided for. The Law Society recommends that the Bill should be amended to address, as a minimum, the following matters.
- (a) The status of a scheme board in the local government context needs to be clarified, by specifying, for example, whether the scheme board:
- (i) is or is not a council-controlled organisation (section 6 of the Local Government Act 2002);
 - (ii) like a regional transport committee, is considered to be statutory and not a joint committee under clause 30A of Schedule 7 of the Local Government Act 2002.

This is particularly important if the scheme board is to handle money and have a disbursement account (suggested by clause 65W(c) and (d) of the Bill, although clause 65S makes it ambiguous).

- (b) Clause 65V does not state a quorum requirement, nor are matters stipulated as to how a scheme board conducts business. The Law Society queries whether this is deliberate and, if so, recommends that (at a minimum) it should be a responsibility of the scheme board in clause 65W to establish its own procedures and governance documents.

(c) It is not clear the extent to which a scheme board is subject to Parts 1–6 of the Local Government Official Information and Meetings Act 1987, or the Official Information Act 1982.

(d) It is not clear whether the Auditor-General is the auditor for scheme boards, and there is presently no audit requirement, including the need for an audit report in the scheme board’s annual report prepared under clause 65Y.

3.27 To ensure provisions contained in the Bill are robust and consistent with minimum expectations, the Law Society recommends drafting changes to clarify these points.

Voting rights allocation

3.28 Under clause 65V(3), which refers to voting rights divided between board members based on the share of the scheme establishment costs that each local authority has agreed to contribute, it is not clear how the position that local authorities contribute to the costs of scheme establishment fits with clause 65S(1)(a) (which refers to allocating revenue from a time of use charging scheme to reimburse establishment costs incurred by the scheme board). The policy may be that local authorities provide an initial contribution to the scheme board which is later reimbursed under clause 65S(1)(a). This needs to be made more clear. Given that local authorities can join at a relatively late stage when presumably most expenditure has been incurred (clause 65U(3)), the Law Society also doubts whether this is an appropriate metric, unless intended to incentivise early involvement. The select committee may wish to explore this question further with officials and consider the need for any drafting clarification.

Clause 65W: Responsibilities of scheme board

Consistency with clause 65S

3.29 Clause 65W sets out the functions and duties of a scheme board. While it appears, from this clause, that the scheme board is the de facto “operator” of a scheme, clause 65S(1)(b) refers to the application by the Agency of revenue from a time of use charging scheme to “meet the reasonable ... costs of scheme operation, revenue collection, and billing by the Agency”. This gives rise to ambiguity as to whether the Agency or a scheme board operates a scheme.

3.30 The Law Society recommends clarifying the intended interaction between the role of the Agency in clause 65S(1)(b) and the functions of a scheme board in clause 65W.

Clause 65X: Investment agreements and disbursement accounts

Investment agreements: connection with clause 65ZG

3.31 Clause 65X requires periodic investment agreements to be reached between local authority members of a time of use charging scheme and the responsible Minister. To avoid confusion, the Law Society recommends that this clause should be more explicit about the investment agreements needing to cover disbursement of establishment, collection, billing, and oversight costs. It needs to be read in light of clause 65ZG(1)(a) and (b), which provide that the Agency has functions and duties to conduct billing under

a time of use charging scheme, and to disburse funds collected to cover establishment, collection, billing, and oversight costs in accordance with investment agreements.

- 3.32 For consistency with subclause (1), subclause (2) requires minor amendment. The “years” in clause 65X(2) should be “financial years”.

Clause 65Y: Reporting obligations of scheme boards

Information requests

- 3.33 Clause 65Y enables information about a time of use charging scheme to be requested from the scheme board or any members of the scheme. However, clause 65Y(2) only gives a timeframe for a scheme board to respond. The Law Society queries whether this timeframe should also apply to members of the scheme.

Timeframe for providing annual report

- 3.34 In the Law Society’s view, in clause 65Y(3) it would be useful to provide a timeframe within which the annual report must be provided, such as within a certain period from the end of the financial year.

Clause 65Z: Time of use charging scheme impact assessments

Impact assessments produced for consultation on clause 65I notice

- 3.35 Clause 65Z requires time of use charging impact assessments to be produced. In the Law Society’s view, the requirement of clause 65Z(1)(c) is confusing, for the same reasons noted earlier in comments provided under clause 65I. Clause 65Z(1)(c) suggests a time of use charging impact assessment is consulted on in, seemingly, a second specific consultation round. The Law Society doubts whether this is the intended policy, as the scheme impact assessment relates to and will help readers to evaluate a proposal. Subclause (3) appears to better express the intended policy with respect to consultation.
- 3.36 The Law Society recommends that the policy intention and drafting of clause 65Z(1)(c) are clarified, including to ensure internal consistency in the clause.

Clause 65ZA: Public notification of time of use charging scheme

Internet publication

- 3.37 Clause 65ZA requires a scheme board to make certain information available free of charge “on its internet site”. The Law Society suggests that it might be practical to add the alternative of publication on the website of one or more of the members of the scheme (terminology depending on clarification of the membership concept, as earlier discussed under clause 65U).

Clause 65ZB: Territorial authority that is not member of scheme – collection and billing infrastructure

Role of collection

- 3.38 Clause 65ZB applies to a territorial authority that is not a member of a scheme but controls local roads that are part of a scheme. The Law Society recommends that clause

65ZB(2) is clarified. As drafted, this subclause requires a territorial authority to facilitate the operation of scheme collection and traffic monitoring infrastructure on behalf of the scheme board. However, collection also appears the responsibility of the Agency: clauses 65S(1)(b) and 65ZG(1)(a).

- 3.39 If the intent is for these territorial authorities to have their expenses reimbursed, this should also be clarified.

Clause 65ZC: Investment by territorial authority that is not member of scheme

Application of clause 65X(5)

- 3.40 Clause 65ZC of the Bill provides for investment by, and investment agreements with, territorial authorities that are not members of a scheme. In the Law Society's view, a further subclause (3) is needed, to provide that section 65X(5) applies for the purposes of subclause (2).

Clause 65ZF: Privacy

Privacy concerns

- 3.41 Clause 65ZF of the Bill, relating to privacy, covers personal information stored or held for the purposes of a time of use charging scheme. The Law Society is concerned the potential privacy issues arising from time of use charging schemes are not well-recognised or addressed in the Bill as presently drafted, as the Privacy Commissioner has also raised.⁶
- 3.42 Clause 65ZF is identical to the provision in section 50 of the Land Transport Management Act (which relates to a road toll scheme). The new clause, like section 50, contains requirements that theoretically protect privacy, by limiting use of personal information beyond the standing requirements of Information Privacy Principle 10 of the Privacy Act 2020. Specific constraints are put around retention of information, and privacy policies are required. These requirements are more onerous than would apply under the Privacy Act alone. The Law Society remains concerned about whether they go far enough for what is proposed.
- 3.43 The comments from the Privacy Commissioner in the DDS are clear that his Office was only consulted late in the process and there remain concerns about "very serious privacy impacts" and lack of engagement:⁷

Despite the RIS identifying privacy as a key issue in this policy process, we were not included in earlier policy development or in departmental consultation on the Cabinet paper as required in the Cabinet Manual. We are now responding to a draft Bill which reflects earlier policy decisions on a short timeframe. While we aim to provide helpful comments below, we will likely have further issues to engage on at the Select Committee stage.

- 3.44 One privacy consideration is that, once established, a person who travels in the time of use charging area because they have no other option will also have no choice in terms of

⁶ "Departmental Disclosure Statement: Land Transport Management (Time of Use Charging) Amendment Bill" (6 December 2024) at 3.5.1.

⁷ Above n 6 at 3.5.1.

the collection of their personal information (as the Privacy Act would normally require). This contrasts with a toll road, where one of the privacy safeguards is the requirement for there to be an untolled alternative route.⁸

- 3.45 Some of the requirements enable time of use schemes to be altered, which obviously leads to the possibility that the privacy impacts could grow or lessen with those changes. The requirements of clause 65ZG would continue to apply. Beyond this, the Law Society would recommend that consideration is given to whether a scheme board and enforcement authority should be required to review/revise their privacy policies whenever a change is made.
- 3.46 On a practical note, it is not clear why the privacy clause only applies to the scheme board and enforcement authority, but not to the Agency which collects charges and conducts billing under clause 65ZG. In the Law Society's view, because of clause 65ZG (Agency's responsibilities in respect of time of use charging schemes), clause 65ZF(1) also needs to apply to the Agency even though the Agency is bound by the "regular" provisions in the Privacy Act.
- 3.47 Given that much will depend on the design of any given time of use charging scheme, the Law Society:
- (a) supports the Privacy Commissioner in recommending that a statutory consultation with the Privacy Commissioner should be included as a requirement in the Bill; and
 - (b) commends any submission that the Commissioner may make to the attention of the committee.

4 Recommendations

4.1 The Law Society recommends that:

- (a) In clause 65G(1)(c), the Minister should be required to give reasons for their decision to "decline to recommend that the Governor-General establish a time of use charging scheme in the manner set out in the scheme proposal".
- (b) In clause 65I(2), either the language "publicly consulted *on the proposed notice*" is clarified, or the separate requirement for the scheme board to have consulted specifically on the proposed notice is spelt out between clauses 65H and 65I, as an explicit step in the process (see also clause 65Z).
- (c) In clause 65K:
 - (i) The reference to the Minister's "complete discretion" is removed. The Ministerial powers in this termination clause should mirror the Ministerial powers for establishing a scheme (clause 65G).
 - (ii) In subclause (4)(c), the words "as if the scheme had been initiated under section 65C(2)" are deleted.

⁸ Land Transport Management Act 2003, s 48(1)(d).

- (iii) A minimum period of operation should be specified before a termination request can be made.
- (d) In clause 65K(4)(d), for the reasons discussed under clause 65G, the Minister should be required to give reasons for a decision to decline to recommend that the Governor-General terminate the time of use charging scheme.
- (e) In clause 65N:
 - (i) subclause (3) should be deleted; and
 - (ii) a cross-referencing correction may be needed, to clause 65L not clause 65J.
- (f) Other matters not presently provided for in clause 65N, such as the process of appointing a scheme commissioner and duties of cooperation with the scheme commissioner, should also be considered for inclusion in the Bill.
- (g) In clause 65O, the question is clarified regarding whether notification of the need to pay a charge ought to be given by the Agency, not the scheme board.
- (h) In clause 65U:
 - (i) subclause (3) is reworded, to remove the word “approved” which is not consistent with other clauses; and
 - (ii) terminology for scheme membership and/or joining a scheme is reviewed for consistency (see also clause 65V).
- (i) In clause 65V, the committee should examine and clarify the basis on which voting rights are allocated between local authorities (whether, despite the uncertainties noted above, that is by the share of scheme establishment costs, or some other metric).
- (j) New clauses are inserted to provide for key governance matters, presently omitted from clause 65V. As a minimum:
 - (i) The status of a scheme board under the Local Government Act 2002 needs to be clarified.
 - (ii) It should be a responsibility of the scheme board in clause 65W to establish its own procedures and governance documents.
 - (iii) The Bill should address whether a scheme board is subject to Parts 1–6 of the Local Government Official Information and Meetings Act 1987, or the Official Information Act 1982.
 - (iv) There should be provision for audit requirements, including the need for an audit report in the scheme board’s annual report prepared under clause 65Y, and clarification of whether the Auditor-General is the auditor for scheme boards.
- (k) In clause 65W, the intended interaction between the role of the Agency in clause 65S(1)(b) and the functions of a scheme board in clause 65W is clarified.

- (l) In clause 65X:
 - (i) amendment is needed to specify that investment agreements should address disbursement of establishment, collection, billing, and oversight costs (given the requirement of clause 65ZG(1)(b) on the Agency to disburse funds collected to cover establishment, collection, billing, and oversight costs “in accordance with investment agreements”); and
 - (ii) for consistency with subclause (1), the “years” in clause 65X(2) should be “financial years”.
- (m) In clause 65Y, it would be useful to provide a timeframe within which the annual report must be provided, such as within a certain period from the end of the financial year.
- (n) In clause 65Z, the policy intention and drafting of clause 65Z(1)(c) are reconsidered (see further clause 65I).
- (o) In clause 65ZA, alternatives to publication by a scheme board “on its internet site” may be desirable.
- (p) In clause 65ZB, the respective roles and responsibilities of territorial authorities, the scheme board and the Agency should be clarified (for example, on whose behalf is the territorial authority to operate scheme collection infrastructure?), as should the question of whether territorial authorities are to have their expenses reimbursed.
- (q) In clause 65ZC, a further subclause (3) is needed, to provide that section 65X(5) applies for the purposes of subclause (2)
- (r) The Committee should note concerns of both the Law Society and the Privacy Commissioner that the Bill does not adequately address potential privacy issues. As a minimum:
 - (i) a scheme board and enforcement authority should be required to review/revise their privacy policies whenever a change to a time of use charging scheme is made;
 - (ii) because of clause 65ZG, clause 65ZF(1) also needs to apply to the Agency; and
 - (iii) a statutory consultation with the Privacy Commissioner should be included as a requirement in the Bill.

Nāku noa, nā



Ataga'i Esera
Vice President