



**LEGISLATION ADVISORY COMMITTEE**

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16 October 2013

Mr David Bennett MP  
Chair  
Transport and Industrial Relations Committee  
Parliament Buildings  
P O Box 18 041  
**WELLINGTON 6160**

Dear Mr Bennett

**Land Transport and Road User Charges Legislation Amendment Bill 143-1**

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced, and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include to:
  - (a) scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
  - (b) help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.
4. The LAC considered the Land Transport and Road User Charges Legislation Amendment Bill at its meeting on 11 September 2013. The LAC has concerns about the breadth of the search warrant power in clause 14 of the Bill, and also

about the breadth of the power given to the Road User Charges collector under clause 17 to specify road user charges by *Gazette* notice.

### **Power of Search and Entry**

5. Clause 14 replaces the current section 79 of the Road User Charges Act with a new section 79 that authorises the issue of search warrants in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012 in relation to offences under the Road User Charges Act notwithstanding that all offences are punishable by fines and are not punishable by imprisonment. The maximum fines vary from \$1,000 to \$15,000 in the case of an individual and \$5,000 to \$75,000 in the case of a body corporate.
6. In general terms search warrants ought normally be available in relation to offences punishable by imprisonment as the fact that an offence carries a penalty of imprisonment will usually be a reliable indicator that it is sufficiently serious to justify the availability of a search warrant power. In relation to non-imprisonable offences, search warrant powers can be justified where they are necessary in the public interest for achieving the purposes of the legislation.<sup>1</sup>
7. An across-the-board application of the search warrant power does not appear to be justified. The LAC considers that the section should be amended so that it is only available in relation to those specific offences (such as the offences under sections 46 and 66) where search powers are necessary to achieve the Act's purposes. It is not necessary to make intrusive search powers available in relation to other offences (such as that in section 67) of the Act
8. Obtaining evidence in relation to some of the offences in the Road User Charges Act would likely be problematic in the absence of a search power (for example, the provision of false or misleading information to the RUC collector under section 46 and the production of false records or information in breach of section 66). However, evidence of others (for example, a failure to produce business records in contravention of section 67) will usually be readily available without the need for an intrusive search power.

### **RUC collector power to specify road user charges**

9. Clause 17 grants the RUC collector the power to specify by notice in the *Gazette* a RUC vehicle type and rate of road user charge payable in respect of a vehicle of that type. New section 94A provides that the RUC collector may do this where the vehicle or combination vehicle requires a licence and no rate of road user charge has been specified in regulations that applies to the vehicle or combination vehicle. Subsection (4) of new section 90A applies subsections 85(4) and (5) of the Road User Charges Act to *Gazette* notices issued by the RUC collector. Under those provisions any notice issued by the RUC collector must be expressly validated by an Act of Parliament or will expire and any user charges otherwise payable will have to be refunded.

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<sup>1</sup> See Law Commission *Search and Surveillance Powers* (NZLC R97, 2007).

10. When setting the rate the RUC collector must use the same methodology as used for setting rates of road user charges in regulation. After specifying the rate by Gazette notice for the type of vehicle, the Road User Charges collector may issue the owner or operator of the vehicle or combination vehicle an assessment of the amount of road user charges payable, which is then payable in the same way as other road user charges (new section 90B).
11. We understand that the purpose of this new power proposed for the RUC collector is to deal with a very small number of vehicles that have been identified that do not fall within the definitions of vehicle types or combinations of vehicle types specified in the Road User Charges Regulations 2012 and Road User Charges (Rates) Regulations 2012 (for example, a one off combination to move a large object like a wind turbine on the roads). However, the ambit of the power that is being given is far broader than is needed. The extent of any power of this type should be carefully delineated. In its current form it allows the RUC collector to set rates for any type of vehicle or combination vehicle that requires a licence provided that there is no rate already specified in regulation.
12. Although the requirement for that notices eventually be validated by an Act of Parliament offers some protection, the LAC considers further measures are needed.
13. The LAC is concerned that the power given to the RUC collector could potentially be used to set road user rates for a much broader range of types of vehicle than is probably intended. There is nothing in the provision itself that restricts its use to unusual one off situations where it is not feasible to use the regulation making power to set additional rates for road users. At present the only restriction is that the RUC collector must use the same methodology as is used in regulations when specifying rates by Gazette notice. The LAC submits that the RUC collector's power should be limited to setting road user rates to deal with unusual one-off situations affecting small numbers of vehicles.
14. In addition, we consider that as the RUC collector's power is essentially a legislative power it should be subject to safeguards that apply under the Legislation Act 2012. The LAC submits that the Bill be amended to provide that a Gazette notice issued by the RUC collector be a disallowable instrument for the purposes of the Legislation Act and that they must be presented to the House of Representatives under section 41 of the Legislation Act. In our view it is appropriate to impose this requirement to ensure that notices issued by the RUC collector come to the early attention of the House and can be considered by the Regulations Review Committee.

15. The Committee does not wish to be heard on this submission.

Yours sincerely

Hon Sir Grant Hammond  
Chair