

Regulatory Impact Statement

ROAD USER CHARGES: ADMINISTRATION FEE CREDIT CARD BANK CHARGES

Agency Disclosure Statement

The Ministry of Transport has prepared this Regulatory Impact Statement with input from the NZ Transport Agency (NZTA).

It provides an analysis of options to enable the NZTA to pass on the precise cost of credit card transaction bank charges to road user charges (RUC) purchasers that incur them.

The preferred option will require amendment to the Land Transport Act 1998, Road User Charges Act 2012 and Road User Charges (Administration Fees) Regulations 2014.

The Ministry of Transport and NZTA provided the public with an opportunity to make submissions on this proposal from 13 December 2013 to 11 February 2014.

The preferred option in this paper will not impair private property rights, or the incentives to innovate and invest, or override any of the fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee's Guidelines on Process and Content of Legislation).

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Status quo and problem definition

1. Approximately 650,000 of the 4 million vehicles currently listed on the Motor Vehicle Register are subject to road user charges (RUC). Vehicles with a gross vehicle mass of more than 3.5 tonnes, or vehicles that use diesel or other fuels not taxed at source must pay RUC.
2. Under section 16 of the Road User Charges Act 2012, an application for a RUC licence is required to be accompanied by payment of RUC and the administration fee (if any) for the licence. Under section 88(3) of the Act, different rates of administration fees may be prescribed for different types or forms of RUC licence, different payment methods, or on any other differential basis.
3. Therefore, the Road User Charges Act 2012 recognises that administration fees may be incurred by a RUC collector and that such costs may be payable by a person purchasing a RUC licence. As such, the government can make regulations that prescribe the administration fees that customers must pay.
4. The NZTA is responsible for administering the RUC system, which includes the collection and refunding of revenue from RUC. The Road User Charges (Administration Fees) Regulations 2014 prescribe the administration fees that recover the costs of collecting RUC.
5. RUC administration fees are charged when a RUC licence is purchased, or for other RUC transactions and services. RUC administration fees cover the cost of providing the different ways of purchasing RUC, RUC services, and maintaining the RUC system.
6. Sellers incur bank charges when customers purchase RUC using credit cards. Banks calculate the applicable bank charge as a percentage of the total purchase price. However, the NZTA currently recovers a portion of the costs via a fixed (averaged) amount included within the regulated RUC administration fee.
7. Current RUC administration fees recover \$0.58 towards credit card charges from every transaction conducted over the counter, and \$0.67 per online transaction. These amounts are not explicit in the RUC administration fees; the overall fee incorporates these. Customers pay the overall fee regardless of whether payment is made by credit card or otherwise.
8. The use of a fixed amount included in the applicable regulated fees to recover bank charges has given rise to a number of problems. The paper explains these below.

RUC administration fees do not fairly attribute costs to those who benefit from the convenience of using credit cards

9. As a result of the NZTA recovering credit card convenience fees through a fixed amount built into existing administration fees:
 - customers purchasing small amounts of RUC (which incur correspondingly small bank charges) are cross-subsidising those purchasing large amounts of RUC (which incur correspondingly large bank charges) with credit cards
 - customers purchasing through direct payment methods are cross-subsidising those choosing to pay with credit cards
 - due to the way RUC administration fees have evolved over time, the fee for over the counter transactions includes \$0.58 to recover credit card charges. However, commercial RUC agents on-charge the exact bank charge amounts they incur by accepting credit card payments. This has the result that, in effect, the NZTA is discounting some purchases, compared to what the commercial agents are charging
 - An example of the cross subsidisation occurring is that most of the high value transactions, with corresponding high credit card charges, are being generated by commercial operators, not private motorists. This results in private motorists, who make up the largest proportion of RUC purchasers, subsidising commercial operators in many instances.

The status quo exposes the NZ Transport Agency to a risk of higher than budgeted bank charges

10. Bank charges are difficult to forecast with accuracy. The cost of absorbing credit card bank charges grows in relation to the amount of RUC sold via credit card transactions, risking higher than budgeted bank charges. The NZTA has limited control over this risk and it is, therefore, difficult to mitigate.
11. The NZTA collects more than \$1.2 billion per annum in RUC. The cost of collecting these funds is \$10.5 million per annum, and this is partially recovered through administration fees. About \$1.0 million of these collection costs relate to credit card usage. However, there is potential for this cost to increase substantially.
12. Historically, the NZTA has recovered less revenue from the credit card component built into existing administration fees, compared to the actual credit card bank charges incurred. The NZTA has had to absorb this shortfall. The expected increase in credit card use will likely increase this shortfall over time, unless a solution is introduced.

13. The table below compares the expected revenue from the credit card component built into existing fees against the cost of credit card charges. The figures are based on actual data for 2014/15 and forecasts for 2015/16 and 2016/17.

Year	Recovery of fee	Cost of fee	Surplus/ (deficit)
2014/15 (Actual)	771,416.24	772,447.74	(1,031.50)
2015/16	728,805	1,185,329.60	(456,524.22)
2016/17	671,667	1,392,295.38	(720,628.62)

Other RUC sellers consider that they are commercially disadvantaged

14. Customers can currently purchase RUC from a number of NZTA commercial agents. These commercial agents currently pass on the exact credit card bank charge to customers. The administration fee component of a RUC purchase is collected by the commercial agent on behalf of the NZTA. The commercial agent transfers this amount to the NZTA. The NZTA then pays the commercial agent, as per their contracts for providing RUC purchasing services.
15. This creates an incentive for customers to purchase RUC from the NZTA at a significantly cheaper cost than other commercial agents who currently pass on bank charges.
16. Some commercial agents have intimated they are considering approaching the Commerce Commission about the issue unless it is resolved.

Objectives

17. The government's objectives for the RUC system include:
- cost recovery
 - equity
 - minimising administrative and compliance costs.
18. The NZTA intends to pass on the precise cost of credit card transaction bank charges to RUC purchasers that incur them, to eliminate the problems identified above. The precise cost is subject to change, and is dependant upon the rate charged by the bank, and so any solution must allow for potential price increases or decreases.
19. The NZTA needs to continue to recover the correct cost of administering the RUC system while simultaneously providing equitable administration fees and improving customer service. The analysis considers the options below against the following criteria:
- equity – the fees recover the true costs associated with each individual's purchase method
 - technical feasibility – the method of recovering credit card transaction bank charges is technically feasible

- cost recovery – the method of recovering credit card transaction bank charges allows the NZTA to recover the costs of administering the RUC system
- legislative feasibility – the method of recovering credit card transaction bank charges is provided for in legislation.

Options and impact analysis

20. Officials considered five options to enable the NZTA to recover credit card transaction bank charges as a convenience surcharge, including retaining the status quo.

Option 1: Retaining the status quo

21. Option 1 would retain the current administration fees and continue to recover bank charges as a fixed (averaged) amount included within the applicable regulated fee. This option will not address the issues outlined in the problem definition.

Option 2: Directing bank charges from the bank directly to the customer

22. Option 2 is a non-regulatory option that would see the NZTA implement a system similar to that used by the Inland Revenue Department, or the New Zealand Police.
23. Under this option, the bank would charge the credit card surcharge directly to the customer, and the surcharge would not pass through the NZTA's bank accounts.
24. This would amount to the customer entering a separate agreement with the NZTA's bank to pay the fee in order to obtain the convenience of paying RUC by credit card. The NZTA would design its website so that customers link to the NZTA's bank's website and make payments directly to the bank, with no involvement from the NZTA.
25. This option would be equitable and would avoid any cross-subsidisation. It would allow the NZTA to pass on the precise cost of credit card transaction bank charges, revealing the full cost of credit card purchases to users. RUC administration fees would still be payable to the NZTA but these would exclude charges for the banks services.
26. If this option were available, it would not be beyond the NZTA's authority to offer this service, as long as the customer had a direct contractual liability with the bank for the bank charge. This option would require an adjustment to current RUC administration fees, to remove the current credit card bank charge element.
27. The NZTA's bank previously offered the customer interface that would allow this direct charging to take place (like the Inland Revenue Department and New Zealand Police have in place). However, the bank is no longer offering this service. As the NZTA's bank will not provide this service, the option is not viable.

Option 3: Standard business practice

28. Under this option, the NZTA would address bank charges by collecting them on behalf of its bank via its website. The regulated administration fee would be exclusive of any component relating to actual or average bank charges. While the NZTA might provide information on how banks charge for the use of credit cards, the bank would share responsibility for ensuring the customer understands the charges. The NZTA would include a tick box that would not allow a credit card purchase to proceed without the customer acknowledging and accepting that bank charges, set by the bank, could apply and, if so, would be included in the total payment.

29. This option would require an adjustment to current RUC administration fees, to remove the current credit card bank charge element.
30. In this instance, when a customer purchased RUC via credit card, the NZTA would collect the associated bank charge and transfer it immediately to a non-interest bearing NZTA bank account. The NZTA would then pay those funds on to the bank to meet the monthly charge for all applicable credit card transactions.
31. This method of paying credit card charges is the way many commercial businesses choose to operate surcharging services. The growing prevalence of surcharging has promoted better indication of true price, particularly for bill payments. This option would eliminate all of the issues outlined in the problem definition.
32. This option would mean that the NZTA receives a bank charge and that the collection of the bank charge is a NZTA administration cost.
33. However, Crown Law has advised that the NZTA cannot collect a bank charge for paying into its bank account without specifying the bank charge in regulations or without a specific power in the empowering provision.

Option 4: Incorporating the exact cost of bank charges into the Road User Charges (Administration Fees) Regulations 2014

34. Under this option, the regulations would be amended to incorporate a fixed percentage fee (the bank charge), of the total transaction purchase price, for RUC transactions purchased by credit card.
35. However, Crown Law has advised that the Road User Charges Act 2012 (section 88) does not provide sufficient authority for prescribing payment of the bank charge in terms of fixing a percentage of the total amount.
36. The Road User Charges Act 2012 provides for the prescribing of administration fees in relation to costs and expenses incurred while exercising function or powers performing duties, or providing services under the Road User Charges Act 2012 or regulations made under it.
37. Parliamentary Counsel has noted¹ that where fees are to be payable under an Act or associated regulations, the general approach in legislation is to provide for the fee to be fixed or prescribed (as with the Road User Charges Act 2012). If the intention is that the fee itself is not to be fixed by regulation but instead the rate at which a fee is to be calculated or the method of calculating a fee is to be set by regulation, then the empowering Act will provide for that. Examples of this include the Building Act 2004 (section 402), Overseas Investment Act 2005 (section 61), and Takeovers Act 1993 (section 46).

¹ By reference to the Parliamentary Counsel Office's internal manual, which corresponds with the guidelines in Part 4 of Chapter 15 of the Legislation Advisory Committee Guidelines: 2014 edition which relate to how a fee amount should be determined.

38. Section 88 of the Road User Charges Act 2012 provides for the prescribing of administration fees, as well as the prescribing of different rates of administration fees for different types of RUC licence, different payment methods or on any other differential basis.² The RUC regulations also provide for the prescribing of the recipient to whom administration fees are payable under the Road User Charges Act 2012.³ Section 88 does not provide for the prescribing of the rate at which the fee is to be calculated, or a method for calculating the fee.
39. Therefore, section 88 of the Road User Charges Act 2012 is not sufficient authority for prescribing payment of the bank charge in terms of fixing a percentage of the total amount.
40. Officials have considered whether it is possible to impose a bank charge using sections 167 and 168 of the Land Transport Act 1998.
41. Section 167 is the general regulation-making power. Section 167(1)(j) provides for the making of regulations “specifying the matters for which fees or charges are to be paid under this Act or any other enactment concerning land transport”. Under this subsection it is the *matters* for which fees are to be paid that can be specified by regulation. Therefore, this subsection could not be used to prescribe the *method* of setting bank charges in terms of fixing a percentage of the total amount.
42. Section 168(1)(b) of the Land Transport Act 1998 allows regulations to be made that provide for the setting of fees to meet costs incurred by the NZTA when acting under the Land Transport Act 1998 or “any other enactment relating to land transport⁴”.
43. However, while the Road User Charges Act 2012 is an enactment relating to land transport, it already expressly provides for the prescribing of administrative fees and, is silent about the ability to provide for the fixing of fees for other costs. The Legislation Advisory Committee Guidelines state: “if a fee is to be determined by a particular method or calculation . . . , this should be authorised in the empowering provision”. It would be, therefore, logical to assume that when drafting section 88, if there was any intention to allow fees to be determined by a particular method or calculation, the provision would have expressly said so. As the Road User Charges Act 2012 shows a deliberate intention to provide for administration fees, and makes none for other costs, the specific intent thus set out precludes using the more generic provisions afforded in section 168(1)(b).
44. Therefore, the NZTA cannot be empowered to pass the actual cost through to customers by using sections 167 and 168 of the Land Transport Act 1998.

Option 5: Amend the applicable primary legislation (preferred option)

45. Option 5 seeks to amend both the Road User Charges Act 2012 and Land Transport Act 1998 to provide the legislative enablement for both options 3 and 4. This recognises that it is not always possible to anticipate the best way to pass through costs for every eventuality, so a range of means that preserve key public interests is likely to be more efficient over the long term. By amending the Acts, Option 5 would:
 - enable the NZTA to act as a go between for any third party charges incurred by the NZTA as a result of customers purchasing any NZTA service by credit card or other

² Road User Charges Act 2012, section 88(3)

³ Road User Charges Act 2012, section 88(4)

⁴ ‘Land transport’ means “transport on land by any means and the infrastructure facilitating such transport; and includes rail, surface-effect vehicles, and harbour ferries (Land Transport Act 1998, section 2)

- financial service or device. As with Option 3, this would allow the NZTA to pass on credit card or other third party set charges by way of a standard business practice
- authorise the making of regulations that prescribe the method or formula of calculating a fee. In other words, the Acts should include reference to the rate at which, or method by which, those fees are to be calculated. As with Option 4, this would enable RUC administration fee regulations to provide for a fee to be determined by a formula, rather than explicitly stating an exact fee, or a set figure.

46. This option is equitable. It would enable the NZTA to pass on the precise cost of credit card bank charges to those generating them, eliminating cross-subsidisation. It would also enable the NZTA to accommodate any changes to the rate, which is based on a commercial arrangement between the NZTA and its' bank, and so is subject to change.
47. The option seeks flexibility without relaxing controls on the setting of fees by public entities.
48. The following table outlines the changes to RUC licence administration fees once the Road User Charges Act 2012 has been amended to remove the credit card charging component.

	Fee structure	Status Quo		Final Proposal	Change from Status Quo
		Fees \$	Credit card convenience fee \$	Fees \$	
RUC Licence Purchase Channel Fees	Face-to-face channel	6.78	0.58 per transaction AND Passed on to customer by commercial agent (credit card transactions only)	6.20	decrease
	Digital self-service (electronic service provider)	1.83	Passed on to customer by commercial agent	1.83	nil
	Digital self-service (Truck Stop)	5.39	Passed on to customer by commercial agent	5.39	nil
	Digital self service (internet)	4.17	0.67 per transaction	3.50	decrease
	Digital assisted	7.50	Not recovered	7.50	nil

49. There is no need to change the administration fees that have not been shaded in the table above as the relevant credit card charges:
- are already being on-charged by the commercial agent providing these services; or
 - are not currently built into the total current administration fee.
50. As with all options outlined in this RIS, and subject to Cabinet approval, Option 5 would amend the Road User Charges (Administration Fees) Regulations 2014 to reduce the two RUC administration fees concerned.

Effect on total RUC purchase price for customers

51. The table below outlines what customers would pay for RUC under each payment method for a variety of RUC licences where the credit card surcharge is passed on. The NZTA will continue to offer a variety of payment options so that customers have a choice in the costs that they will incur.

Size of RUC purchase		\$500	\$1,000	\$5,000	\$20,000
Face-to-face channel (over the counter)	Status quo \$	506.78	1,006.78	5,006.78	20,006.78
	On-charging – cash / bank transfer \$	506.20	1,006.20	5,006.20	20,006.20
	On-charging – credit card \$	510.30	1,014.35	5,046.75	20,168.25
Digital self service (online)	Status quo \$	504.17	1,004.17	5,004.17	20,004.17
	On-charging – cash / bank transfer \$	503.50	1,003.50	5,003.50	20,003.50
	On-charging – credit card \$	507.58	1,011.63	5,044.03	20,165.53

52. The table above outlines that customers purchasing RUC with credit cards will face an overall increase in the price they pay for their RUC licences. However, the increased price reflects the true cost associated with this purchase method.
53. Customers purchasing RUC by cash or direct transfer methods will face a reduction in the price they are paying for their RUC licences, as outlined in the table.
54. The proposal in this paper continues to allow for a variety of purchase options, most of which will not be subject to a price increase.

Comparison of options against criteria

55. The following table compares the options against the assessment criteria. Option 5 is preferred as it is the best fit against the criteria.

Assessment criteria	Option 1	Option 2	Option 3	Option 4	Option 5
Equitable	No	Yes	Yes	Yes	Yes
Technical feasibility	Yes	No	Yes	Yes	Yes
Cost recovery	No	Yes	Yes	Yes	Yes
Legislative feasibility	Yes	Yes	No	No	Yes

Consultation

56. In April 2012, Cabinet approved a schedule of 13 new and amended RUC administration fees, which included purchases over the internet [EGI Min (12) 6/7 refers]. These changes took effect from 1 August 2012 in conjunction with the introduction of a simplified RUC regime.
57. The previous Minister of Transport asked the NZTA to review the impact of these changes and report to Cabinet by December 2013.
58. The NZTA completed the review in November 2013 and Cabinet agreed to public consultation on proposals to change some RUC fees during 2013/14.
59. The NZ Transport Agency's public consultation on changes to RUC administration fees commenced on 13 December 2013 and concluded on 11 February 2014. To make the public aware of the proposed changes, a notice was placed on the NZ Transport Agency website, as well as in major newspapers.
60. In addition, a number of stakeholder groups were identified as likely to be directly affected by the changes. These groups were sent an email, which included the same information as the public notice. All notices provided a link to the NZTA's fees consultation landing page and included the NZTA's free phone number if the public had questions about the proposals.
61. As part of the consultation, parties were asked to comment on the proposal to introduce a surcharge for those using credit cards to purchase RUC distance licences, with a consequential reduction in applicable administration fees. Three out of the thirteen submissions received from interested parties commented on the credit card charges proposal, all of which supported it.
62. Those that commented on the proposal did so in the context of encouraging the removal of any cross-subsidisation between RUC administration fees. The introduction of a surcharge applied only to credit card users will allow this to happen.
63. Having considered the review's findings and feedback from public consultation, Cabinet approved a schedule of new and amended RUC administration fees in June 2014 [CAB Min (14) 19/7 refers]. These fees came into effect on 1 November 2014.

64. Cabinet noted that the NZTA would eliminate the need for cross-subsidisation of online payments when it introduced a solution to improve the management of credit card bank charges associated with online RUC transactions.
65. Cabinet agreed that administration fee reductions as a consequence of on-charging bank charges could be referred back to the Economic Growth and Infrastructure Committee for a decision without public consultation [EGI Min (14) 11/5 refers].

Conclusion

66. Customers incur bank charges when they purchase RUC using payment options with credit cards. The bank sets its charge as a percentage of the total purchase price; however, currently the NZTA recovers costs via a fixed amount included within the applicable regulated RUC administration fee. This arrangement has created several problems:
 - RUC administration fees are not fairly attributed to those who benefit from the convenience of using credit cards
 - the NZ Transport Agency is exposed to a risk of higher than budgeted bank charges
 - other RUC sellers consider that they are commercially disadvantaged.
67. The recommended option will enable the NZTA to pass on the precise cost of credit card transaction bank charges to RUC purchasers that incur them and will eliminate the problems outlined above. While the Ministry of Transport and NZTA have considered other options, they are currently not feasible under the legislative framework surrounding RUC administration fees.

Implementation plan

68. Any changes agreed by Cabinet will require amendment to the Land Transport Act 1998, Road User Charges Act 2012, and Road User Charges (Administration Fees) Regulations 2014. A Land Transport Amendment Bill is proposed for introduction in 2016 and would be a useful vehicle for the changes to the Land Transport Act 1998.
69. Decisions about any changes to fees will be communicated on the NZTA's website and directly to the agents responsible for selling RUC distance licences.
70. Changes to the ICT financial system that sits behind RUC purchases would need to be made to enable credit card convenience fees to be calculated and on-charged. Staff who are involved in RUC sales and public advisory roles would also need to be trained prior to implementation. The proposed change will have no impact on Crown revenue as RUC administration fees are revenue of the NZTA. The system changes are likely to cost circa \$400,000 and will be absorbed within current budgets.
71. Commercial operators who buy large amounts of RUC in a given purchase may have concerns that surcharges will increase their costs above current levels. It will be made clear that surcharging will reflect the true cost of this payment option. It will also be communicated that a range of payment options exist that do not attract surcharges. Targeted communication will be used to ensure affected service providers understand the changes and rationale.
72. There is a chance that the public may confuse proposed changes to RUC administration fees with changes to RUC rates. To minimise any confusion, the difference will be clearly explained in the communications announcing any changes to administration fees.

Monitoring, evaluation and review

73. The effectiveness of the RUC administration system will be monitored by the Ministry of Transport and NZ Transport Agency using the following indicators:
 - number of sales taking place through each RUC administration fee purchase channel
 - number of sales taking place over the internet
 - number of sales taking place by credit card
 - number of sales taking place through commercial agents.
74. The monitoring of data for the above indicators is collected by the NZTA as part of administering the RUC system and will not incur additional costs.
75. The Ministry of Transport and NZTA undertake reviews of land transport fees and charges every three years. The Ministry of Transport and NZTA will use these indicators to ensure that the costs of administering the RUC system are collected from those who use the system, while simultaneously driving down costs and improving customer experience.