

# Regulatory Impact Statement

## Access to Photographic Images of Driver Licence Holders

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Transport. It provides an analysis of a legislation option against the status quo to:

- improve the ability of Police to verify the identity of persons being detained by allowing Police to access photographic images of driver licence holders for the purposes of transport law enforcement
- improve the ability of law enforcement agencies to verify the identity of persons being detained or investigated, and throughout the criminal justice system, by allowing law enforcement agencies to access photographic images of driver licence holders for the purpose of law enforcement

The first objective reflects the value in allowing Police access to the photographic image in the course of everyday transport law enforcement situations such as at the road side, to verify the identity of the person detained or stopped.

The second, and wider objective, reflects the Government's interest, which arose from the recent case of Phillip John Smith/Traynor, a serving prisoner, in ensuring that offenders do not leave New Zealand in order to avoid remaining subject to a sentence or criminal order<sup>1</sup>. The Government is concerned that existing data management mechanisms and associated legislation do not support effective identification of offenders (or those potentially entering the criminal justice system) that could lead to a prisoner's flight.

The number of options analysed and the rigour of analysis undertaken has been limited by the specific nature of the problem, and time constraints. For example, the impact of the legislative option could not be fully analysed in terms of the possible mechanisms for sharing of the photographs on the driver licence register and this will be the subject of further development.

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<sup>1</sup> The Government is developing a number of other policies as a result of official commentary on the incident involving Phillip John Smith/Traynor. This Regulatory Impact Statement is therefore concerned with one issue among others for which Statements are being prepared (by the Ministries of Health, Transport and Justice).

# Status quo and problem definition

## Driver licensing system

1. Driver licensing has an important role in supporting road safety. It shows that a driver has met the required standard of medical fitness, road rule knowledge and driving skill. It also provides the New Zealand Police (Police) with evidence that the person holds a valid driver licence or endorsement to drive a particular type of vehicle and whether any conditions apply.
2. The NZ Transport Agency is the regulator of the driver licensing system. It sets driver licensing test standards, oversees nationwide licensing and testing services, and maintains the national register of driver licences (the driver licence register).

## Photos on driver licences

3. New Zealand's current driver licence system came into effect on 3 May 1999. It was the result of a substantial overhaul of the previous system and included the introduction of photo driver licences.
4. As the introduction of photo driver licences also involved capturing and storing photographic images of licence holders in a digital format on the driver licence register, Parliament determined that the law should tightly control access and use of these images.

## Current access to the photographic images of driver licence holders

5. Section 200 of the Land Transport Act 1998 (the Act) sets out who may access photographic images of driver licence holders on the driver licence register. Access is restricted to employees of the NZ Transport Agency acting in their official capacity, next of kin of a deceased individual to whom an image relates, and Police in limited circumstances.
6. Police may only access driver licence photographic images on the driver licence register for the purpose of enforcing transport legislation referred to in section 113(1) of the Act<sup>2</sup>, but they must provide to the NZ Transport Agency either of the following:
  - written consent to such access given by the individual whom the image relates, or
  - an appropriate warrant issued under section 198 of the Summary Proceedings Act 1957<sup>3</sup>.
7. A wider range of agencies currently has access to the driver licence register without the photographic images on the driver licence. They are: the Department of Corrections; the Ministry of Justice; Local authorities authorised under section 112; The Serious Fraud Office; the Ministry of Transport (access is limited to obtaining information for the purpose of verifying the identity of people who are or apply to be holders of licences issued under the Road User Charges Act 2012); and the Registrar of Motor Vehicles (access is limited to obtaining information for the purposes of (a) verifying the identity of people who are or apply to be registered in respect of motor vehicles on the register of motor vehicles; or (b)

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<sup>2</sup> The [Local Government Act 1974](#), the [Local Government Act 2002](#), the [Road User Charges Act 2012](#), the [Government Roading Powers Act 1989](#), the [Railways Act 2005](#), the [Land Transport Management Act 2003](#), and the [Land Transport Act 1998](#).

<sup>3</sup> Section 198 of the Summary Proceedings Act 1957 has been repealed. Search Warrants are now issued under the Search and Surveillance Act 2012. It appears section 200 of the Land Transport Act has not been updated to account for these changes.

correcting or updating information held on the register of motor vehicles about such people)

## **The Problem: Issues with the current access**

### ***Police – roadside access***

8. Police can access the driver licence photograph for enforcement of transport legislation. However, Police's access is restricted and is not able to occur at the time an offence has been committed or when a person is detained. A police officer cannot access the photograph at the time they are detained, for example at the roadside, to verify that the person is who they say they are.
9. This can limit the Police's ability to enforce transport law as Police can only require a driver to remain stopped on a road for 15 minutes in order to establish the identity of the driver. This means that offenders can provide false details and continue to drive. It also means that the details of innocent people can be used by offenders who would receive infringements, be subject to fines from unpaid infringement fees, convictions and demerit points as well as other costs such as not being allowed to leave the country until fines are paid. Driver licences can be revoked or suspended for a number of reasons e.g. for medical reasons and for various offending, and it is important that Police can identify the person at the roadside and prevent them from continuing to drive.
10. The Ministry of Justice advises that it can take upwards of 12 months for these errors to be resolved. Disputing an infringement fee or fine is hard on the victim as there is an onus on them to prove that they did not commit the offence. It has not been possible under the time constraints of this analysis to determine the extent of this issue. However, the potential consequences for victims can be serious, in some cases eventuating in the victim having their licence suspended and consequent loss of employment.

### ***Other agencies***

11. Currently no other agencies have access to the photographic images of drivers on the Register. While this in itself is not a major hindrance to law enforcement agencies to carry out their work, the inability to access this form of identity is one of a series of gaps that together allow a person to maintain two or more unconnected identities. Currently, legislative settings do not allow agencies to easily link a person's different names and share that knowledge with other relevant agencies.
12. This series of gaps was highlighted in the report of the Government Inquiry into Matters Relating to Phillip John Smith / Traynor (the Inquiry), who left New Zealand while he was on a temporary release from Spring Hill Corrections Facility. The Inquiry identified that currently the justice sector is constrained by its ability to accurately establish identity, including the use of aliases, and to share that information with other law enforcement agencies. This compromises the ability of these agencies to protect the public from risk and increases the risk of an offender fleeing and avoiding the consequences of their offending.

# Objective

13. The policy objective is to improve the ability of law enforcement agencies to verify the identity of persons being detained or investigated.

# Options and impact analysis

14. The driver licence photograph provides biometric information that shows physical characteristics that uniquely identify the person concerned. The Ministry has identified three options to allow access to this information:

- Option 1 (status quo) – Police obtain biometric information on the driver licence register by warrant or consent; other agencies currently allowed access to the register can only access the biographic information
- Option 2 (non-regulatory) – development of Approved Information Sharing Agreements with law enforcement agencies including Police to obtain the biometric information on the driver licence register
- Option 3 (regulatory) – extend the existing power by: removing the requirement for Police to obtain a warrant or consent to access to photograph on the driver licence; and to allow law enforcement agencies access to the biometric information on the driver licence register for law enforcement purposes

## Analysis of options

Option for obtaining photographic information on the driver licence register	Effectiveness	Risks and comments
<i>Option 1: under existing provisions</i>	<b>Ineffective</b> , as it provides no improvement in the ability to accurately identify individuals.	
<i>Option 2: by use of Approved Information Sharing Agreements (AISAs) with each law enforcement agency.</i>	<b>Ineffective</b> as AISAs cannot override existing legislation that restricts sharing. A legislative change would be required and while this could be implemented, to then enter into AISAs with different agencies would be cumbersome.	While AISAs provide the option for a non-regulatory approach, in this case they do not, as current legislation would need to be amended before the AISAs could be actioned.

Option for obtaining photographic information on the driver licence register	Effectiveness	Risks and comments
<p><b>Option 3:</b> <i>extend the existing provisions by removing the requirement for Police to obtain a warrant or consent; and by allowing other law enforcement agencies access to the photographs for law enforcement purposes</i></p>	<p><b>Effective:</b></p> <p>Police will be able to access the photograph of Offenders are highly unlikely to refuse to cooperate given the possibility of prosecution for a breach of conditions.</p> <p>Drivers could be protected from unlicensed or disqualified drivers using their identity illegally at the roadside.</p> <p>It will also assist in follow-up investigations, such as identifying a driver after a crash or for a failing to stop offence (e.g. fleeing drivers). This will reduce road safety risks by being able to more easily identify unlicensed or disqualified drivers and will reduce unnecessary work for Police, the Ministry of Justice, and the Transport Agency.</p>	<p>When the photographic driver licence was introduced in 1999, there was considerable concern by the public about privacy issues and about the possible use by government agencies for purposes other than traffic law enforcement. This may still be the case (although society has very different views on identity information sharing now)</p> <p>The mechanisms developed for allowing access to the photographs on the driver licence will need to be able to allow auditing of use.</p>

15. Option 3 would allow access to the photograph on the driver licence by law enforcement agencies for law enforcement purposes. Law enforcement agencies will be able to use the photograph information in different ways. Examples are:

- Customs – at the border, if there is concern about a person, the driver licence photograph will be able to provide another source of identity verification
- Corrections – for confirming an offender’s identity, for example, at the point of entry into the criminal justice system. Producing a driver licence will usually constitute proof of identity for example upon arrest; if a person enters into the system under a name other than their real name, it can mean their real identity is not currently in the system and multiple identities are not linked<sup>4</sup>
- Police – will be able to verify the identity of a person detained at the roadside (for example, if they do not have their driver licence with them); will be able to use the driver licence photograph as a check on identity for other law enforcement purposes, similar to the use by Corrections on entry to the criminal justice system

## Consultation

16. The following agencies have been consulted on the contents of this Regulatory Impact Statement during its preparation: Ministry of Justice, the NZ Transport Agency and NZ Police. Some discussions on the content have been held with the Department of Internal Affairs and the Office of the Privacy Commissioner. NZ Customs and the Department of Corrections were members of a working group established to respond to the Inquiry, and are aware of the proposals in the this paper.

17. All agencies have supported the objective of the use of the photograph on the driver

<sup>4</sup> This was the case for Phillip John Smith / Traynor, who entered the criminal justice system in the name Smith and was subsequently able to leave the country on a passport in his real (birth) name.

licence register to improve the ability of law enforcement agencies to verify the identity of persons being detained or investigated. The NZ Transport Agency is concerned to ensure that the integrity and security of the driver licence register is maintained and not reduced by any mechanisms used for sharing the information. Police are concerned that they have “real time” access, for example at the roadside (where they can only detain a person for 15 minutes). “Real time” means within seconds of a request for information. Agencies have agreed to work closely together over the next 4-5 months to develop mechanisms that both maintain the security and integrity of the driver licence register and provide law enforcement agencies with the level of service they require. Careful design and safeguards will be necessary to mitigate any privacy risks.

## Conclusions and recommendations

18. As a result of the analysis summarised above, the Ministry of Transport prefers Option 3, which is to extend the existing provisions for access to the photograph on the driver licence register by removing the requirement for Police to obtain a warrant or consent; and by allowing other law enforcement agencies access to the photographs for law enforcement purposes. Option 3 would provide law enforcement agencies with additional biometric identity checks and would fulfil the objective of improving the ability of law enforcement agencies to verify the identity of persons being detained or investigated.
19. It is recommended that the Land Transport Act 1998 be amended to reduce the restrictions on access to photographic images of driver licence holders with consequential amendment of Schedule 5 of the Privacy Act 1993<sup>5</sup>.

## Implementation plan

20. The Minister of Justice plans to take an Omnibus Bill to Parliament that contains a number of other policies arising from the Inquiry on the incident involving Phillip John Smith / Traynor. This will include a recommendation mirroring Option 3 that will propose amending the Land Transport Act 1998 by reducing the restrictions on access to the photographs on the driver licence register.
21. The legislation does not specify the mechanisms for allowing access and options for these will be developed by the NZ Transport Agency in close cooperation with other agencies. The development of the mechanisms will be completed within four months. The Minister of Justice plans to report back to Cabinet in February 2016 with recommendations for the mechanisms that will allow agencies to access the photographs.

## Monitoring, evaluation and review

22. The Ministry will continue to monitor the performance of New Zealand’s driver licensing system as part of its normal course of business. The Ministry and the NZ Transport Agency will work with other agencies to ensure that any issues that arise around the sharing of the photographic image are addressed and that the integrity and security of the driver licence register are maintained.

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<sup>5</sup> Schedule 5 of the Privacy Act specifies the access that agencies have to law enforcement information. In the case of Driver Licence Register, it currently records that the Police have access to the Driver Licence Register (except photographic images on driver licences).