

Departmental Disclosure Statement

Land Transport (Road Safety) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 August 2023

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Part One: General Policy Statement

The Land Transport (Road Safety) Amendment Bill (the Bill) creates new powers and sanctions aimed at ensuring road safety and provides enforcement agencies with new tools to ensure they can carry out enforcement activities in a timely manner.

The public have a reasonable expectation that road safety should be maintained. This requires NZ Police and Waka Kotahi NZ Transport Agency, as the two relevant enforcement agencies, to have adequate powers and tools to respond to inappropriate behaviour on the roads. In particular, this response requires adequate measures to detect inappropriate behaviour and the ability to carry out enforcement activities in a timely manner.

The Bill has two main objectives: to improve legislative response to fleeing drivers, and to address safety matters within the land transport system.

To respond to fleeing drivers, the Bill amends:

- The Land Transport Act 1998 to:
 - expand the period Police may seize and impound a vehicle for if the officer believes on reasonable grounds that the person driving the vehicle has failed to stop from 28 days to 6 months; and
 - create a new power to enable Police to seize and impound a motor vehicle for 28 days if the registered person of that vehicle fails to provide information about a fleeing driver and impounding the vehicle is necessary to prevent a threat to road safety; and
 - increase the period of licence disqualification after a second conviction for a failing to stop offence.
- The Sentencing Act 2002:
 - to create a new sentencing option to enable courts to order that a vehicle be forfeited on conviction for failing to stop or to remain stopped.
- Consequential amendments have also been made in:
 - Summary Proceedings Act 1957
 - Land Transport (Offences and Penalties) Regulations 1999
 - Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999

Other safety matters that are being addressed, will amend the following legislation:

- The Land Transport Act 1998, to:
 - providing for the electronic service of Notices
 - ensuring point-to-point safety cameras can be used as an enforcement tool for speeding offences; and
 - providing for the automated issuing of certain infringement notices; and
 - introducing emergency powers for the Director of Land Transport, which include:
 - Extending the period of validity for land transport documents
 - Requiring further inspection of registered motor vehicles.
 - revoking evidence of vehicle inspection (for example, a warrant of fitness or certificate of fitness) for a class of vehicle to address a safety issue that has potential to cause injury (by amending the Land Transport Rule: Vehicle Standards Compliance 2002).

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Evidence Based Policing Centre was commissioned to do research into the motivations of fleeing drivers in 2019. The results of this research can be found here: https://www.police.govt.nz/sites/default/files/publications/fleeing-driver-review-report.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Regulatory Impact Statement: Director of Land Transport powers during emergency and other time-critical safety events was developed by the Ministry of Transport. The Regulatory Impact Statement: Legislative Proposals to Identify and Penalise Fleeing Drivers was developed by the Ministry of Transport, with support from the Ministry of Justice and New Zealand Police. Portions of the RIS are being withheld, due to containing Crown Law advice. Both reports will be published here: https://www.treasury.govt.nz/publications/search?f%5B0%5D=field_tsy_publication_category%3A2706&f%5B1%5D=field_resource_type%3A4499&f%5B2%5D=field_tsy_author_corporate%3A419	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
This RIS does not address the changes to remove the financial assurance regime introduced through the Supplementary Order Paper. Due to timing constraints, on advice from Treasury, officials will complete a Post-Implementation Review of the six-month impoundment policy as part of the planned review of the Towage and Storage system in 2024 and provide this to Cabinet.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The size of the potential costs and benefits for the policy are available in the RIAs mentioned above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The proposals specifically relating to fleeing drivers will introduce a new discretionary power for Police in relation to registered vehicle owners who fail to provide information about a fleeing driver. The discretionary nature of this new power and the existing discretionary nature of impoundment for failing to stop offences will impact on the potential costs or benefits outlined in the RIA.</p> <p>The removal of the financial assurance for towage and storage operators could exacerbate current issues of operators refusing to accept impoundments. This is because the towage and storage operators will be faced with the increased administrative and financial burden of arranging payment instalment and left with the responsibility of debt collection arrangements if registered persons default on payments.</p> <p>An unwillingness to contract to Police for six-month impoundment is anticipated to flow on to all Police impoundments, including the new 28-day impoundments recently introduced by the Criminal Activity Intervention Legislation Act 2023 to better respond to criminal offending that is commonly associated with gang activities, such as dangerous driving. This is because towage and storage providers will look for more financially viable work, for example insurance or local council work rather than Police work.</p> <p>The Road Safety Bill repeals the current 28-day impoundment power for fleeing driver events, so that if vehicles are unable to be picked up for six-month impoundments, Police have no viable immediate enforcement power.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No specific issues were identified in the policy process that may have implications for New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

One of the main objectives in the Land Transport (Road Safety) Amendment Bill is to improve legislative responses to fleeing drivers, it achieves this through a suite of new tools and expanded Police powers. The new powers are intended to address road safety concerns, and flow from the Crown's general obligation to protect its citizens.

But Police research shows that fleeing drivers are more likely to be younger, Māori men, and as such, these new powers are likely to disproportionately impact Māori and conflict with the equity principle of te Tiriti O Waitangi. In particular, the requirement to pay (or enter into a payment arrangement with) operators within 38 days will likely disproportionately impact Māori who are over-represented in fleeing driver events and related offending.

In considering whether the Crown is meeting its Treaty obligations to Māori, we have sought to balance the Crown kāwanatanga and Māori rangatiratanga as they relate to fleeing driver offences.

We have addressed the disparity in likely application of these powers, by considering the different socio-economic and cultural factors of Māori and including mechanisms to protect Māori interest as far as it is reasonable in the circumstances. Specifically, to ensure the Crown is achieving its outcomes equitably, the legislation provides several mechanisms. This includes:

- Ensuring that the power to impound vehicles for six months is discretionary rather than compulsory; and
- Widening existing appeal provisions for vehicles impounded for six months to include extreme hardship to the vehicle owner or undue hardship to another person.

The intent behind these aspects is to reduce to flow on effects of the policy. For example, ensuring that a vehicle is not caught by this policy if,

- there is undue hardship on family members where the vehicle owner is the sole or designated caregiver and is required to drive to care for dependent family members; and
- the vehicle owner is unable to access public transport, for example in a rural community, and they can demonstrate that having their vehicle impounded for six months would result in them losing their job, business, or livelihood.

Although we recognise the importance of robust and sincere consultation, there has been insufficient time during the policy development process to consult with Māori. However, we expect key Māori organisations and communities to be consulted throughout the legislative process, particularly throughout the Select Committee process.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
<p>Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/section-7-reports/</p>	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p><u>Question 3.4(a)</u></p> <p>Section 52A(4) is amended to increase the period of licence disqualification after a second conviction for failure to stop, or remain stopped, from one year to 'a period of not less than one year and not more than two years'.</p> <p>New section 96AAA of the Land Transport Act 1998 expands the period an enforcement officer may seize and impound a vehicle to six-months if the vehicle has been failed to stop (or remain stopped).</p> <p>New section 96AAB of the Land Transport Act 1998 creates a discretionary power for an enforcement officer to seize and impound a vehicle if:</p> <ul style="list-style-type: none"> • the registered person of, or hirer of, a vehicle that has failed to stop, or remain stopped, for Police, fails to provide the information required on the driver that has committed the offence; and • impounding the vehicle is necessary to prevent a threat to road safety. <p>New section 142AAC of the Sentencing Act 2002 creates an offence to sell or dispose of a motor vehicle that is subject to a forfeiture order.</p> <p>New section 142AAD of the Sentencing Act 2002 creates an offence to remove a forfeited vehicle from either the custody of a bailiff or constable, or the Registrar of the court.</p> <p>New section 142AAF of the Sentencing Act 2002 creates an offence if a person, whose vehicle has been subject to a forfeiture order, acquires interest in a motor vehicle within 12 months.</p> <p><u>Question 3.4(b)</u></p> <p>New section 142AAB of the Sentencing Act 2002 provides the Court the ability to order the forfeiture of a vehicle, upon conviction, for failing to stop, or remain stopped for Police.</p> <p>Section 110 is amended to allow a District Court to consider extreme or undue hardship as applicable grounds for appeal for six-month impoundments. This will only occur in instances where an initial appeal to Police has been unsuccessful.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice have been involved in the policy development process on the fleeing driver specific policies, and on the draft Bill. The Ministry of Justice noted the increases in penalties for offences relating to failure to stop and failure to provide information do not align with the offence and penalty vetting regime, as they raise issues about proportionality and consistency with penalty levels for similar offending. The Ministry of Justice also noted the limited deterrent effect of increasing penalties. Te Manatū Waka provided further detail to assure the Ministry of Justice about the policy justifications and implementation of changes relating to automated issuing of infringements and electronic service.</p> <p>As for the requirement for registered persons to take action within 38 days, the Ministry of Justice note that given the short period in which the registered persons have to engage with the towage operator or storage provider to prevent their vehicle from being deemed abandoned by either paying for the six-month impoundment in full, or arranging to do so in instalments, it is likely that this will have potentially significant impacts on the Court system in terms of capacity for appeal processes. This increase in appeals would likely create additional pressures in the court system which is already experiencing delays. There would potentially be difficulties in scheduling hearings in a timely fashion; further delays in confirming whether the vehicle is to be released mean that costs for operators would continue to build up over this period.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p><u>Electronic service-related provisions</u></p> <p>The following sections of the Land Transport Act 1998 have been amended:</p> <ul style="list-style-type: none"> • Section 22 to allow for an electronic address to be provided where an accident occurs • Section 96 to allow an electronic address to be provided, and used in sending impoundment notices • Section 96A to allow an electronic address to be provided, and used, to send an impoundment notice for a vehicle that is used in a transport service • Section 113 to allow an enforcement officer to request an electronic address while enforcing transport legislation • Section 114 to allow an enforcement officer to request an electronic address while inspecting records • Section 118 to allow an enforcement officer to request an electronic address from a driver or passenger in the act of identifying them • Section 128E to allow a parking warden to request an electronic address • Section 128F to allow enforcement officers to request an electronic address in relation to public transport service fare related offences • Section 133 to allow electronic address to be provided by a registered person providing a statutory declaration to transfer liability in relation to a moving vehicle offence or special lane offences • Section 133A to allow electronic address to be provided by a registered person providing a statutory declaration to transfer liability in relation to a stationary vehicle offence • Section 139 to allow infringement notices to be issued to an electronic address <p><u>Automated infringement notices</u></p> <p>The following new sections of the Land Transport Act 1998 include:</p> <ul style="list-style-type: none"> • Section 139AAA to allow for the detection of, and issuance, of an automated infringement notice 	

- Section 141A to provide for the evidence of capability of the automated infringement offence verification system

Average speed

The following new sections of the Land Transport Act 1998 include:

- Section 146A to allow for the concept of average speed as evidence of actual speed, which includes definitions of:
 - Data (in relation to how this will determine a speeding offence in relation to average speed)
 - Element (which sets out the details of the average speed system and how this will be verified)
 - Point-to-point average speed system (to require two or more approved vehicle surveillance equipment items to be used)
 - Shortest practicable distance (to set out how the distance will be measured and notified)
- Section 146B to set out how an applicable speed limit will apply on a road with multiple speed limits
- Section 146C to set out how evidence will be provided in relation to average speed
- Section 146D to set out the publication of matters relation to point-to-point average speed systems

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Office of the Privacy Commissioner was consulted in relation to the production of a Privacy Impact Assessment that covered point-to-point average speed. Recommendations that were accepted, and are being addressed through operational policies developed by Waka Kotahi NZ Transport Agency include:

- Undertake an agency risk workshop to qualify the risk assumptions made within this assessment.
- Identify a national governance structure for the national deployment of roading management cameras that includes regular oversight and assurance reporting.
- Acquire a legal opinion on the lawfulness of collection of personal information in the context of the deployment of roading management cameras
- Establish at an early stage the primary and directly related purposes for using a roading management camera system and collecting personal information.
- Establish policy or guidance for each targeted deployment of roading management cameras, that prescribes the expectations of data minimisation so that collection of unnecessary personal information is eliminated.
- Implement a transparency strategy to cover the deployment of a roading management camera system including comprehensive advice through appropriate agency channels.
- Establish technical security within the roading management camera system and storage that is commensurate with the agency's responsibility for security
- Develop a carefully designed set of user roles for retained information, ensuring that access to personal information is limited to the appropriate staff.
- Ensure the system logs access to and activity within the roading management camera data and the log is audited.
- Develop a business process for approving and documenting legitimate disclosures of information from the roading management camera data to external agencies.
- Create business processes that provide assurance that the technical system is accurate and reliable.
- Create business processes that provides for human oversight of roading management camera data that contributes to decision making.
- Set retention periods for personal information collected by individual roading management camera systems.

- Establish a business process that administers the various requests that will be made for roading management camera data/personal information.
- Establish comprehensive guidance and training for staff and a business process that provides oversight of the way roading management camera data is managed and used.

The Office of the Privacy Commissioner was not consulted in relation to the electronic-service related provisions as this was seen as being technical in nature, in that it only amends how information could be collected for enforcement purposes.

While the Office of the Privacy Commissioner was also not consulted on the use of automated infringement notices, Waka Kotahi NZ Transport Agency has undertaken a separate privacy impact assessment. This has considered how the automated system will operate on factual information, and that there are systems in place to ensure information is factual.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>All proposals have been consulted on with Waka Kotahi. Specifically, electronic service of notices, automated infringement notices and point-to-point average speed related proposals have been developed by the Ministry of Transport, in conjunction with Waka Kotahi, since 2019.</p> <p>Waka Kotahi have been involved in, and consulted on, the fleeing driver related proposals since August 2022. These proposals were developed in conjunction with the Ministry of Justice and NZ Police.</p> <p>The Motor Trade Association, Automobile Association of New Zealand and the Financial Services Federation were involved in a period of targeted engagement over a four-week period specifically on the proposal to enable enforcement offices to impound vehicles for six-months for failing to stop.</p> <p>The following departments have been consulted on the relevant parts of the draft Road Safety Bill: Te Puni Kōkiri, Ministry for Pacific People, Ministry for Ethnic Communities, Te Arawhiti, the Ministry of Business, Innovation and Employment (MBIE), Treasury, the Ministry of Social Development, and the Department of Corrections. The Department of the Prime Minister and Cabinet has been informed.</p> <p>Electronic service of notices, automated infringement notices and point-to-point average speed related proposals have also undergone public consultation for a six-week period from 1 June to 8 July 2022 with 14 submissions received on these specific proposals. These were largely in support and any specific policy-design related feedback was inputted into the provisions in the draft Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Officials have worked closely with relevant agencies to ensure that the provisions in the Bill are workable and can be operationalised.</p> <p>Police has advised that enforcement officers may find it more difficult to get towage and storage provider to impound vehicle for six-month periods due to the administrative burden and increased financial risk involved (refer 2.6 for more detail).</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
All provisions relating to seizure and forfeiture of property are discretionary in nature.	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<u>4.4 (a) Amendment to strict liability offence</u> Section 146A will introduce the concept that exceeding an average speed limit will be considered evidence of actual speed. This widens the scope of current speed limit offences, which are currently enforced using fixed, or mobile safety cameras that record a point in time. The widened provision will introduce a formula, which is used to calculate average speed over a surveyed distance between two points. Existing provisions to transfer liability, if the registered person is not the person driving at the time of the offence, will continue to apply.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
Section 102 will widen existing appeal provisions to allow for a vehicle, that is impounded for six-months, to be released if the act of seizing and impounding the vehicle will result in: <ul style="list-style-type: none">• Extreme hardship to the registered person (whether in relation to employment or otherwise); or• Undue hardship to a person other than the registered person (whether in relation to employment or otherwise). In considering the appeal, Police and the District Courts (if the Police appeal is unsuccessful) must consider whether the release of the vehicle is contrary to the interests of road safety. Existing, standard, appeal provisions will continue to apply.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
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The following provisions call for special comment, as they are likely to raise issues with consistency with the New Zealand Bill of Rights Act 1990.

Section 96AAA which enables Police to seize and impound a motor vehicle for 6 months for failing to stop, or remain stopped, may also engage section 27 of the New Zealand Bill of Rights Act 1990 in relation to the right to justice. This is because the six-month impoundment of a vehicle may not have a materially different impact from forfeiture (particularly where vehicles are abandoned), and in circumstances where no prosecution is brought, or no conviction, and there is no judicial oversight of the impoundment of the vehicle, this would involve the imposition of a penalty without due process.

The widening of the current appeal and review mechanisms to include extreme or undue hardship may mitigate the lack of due process to some degree, as it would enable the registered person of a vehicle to appeal firstly to Police and if needed, to the Courts.

The registered person can regain their vehicle without cost under two circumstances: if Police decide not to charge or if the registered person successfully appeals to Police or the District Court under hardship grounds (added previously in response to Crown Law concerns). However, after a vehicle has been impounded, the registered person of the motor vehicle would need to take action within 38 days from the impoundment to prevent the vehicle being deemed abandoned.

Under section 97(3AAA), they could either pay the regulated towage and storage fees for six months to the operator (vehicle released at the end of six-months); or agree to pay the operator in instalments (vehicles remain on lots until this is paid in full). If there has been no payment or agreement to pay within 38-days, the operator can apply to Police to have the vehicle transferred to them to either sell, or scrap and claim a rebate from Waka Kotahi.

Section 96AAB enables Police to seize and impound a motor vehicle for 28 days for failing to provide information about a fleeing driver, may limit the right to be free unreasonable search and seizure under section 21 of the New Zealand Bill of Rights Act 1990

This is considered justified given the significant harms caused by fleeing drivers. The impact is also limited in that the penalty is closely linked to the objective of achieving positive road safety outcomes and requires Police to form a reasonable belief that impounding the vehicle is necessary to prevent a threat to road safety. We also consider the new power to have adequate safeguards built in to prevent its unreasonable exercise e.g., it would retain the requirement for the vehicle to be released if charges are not laid, and it would retain the current review and appeal mechanisms to the NZ Police and the District Court (if the NZ Police appeal was unsuccessful).

Section 97(2A) sets out that if a vehicle is not claimed at the end of the six-month impoundment period, the registered person will not be liable for the applicable fees and will not face a debt recovery process.