

Departmental Disclosure Statement

Land Transport (Wheel Clamping) Amendment Bill
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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 Business, Innovation and Employment.

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

13 March 2019

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Part One: General Policy Statement

Objective

The Bill amends the Land Transport Act 1998 (the Act) to regulate the maximum fees charged by wheel clamp operators in order to protect motor vehicle users from unreasonable fees.

Approach taken

This Bill sets a maximum wheel clamping fee of \$100 that can be charged in relation to a parking breach in a parking place on a road that is not under the control of an enforcement authority (i.e. not a motorway, state highway, or government road or a road under the authority of local government). The Bill is intended to apply to operators who use wheel clamping as an enforcement method on private property, who do not have powers under an enactment to enforce parking. It is not intended to apply to parking enforcement of the public road system, as transport legislation provides a specific regime for enforcement authorities (such as the Police, New Zealand Transport Agency and local authorities) to apply to address parking breaches. Nor is it intended to apply to clamping authorised by an enactment (such as under freedom camping legislation).

The Bill makes it an offence for a person to charge more than the maximum fee, or to fail to remove, or arrange for the removal of, the wheel clamp. These offences will be enforced by the New Zealand Police.

The Bill provides for the ability to prescribe the maximum fee in regulations.

The Bill is not intended to of itself authorise an operator to apply an immobilising device to a motor vehicle parked in a parking place.

Justification for approach taken

There is no specific legislation regulating wheel clamping as a method of parking enforcement. Rules governing parking rights and enforcement on private land are unclear and seldom tested in the courts. This has meant that motorists are often charged unreasonable fees for the release of their vehicle, and that wheel clamping is often the subject of complaints from motorists.

As the law is not clear on the exact charges that are reasonable, motorists are unlikely to understand in what circumstances they might successfully dispute a fee. Consequently, there are few incentives for wheel clamp operators to charge reasonable fees. Voluntary industry initiatives have not been effective in changing behaviour across the industry.

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?	NO
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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
Impact Summary: Wheel Clamping, Ministry of Business, Innovation and Employment, 20 April 2018. A copy of this report can be found at: <ul style="list-style-type: none">• https://www.mbie.govt.nz/business-and-employment/consumer-protection/proposals-to-address-wheel-clamping; and• https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments.	

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
No. The Impact Summary did not meet the threshold for RIA Team assessment and was assessed by MBIE's Regulatory Impact Analysis Review Panel, which provided the following statement: "The Regulatory Impact Analysis Review Panel (RIARP) has reviewed the attached Regulatory Impact Summary (RIS) prepared by the Ministry of Business, Innovation and Employment. They acknowledge the information and time constraints on the analysis, and note that the agency's preferred approach is to undertake consultation and research on the scale and nature of the problems related to wheel clamping before recommending a course of action. Given the Minister's preference to take immediate action, RIARP considers that the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper."	

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?	NO
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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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Impact Summary sets out a broad assessment of the costs and benefits of the policy, but no attempt has been made to quantify these due to the difficulties in measurement.	

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
In general, the policy will only have the intended effect of deterring the charging of unreasonable fees for wheel clamping if the regulated parties comply with the new obligations. This in turn will depend on the level of enforcement action taken against non-compliant parties by the enforcement agency. No further analysis is available on the extent to which the costs or benefits are likely to be impacted by (a) or (b).	

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?
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No international obligations have been identified or raised through the policy process as being relevant to the Bill.

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?

No Treaty of Waitangi obligations have been identified or raised through the policy process as being relevant to the Bill.
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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?	NO
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The Ministry of Justice has been consulted. Advice provided to the Attorney-General by the Ministry of Justice, 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 http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/ .

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Bill specifies in clause 4, new section 98C(4), that it is an offence for a wheel clamp operator to charge a fee that exceeds the maximum amount and/or does not remove or arrange for the removal of a wheel clamp as soon as reasonably practicable after a fee is paid or at the direction of the person in charge of the motor vehicle if no fee is applicable.

Cabinet has also agreed that this will also be an infringement offence. To align with the way other infringement offences are set out in the Land Transport Act and associated regulations, an infringement offence and the associated infringement fees will be set out in regulations made under sections 167(1)(b) and (e) of the Land Transport Act. We intend to recommend an amendment to the Land Transport (Offences and Penalties) Regulations 1999 once the Bill has received Royal Assent. The Bill includes a 42 day period between assent and commencement, which is designed to allow for the regulations to be made and come into force at the same time as the amendment Act.

Clause 4, section 98C(9) of the Bill is an avoidance of doubt provision stating that the creation of a new offence does not prevent a matter from being brought before the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1998 for the exercise of its jurisdiction under that Act.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted during the development of the proposals, prior to Cabinet policy approvals. The Ministry of Justice was consulted about the creation of an offence and infringement offence, the level of the proposed penalties, and the jurisdiction of the Disputes Tribunal to hear the matters in the proposal. The Ministry expressed a view that the matter would be more appropriately dealt with as a civil dispute between two private parties through the Disputes Tribunal only.	

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?	NO
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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?	NO
MBIE has not carried out external consultation on the policy to be given effect by this Bill.	

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
The enforcement agency for the policy, New Zealand Police, has been consulted on the drafting of the Bill.	

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
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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
<p>The Bill specifies in clause 4, new section 98C(4), that it is an offence for a wheel clamp operator to charge a fee that exceeds the maximum amount and/or does not remove or arrange for the removal of a wheel clamp as soon as reasonably practicable after a fee is paid or at the direction of the person in charge of the motor vehicle if no fee is applicable. This offence is a strict liability offence. We consider it appropriate that it only has to be proved that the wheel clamp operator charged more than the prescribed maximum fee or did not remove a wheel clamp as soon as reasonably practicable, as the act alone is sufficient to prove wrongdoing. We do not think that consideration of a mental element is necessary to prove wrongdoing.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>New section 98C(5)(b) provides that, if a wheel clamp operator fails to remove or arrange for the removal of an immobilising device, the motorist may remove or arrange for its removal without any civil or criminal liability. This is subject to the safeguard that the removal causes as little damage to the immobilising device as reasonably possible. This is intended to serve as a self-help provision, so that a motorist can take steps to get their situation remedied if an enforcement officer is unable to attend.</p>	

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?	NO
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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?	YES
Clause 6 of the Bill provides for the ability to specify the amount of the maximum fee that can be charged by wheel clamp operators in regulations, but if no regulations are made, the prescribed amount as set out in the Bill is \$100. The justification for the ability to set and amend the maximum fee in regulations is to provide flexibility if the maximum fee needs to be amended in future, for example, to take into account inflation.	
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

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
<p>The Bill overrides the common law rules of contract insofar as they relate to wheel clamping on private land. The common law effectively sets the rules regarding fees that may be charged for the release of a clamped vehicle. The Bill limits:</p> <ul style="list-style-type: none">• the contractual charges that a property owner may claim to release a clamped vehicle as a result of a breach of contract by the driver of a motor vehicle• limits the amount that a property owner may claim to release a clamped vehicle in any other case.	