

UNCLASSIFIED



24 November 2022

OC221038

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 28 November 2022

ADVICE ON THE IMPLEMENTATION OF A TOWAGE AND STORAGE REGIME FOR SIX MONTH VEHICLE IMPOUNDMENT

Purpose

To provide initial advice on the implementation of a towage and storage regime for the impoundment of vehicles for six months.

Key points

- On Monday 21 November 2022, Cabinet agreed in principle to amend the *Land Transport Act 1998* to allow an enforcement officer to seize and impound a vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required (CAB-22-MIN-0514 refers).
- The Cabinet paper noted that there were operational challenges in the current towage and storage regime and without changes, there is a significant risk to implementation.
- As part of the agreement in principle, Te Manatū Waka Ministry of Transport, NZ Police and the Ministry of Justice were asked to provide further information on the current regime and a potential timeline for further work to occur.
- NZ Police and the Ministry of Justice have been consulted with in the preparation of this initial advice.
- **Appendix 1** provides a flow chart of how the current system works, to help with understanding of the impoundment regime.
- s 9(2)(f)(iv)

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Recommendations

We recommend you:

- | | | |
|---|---|----------|
| 1 | note introducing six-month impoundments will have significant operational impacts for the towage and storage industry | Noted |
| 2 | note a range of preliminary options were identified for Cabinet (CAB-22-MIN-0514 refers), which require further policy work | Noted |
| 3 | agree to further information being provided in your Office on 15 December 2022 with initial advice on which options we intend to engage with industry on | Yes / No |
| 4 | note that final advice on options to proceed with will be provided in early March 2023 | Noted |
| 5 | refer this briefing to Hon Chris Hipkins, Minister of Police and Hon Kiri Allan, Minister of Justice. | Yes / No |

Megan Moffet
**Manager, Regulatory Policy, Te Manatū
 Waka**

..... / /

Hon Michael Wood
Minister of Transport

..... / /

Minister's office to complete: Approved Declined

Seen by Minister Not seen by Minister

Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------------------|---------------|
| Megan Moffet, Manager, Regulatory Policy, Te Manatū Waka | s 9(2)(a) s9(2)(a) | ✓ |
| Amber McGovern-Wilson, Principal Adviser, Regulatory Policy | s9(2)(a) | |

ADVICE ON THE IMPLEMENTATION OF A TOWAGE AND STORAGE REGIME FOR SIX MONTH VEHICLE IMPOUNDMENT

Decisions have been made on which proposals to progress

1. On Monday 21 November 2022, Cabinet agreed in principle to amend the Land Transport Act 1998 to allow an enforcement officer to seize and impound a vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required (CAB-22-MIN-0514 refers).
2. As part of this decision, Te Manatū Waka Ministry of Transport (Te Manatū Waka), NZ Police and the Ministry of Justice have been asked to provide further information on the operational process of seizure and impoundment. This advice is also expected to cover a high-level timeline of next steps in which further, more detailed advice can be provided to Ministers.

The current towage and storage regime creates risks for operators, disincentivising participation

3. Currently, there are several transport offences where Police can take action to seize and impound a vehicle for 28-days when Police reasonably believe an offence has been committed to reduce the likelihood of repeat offending and support the collection of evidence for investigations.
4. Either once the 28-day period is over and the towage and storage fees have been paid to the operator, or a successful appeal has been lodged (e.g., in the instance of a stolen vehicle), the vehicle must be returned to the person.
5. If a vehicle fails to be recovered by the registered person after ten days (abandoned), it may be sold or scrapped by the towage and storage operator. If scrapped, a rebate of \$253 is available to a towage operator from Waka Kotahi NZ Transport Agency. However, this often does not recoup costs for operators. A detailed flowchart of the current process is attached in **Appendix One**.
6. The current abandonment rate varies between 10-15% of impounded vehicles, which is an average of 2,500 vehicles per annum.
7. Evidence from the Motor Trade Association, who represent towage and storage operators, is that from a recent survey of 8 operators, \$500,000 was owed to the group as a whole, with one operator being owed as much as \$175,000 in towage and storage fees.
8. This has resulted in some operators no longer uplifting Police impounded vehicles if the vehicles are too far away, of low value, damaged, unregistered, or unwarranted, or the tow operator considers that the registered person will be unlikely to pay the fees.

s 9(2)(f)(iv)

10. s 9(2)(f)(iv)

...but this is likely to intensify issues with six-month impoundments

11. Current regulated towage and storage fees would mean that the registered person would be required to pay approximately \$2500 - \$5000 for a six-month impoundment, depending on the size of the vehicle. This fee is already higher the value of many vehicles on New Zealand roads, so it is expected that the abandonment rate for six-month impoundments would much higher that currently experienced.
12. However, a recent assessment of private (e.g., commercial companies) towage and storage indicates that a six-month impoundment for a standard-sized family car could cost approximately \$10,000 at market rates.
13. Therefore, to incentivise participation from operators, the regulated fee is likely to need to increase significantly. If progressed, abandonment rates are likely to have correspondingly significant increases.
14. It is likely that six-month impoundments may also increase volumes of unpaid debts for individuals and increase the volume for the Courts in relation to civil enforcement. Further work would need to be carried out to fully understand the impact on the Justice system.

Increasing the impoundment period is likely to impose additional challenges

15. Given the overarching trend in an increase in fleeing driver events, there is a risk that towage and storage operators would simply not have the capacity to store these vehicles for a six-month period, particularly in urban environments.
16. A similar regime is in place for vehicles seized under the *Criminal Proceeds (Recovery) Act 2009* (CPRA) in terms of circumstances where vehicles are held for a lengthy period of time. Under CPRA there is an expectation that vehicles are maintained to the same level as which they are seized.
17. A similar regime would need to be in place for six-month impoundment given that vehicles are likely to start having mechanical issues after not being used for a two-week period. This would come at an extra cost to the operator, which would need to be recovered.

Options for implementation of a six-month impoundment regime

18. In noting these risks, several options for implementation of a six-month impoundment regime have been identified. These include:
 - 18.1 Creating certainty of payment for towage and storage operators by:
 - 18.1.1 the Crown covering operator costs where a vehicle is abandoned
 - 18.1.2 removing operators from the financial transaction by the Crown meeting the costs, with the costs recovered from the registered person via other means (such as the Court).

19. Ensuring that the registered person pays the relevant fee regardless of whether they retrieve the vehicle by creating an ongoing obligation to pay costs irrespective of the vehicle being collected, which could include an option to allow vehicles to be voluntarily surrendered in the first week of impoundment for a lower fee or no fee.
20. Removing the need for private towage and storage services by:
 - 20.1 allowing vehicles to remain on the registered persons' property, with devices installed to prevent the vehicle from being used
 - 20.2 creating Crown-run towage and storage processes.

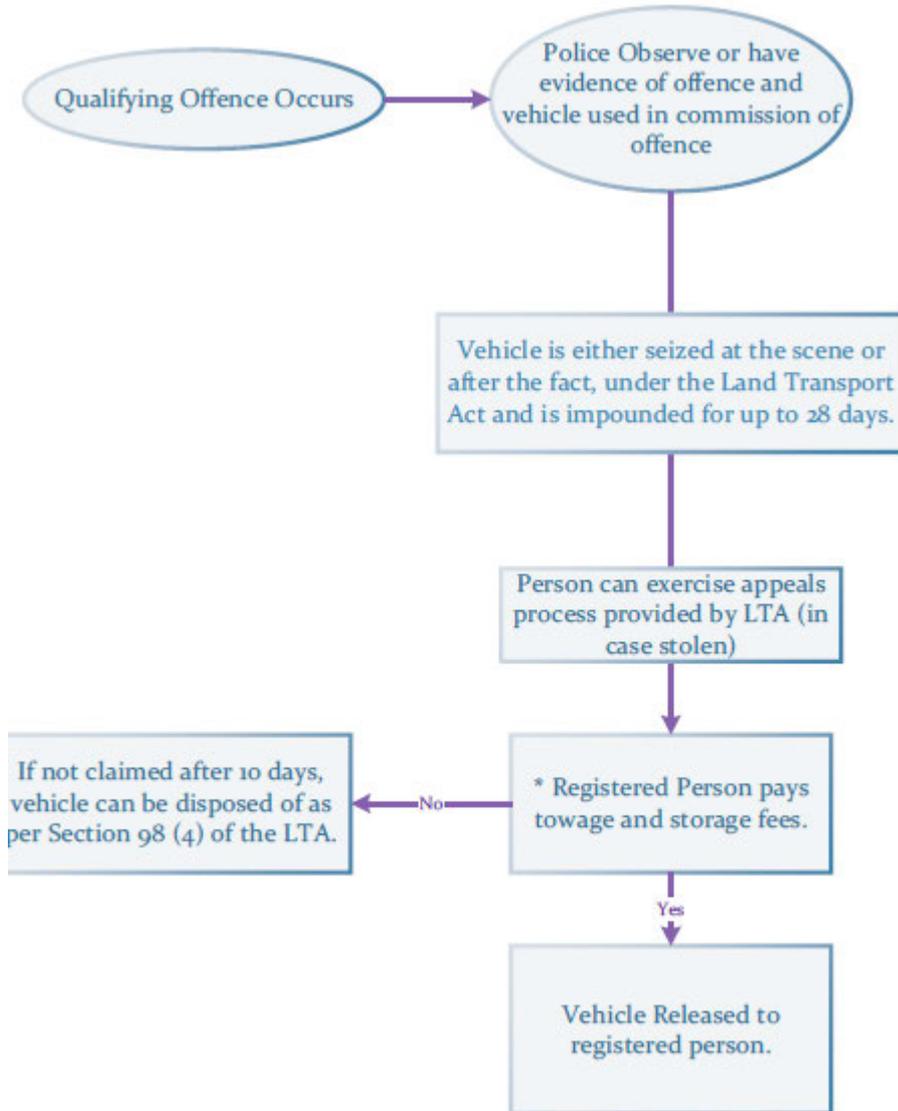
Proposed timeline for further work

21. There is significant policy work required to determine the feasibility, effectiveness and indicative costs of the proposed options. This would include consideration of how options impact on the Court system (where applicable) in relation to debt collection or civil enforcement.
22. Any implementation dates for options that require Crown funding could be significantly extended out due to the formal Budget 2023 process having concluded, following bids being provided to the Minister of Finance. Advice from relevant teams within Te Manatū Waka is that unless Ministers decide to progress with an out-of-cycle bid, this is likely to be delayed for consideration until Budget 2024.
23. A proposed timeline, which allows for a period of direct industry consultation is included below. This work could occur concurrently as the Road Safety Bill progresses. Te Manatū Waka would also consult with Māori on the proposed policy options to better understand the equity implications.

| Step | Timeline |
|--|---------------------------------|
| Provide initial advice on high-level options, with the aim of identifying which options to consult industry on | 15 December 2022 |
| Targeted consultation with towage and storage industry and Māori | Mid January – Mid February 2023 |
| Summary of engagement feedback and further advice | Early March 2023 |

Appendix One: Current impoundment process

28 Day Impoundment of Vehicle Process



IN CONFIDENCE



8 December 2022

OC220991

Hon Michael Wood
Minister of Transport

Action required by:
Friday, 16 December 2022

SECOND TIER DECISIONS FOR INCLUSION IN THE LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL

Purpose

To seek approval to issue drafting instructions on two consequential amendments and to seek formal agreement to include four proposals from the Regulatory Systems (Transport) Amendment Bill No.2 (RSTA Bill) in the Land Transport (Road Safety) Amendment Bill (Road Safety Bill).

Key points

- On 21 November 2022, Cabinet agreed to progress proposals to respond to fleeing drivers as part of the Road Safety Bill (CAB-22-MIN-0514 refers). Alongside this, Cabinet agreed to allow you to issue drafting instructions on any consequential amendments.
- Te Manatū Waka has identified two consequential amendments that are required to meet the wider policy intent. These include
 - Amending the prescribed impoundment notice to address privacy concerns.
 - Correcting references of 'owner' to 'registered person' to better reflect where liabilities should sit for any fees and fines incurred by a vehicle.
- As resources have been directed to supporting the Criminal Activity Intervention Legislation Bill and the Road Safety Bill, the RSTA Bill has been delayed.
- There are several proposals in the RSTA Bill that are required to support the transfer of the safety camera network from New Zealand Police to Waka Kotahi NZ Transport Agency.
- Te Manatū Waka recommends transferring these proposals to the Road Safety Bill, as these proposals are time-sensitive and any further delay will impact on the ability to meet deliverables under Road to Zero.
- We would also recommend transferring proposals relating to expanding powers for the Director of Land Transport to better respond to future states of emergencies or pandemics, and to recall vehicles due to safety concerns.

IN CONFIDENCE

- New Zealand Police and the Ministry of Justice have been consulted in the development of this advice and are in support.

Recommendations

We recommend you:

- | | | |
|---|--|--|
| 1 | note that Cabinet has invited you to issue drafting instructions on any consequential amendments needed for the Land Transport (Road Safety) Amendment Bill | Noted |
| 2 | agree to issue drafting instructions for the following proposals to be included in the Land Transport (Road Safety) Amendment Bill: <ul style="list-style-type: none"> • Clarifying details to be included on vehicle-impoundment forms • Amending references of 'owner' to reference a 'registered person' in sections 96 through 98 of the Land Transport Act 1998 | Yes / No Yes / No |
| 3 | agree to the transfer of proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Land Transport (Road Safety) Amendment Bill: <ul style="list-style-type: none"> • Enabling the use of point-to-point cameras • Automated issuance of infringement notices • Electronic service of regulatory notices • Expanded powers for the Director of Land Transport | Yes / No Yes / No Yes / No Yes / No |
| 4 | note that these four proposals have previously received policy approval from Cabinet (CAB-22-MIN-0532) | Noted |
| 5 | refer this briefing to Hon Chris Hipkins, Minister of Police and Hon Kiri Allan, Minister of Justice. | Yes / No |

Megan Moffet
Manager, Regulatory Policy

..... / /

Hon Michael Wood
Minister of Transport

..... / /

Minister's office to complete:

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------|---------------|
| Megan Moffet, Manager, Regulatory Policy | s9(2)(a) | ✓ |
| Amber McGovern-Wilson, Principal Adviser, Regulatory Policy | s9(2)(a) | |

SECOND TIER DECISIONS FOR INCLUSION IN THE LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL

Cabinet has delegated the ability to make second tier policy decisions to support the Land Transport (Road Safety) Amendment Bill

Background

- 1 On 21 November 2022, Cabinet agreed to progress changes to respond to fleeing drivers through the Land Transport (Road Safety) Amendment Bill (Road Safety Bill). The Road Safety Bill supports the Government's manifesto commitments to keep up the pressure on tackling gangs, by ensuring that New Zealand Police (Police) and other enforcement agencies have the resources and powers to disrupt this offending.
- 2 Cabinet delegated to you, as the Minister of Transport, the ability to issue drafting instructions on any required consequential amendments, savings provisions or transitional arrangements (CAB-22-MIN-0514 refers).

Two consequential amendments require approval to issue drafting instructions

- 3 Te Manatū Waka Ministry of Transport (Te Manatū Waka) have identified two consequential amendments that require policy approval in order for drafting instructions to be issued for inclusion in the Road Safety Bill.
- 4 Amendments have been scoped with Police, Waka Kotahi NZ Transport Agency (Waka Kotahi) and the Ministry of Justice (Justice).
- 5 These amendments are either required to enable the intent, or to support the successful implementation of the Road Safety Bill. These include:
 - 5.1 rectifying privacy implications of the current Police-issued impoundment notice
 - 5.2 correcting drafting errors in the *Land Transport Act 1998* (LTA) to clarify the responsibilities of 'registered persons'.

Privacy implications of the current impoundment notice

- 6 When Police impound a vehicle under section 96 of the LTA, there is a requirement for the enforcement officer to complete an impoundment notice in the prescribed form, or in a form to the same effect, that acknowledges the seizure and impoundment that sets out:
 - 6.1 the full name and full address of the driver
 - 6.2 the year and make of the vehicle and its registration plate details or vehicle identification number
 - 6.3 if the vehicle was involved in street racing offences, the date and time of the alleged offence
 - 6.4 date and time of seizure

- 6.5 place where the vehicle is to be impounded
- 6.6 rights of appeal.
- 7 The enforcement officer must give a copy of the notice to the driver, unless they have left the scene, and the registered owner, if they are present at the time of seizure or as soon as practicable afterwards.
- 8 The impoundment notice, which is prescribed in the *Land Transport (Offences and Penalties) Regulations 1999*, includes a section to record the registered person's personal details.
- 9 Providing this level provides potential privacy and safety risks for both the registered person and offender (driver), in particular in circumstances where the vehicle has been stolen. Current legislation does not provide flexibility to withhold any information when issuing impoundment notices.
- 10 A copy of this notice is also then handed to the towage and storage operator, in normal circumstances (e.g. the vehicle is not stolen), this provides several contact details for when the vehicle is due to be released.
- 11 It is proposed to clarify in the LTA that different versions of the prescribed form should be issued to the registered person and the driver, if these are different people. The details of the registered person would then be provided to the towage and storage operator to support the eventual release of the vehicle.
- 12 The LTA sets out that the towage and storage operator must only release a vehicle to the owner of the vehicle, or a person that is authorised by the owner through the presentation of the owner's copy of the notice of acknowledgement of seizure and impoundment.
- 13 Police is currently working through how this could be operationalised and what changes may be required to existing forms. We would expect exact changes would be identified through this work, and provided in drafting instructions that could be issued to Parliamentary Counsel Office (PCO) in the new year.

Clarification of 'registered person' vs 'owner'

- 14 There is a common misconception that a 'registered person' is the same as an 'owner' in respect of vehicles. However, for the purposes of vehicles, the 'registered person' is the person that is responsible for ensuring that the vehicle meets the requirements that allow it to be driven legally on the road (e.g. maintaining it to a safe standard and ensuring that it was a current Warrant/Certificate of Fitness and registration) but also that any applicable fees and infringement fines will be paid.
- 15 A registered person can be:
 - 15.1 a private individual aged 15 years or over
 - 15.2 a limited liability company
 - 15.3 a government department, local authority or official board

- 15.4 an incorporated society or club.
- 16 In comparison, a person can finance the transaction for a vehicle and be the legal owner, but could decide to delegate the responsibility to another party e.g. a parent purchasing a vehicle for their child. Such arrangements are not formally recognised in the Motor Vehicle Register.
- 17 The purpose of the Motor Vehicle Register, as set out in the LTA is as follows:
- 17.1 enforcement of the law
 - 17.2 maintenance of the security of New Zealand
 - 17.3 collection of charges imposed or authorised by an enactment
 - 17.4 administration and development of transport law and policy.
- 18 Given that the terms 'owner' and 'registered person' are often seen as transferrable, despite having different obligations under transport legislation, there is a need to clarify provisions and who holds specific responsibilities in terms of the impoundment regime to provide consistency across the regulatory framework.
- 19 As an example, under section 98(1)(a)(i), the towage and storage operator may only release the vehicle to the 'owner' upon proof of ownership or the owner's copy of the notice of acknowledgement of seizure or impoundment.
- 20 For many people, it is likely that aside from presenting the owner's copy of the notice of acknowledgement, that proof of ownership would likely be in the form of a certificate of registration.
- 21 We recommend clarifying that the responsibility of any fees accumulated by a vehicle impounded under section 96 of the LTA are the responsibility of the registered person, as is the ability to appeal the impoundment of the vehicle.
- 22 For consistency, further references under section 96 through to 98 of the LTA would need to be amended. Exact changes would be identified in drafting instructions to PCO.

We recommend four proposals from the Regulatory Systems (Transport) Amendment Bill No.2 should be transferred to the Land Transport (Road Safety) Amendment Bill

- 23 On 28 November 2022, 30 proposals received policy approval and agreement to issue drafting instructions for inclusion in the Regulatory Systems (Transport) Amendment Bill No. 2 (RSTA Bill) (CAB-22-MIN-0532 refers).
- 24 As resources have been directed to supporting the Criminal Activity Intervention Legislation Bill and the Road Safety Bill, the RSTA Bill has been delayed. We now expect the RSTA Bill to come into force in 2024, once it has been through parliamentary process.
- 25 Three of the RSTA Bill proposals are necessary to support the delivery of the expanded safety camera network.

- 26 Road to Zero, the 2020-2030 Government road safety strategy, proposed a new approach to safety cameras. Waka Kotahi will take over ownership and operation of the safety camera network from Police. As part of this, the intent has been to expand the safety camera network to include average speed (point to point) cameras.
- 27 These proposals include:
- 27.1 Enabling the use of point-to-point cameras - this includes clarifying the use of multiple images for speed enforcement, and the evidence that will be admissible for these offences.
 - 27.2 Automated issuing of infringement notices – this will enable an automated process for decision-making and issuance of infringement notices. This will enable Waka Kotahi to increase the safety camera network more cost effectively.
 - 27.3 Enabling electronic service of documents – this will enable regulatory notices (e.g. infringement notices or demerit suspension notices) to be sent electronically. A subsequent requirement to provide and update email addresses would also be included.
- 28 Waka Kotahi has indicated intent to commence the first phase of the expansion of the safety camera network throughout 2023 with safety notifications initially being used, instead of infringement notices. Once legislation allows, the safety camera network will be further expanded under a targeted, risk-based approach.
- 29 If these proposals are not transferred to the Road Safety Bill, then the ability to fully implement the camera network will be delayed. As these proposals are time sensitive, there is a significant risk that this will impact on both the ability to meet deliverables under Road to Zero and Government priorities being achieved.

We would also recommend progressing changes to the powers of the Director of Land Transport

- 30 Te Manatū Waka has considered whether any other proposals may be considered time sensitive and requiring earlier progression.
- 31 One proposal that has been identified is the proposed expansion of the Director of Land Transport's (the Director) powers. There are two portions of this proposal, one would provide extended powers in an emergency, with the other enabling the recall of vehicles. Please see **Appendix 1** for more detail on the proposed expansion of the Director's powers.
- 32 The COVID-19 Pandemic showed us that the Director's powers were not sufficiently flexible to quickly address issues in response to emergencies. This proposal would fix this gap in the Director's powers and would reduce system risk. As we are seeing an increasing number of unpredictable health and weather events occurring, we are recommending the transfer of this proposal to the Road Safety Bill to enable the expansion of the Director's powers as soon as possible.

Next steps

- 33 If you agree to the proposed consequential amendments, and the transfer of proposals, Te Manatū Waka officials intend to issue drafting instructions as soon as practicable.

APPENDIX 1: PROPOSED EXPANSION OF THE DIRECTOR OF LAND TRANSPORT'S POWERS

- 1 The proposed expansion of the Director of Land Transport's (the Director) powers has two portions within the proposal.
- 2 The first portion would enable the Director to extend the term of any class of land transport document for which they are responsible, to a specified date.
- 3 These powers could only be used to in the following circumstances:
 - 3.1 A national or local emergency declaration is made (under the Civil Defence and Emergency Management Act 2002), or
 - 3.2 An epidemic notice (under the Epidemic Preparedness Act 2006) is in force, or
 - 3.3 Where the Minister of Transport agrees that there is an emergency. Such agreement could be received through a text message, or email.
- 4 The second portion of the proposal would enable the Director to require any vehicle, or class of vehicles, to present for inspection by a specified date. Failure to do so could result in either that vehicle's CoF or WoF being revoked, or being unable to have their CoF or WoF renewed at their next due inspection.
- 5 This power provides for an initial evidence-gathering mechanism, which could then be used to support a compulsory product recall under product safety regulation, if it is deemed necessary.
- 6 The second power enables the Director to revoke the CoF or WoF of a class of vehicles on the grounds of not meeting safety requirements. This proposal provides a stronger lever for the Director to use, where there is evidence a class of vehicles poses a safety risk to the land transport system and its participants.
- 7 Given this power would immediately render it illegal to drive vehicles covered under this notice, the Director would be required to notify the Chief Executive of Te Manatū Waka of their intent to revoke a class of CoFs or WoFs. However, specific approval would not be required as this would interfere with the statutorily independent functioning of the Director.

IN CONFIDENCE



15 December 2022

OC221046

BR/22/121CH

Hon Chris Hipkins**Minister of Police****Hon Michael Wood****Minister of Transport**

cc Hon Kiri Allan

Minister of Justice

Action required by:

Friday, 23 December 2022

OPTIONS FOR THE IMPLEMENTATION OF A TOWAGE AND STORAGE REGIME FOR SIX-MONTH VEHICLE IMPOUNDMENT

Purpose

This briefing provides you with further advice on options for the implementation of a towage and storage regime for six-month vehicle impoundment. This will help inform conversations with the towage and storage industry in early 2023.

Key points

- On 21 November 2022, Cabinet agreed (in principle) to amend the *Land Transport Act 1998* to allow enforcement officers to seize and impound a vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required (CAB-22-MIN-0514 refers).
- This advice identified three preliminary options for implementation of a towage and storage regime for six-month vehicle impoundments:
 - Creating certainty of payment for towage and storage operators through either the Crown covering operator costs (where a vehicle is abandoned), or removing operators from the financial transaction by the Crown meeting the costs, with the costs recovered from the registered person via other means (such as the Court).
 - Ensuring that the registered person pays the relevant fee regardless of whether they retrieve the vehicle by creating an ongoing obligation to pay costs irrespective of the vehicle being collected, which could include an option to allow vehicles to be voluntarily surrendered in the first week of impoundment for a lower fee or no fee.

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- Removing the need for private towage and storage services through either allowing vehicles to remain on the registered persons' property, with devices installed to prevent the vehicle from being used, or creating Crown-run towage and storage service.
- These options have been identified in answer to system pressures that are covered in **Appendix One**, which include insufficient regulated fees and a driver shortage. These system pressures will likely mean that operators could refuse to undertake six-month impoundment without government intervention.
- Following Cabinet consideration of the advice, officials provided a briefing to your office noting that these options required further policy work, and that additional information on the options would be provided to you by 15 December. This information could then be used to narrow down options prior to industry engagement.
- Further policy work has now been undertaken. Officials consider consultation with industry on the following options would support further detailed work on implementation:
 - Option 1A: Crown covers the towage and storage fees where the registered owner fails to retrieve the vehicle
 - Option 2 and 2A: Ensuring the registered person pays the relevant fee regardless of whether the vehicle is retrieved, but allowing vehicles to be abandoned at the start of the impoundment period
 - Option 3: Creating a Crown run towage and storage process
- A summary table containing analysis of all options can be found attached in **Appendix Three**.
- The Ministry of Justice has been consulted in the development of this advice.

Recommendations

We recommend you:

| | | |
|---|---|----------|
| 1 | note introducing six-month impoundments will have significant operational impacts for the towage and storage industry | Noted |
| 2 | Signal your indicative preferred options for implementing a towage and storage regime for six-month impoundment | |
| | ● Option 1A: Crown covers the towage and storage fees where the registered owner fails to retrieve the vehicle | Yes / No |
| | ● Option 1B: Crown covers the towage and storage fees from the outset, and recovers these from the registered person through the Courts | Yes / No |
| | ● Option 2: Ensuring the registered person pays the relevant fee regardless of whether they retrieve the vehicle | Yes / No |

- Option 2A: Providing people the ability to abandon their vehicle for a low fee or for free Yes / No
 - Option 3A: Storing vehicles on the registered persons' property with an immobiliser device fitted Yes / No
 - Option 3B: Establishing a Crown-operated vehicle towage and storage service Yes / No
- 3 **agree** to targeted consultation with the towage and storage industry, and Māori, on these proposed options in January-February 2023 Yes / No
- 4 **note** that final advice on options to proceed with will be provided in early March 2023 Noted
- 5 **refer** this briefing to Hon Kiri Allan, Minister of Justice Yes / No

Megan Moffet
Manager, Regulatory Policy

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Hon Michael Wood
Minister of Transport

..... / /

Gillian Ferguson
Director, Policy, NZ Police

..... / /

Hon Chris Hipkins
Minister of Police

..... / /

- Minister's office to complete:**
- Approved Declined
- Seen by Minister Not seen by Minister
- Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------|---------------|
| Megan Moffet, Manager, Regulatory Policy | s9(2)(a) | ✓ |
| Amber McGovern-Wilson, Principal Policy Advisor | s9(2)(a) | |
| Gillian Ferguson, Director, Policy, NZ Police | s9(2)(a) | |

OPTIONS FOR THE IMPLEMENTATION OF A TOWAGE AND STORAGE REGIME FOR SIX-MONTH VEHICLE IMPOUNDMENT

Cabinet has agreed in principle to amend the Land Transport Act 1998 to enable enforcement officers to seize and impound a vehicle for six months

1. In November 2022 Cabinet agreed-in-principle to amend the *Land Transport Act 1998* (LTA) to allow an enforcement officer to seize and impound, or seize and authorise the impoundment of, a motor vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required (CAB-22-MIN-0514 refers).
2. The Cabinet paper '*Responding to fleeing drivers* s 9(2)(f)(iv) identified three preliminary options for implementation of a towage and storage regime for six-month vehicle impoundments:
 - 2.1. Creating certainty of payment for towage and storage operators through either:
 - 2.1.1. the Crown covering operator costs (where a vehicle is abandoned), or
 - 2.1.2. removing operators from the financial transaction by the Crown meeting the costs, with the costs then recovered from the registered person via other means (such as the Court).
 - 2.2. Ensuring that the registered person pays the relevant fee regardless of whether they retrieve the vehicle, by creating an ongoing obligation to pay costs irrespective of the vehicle being collected. This could include an option to allow vehicles to be voluntarily surrendered in the first week of impoundment for a lower fee or no fee.
 - 2.3. Removing the need for private towage and storage services through either:
 - 2.3.1. allowing vehicles to remain on the registered persons' property, with devices installed to prevent the vehicle from being used, or
 - 2.3.2. creating a Crown-run towage and storage service.
 - 2.4. As part of Cabinet's decision, Te Manatū Waka Ministry of Transport (Te Manatū Waka), New Zealand Police (NZ Police) and the Ministry of Justice have undertaken further policy work on the above options, including the operational process of seizure and impoundment.
3. Advice in this briefing is based on data available at present and may change as further analysis and stakeholder engagement takes place. These provide a useful indication of potential numbers and costs.

While the number of vehicles could be moderate, six-month impoundments are likely to have a significant impact on the current towage and storage system

4. Over the course of 2022, NZ Police have observed a substantial increase to the number of fleeing driver events. In the 12 months up to 31 August 2022, 8,673 such events were recorded, compared to 6,757 for the 2021 calendar year.

5. In the year prior to the Police pursuit policy change in December 2020 (November 2019 - November 2020), Police was identifying on average 52 percent of all offenders. Since December 2020 (December 2020 – July 2022), Police is identifying on average 34 per cent of all offenders. Initial advice from Police is that it is likely that changes to the operational fleeing driver policy (likely to be implemented in 2023) may mean that more fleeing driver events are resolved, and vehicles ultimately impounded.
6. Not all identified offenders result in impoundment. For the purposes of this briefing, a conservative figure of 2,000 vehicles being impounded per year has been used, but this could be more in practice as there are on average 722 fleeing driver events a month at present and 34% of these events will be resolved (data referred to in paragraph 5).
7. Given the system is designed on the assumption that vehicles are held for a single month, one vehicle that is held for a six-month period will have a similar impact as six vehicles. This could mean that even if only 2,000 vehicles are impounded for a six-month period, that it is likely to have a similar impact as 12,000 extra vehicles within the system.
8. This would then need to be combined with the potential impact of increased seizure powers introduced by the Criminal Activity Intervention Legislation Bill. Currently there are, on average, between 3,500 and 4,000 relevant offences, which will further impact on the towage and storage industry.
9. Given a current 28-day impoundment rate of 20-30,000 vehicles per year, the introduction of up to 16,000 extra 28-day impoundments (or equivalent) is an approximately 50-70% increase. Even with the Crown investing significantly in the system, it is likely to take time for the system to grow sufficiently to undertake the required towage and storage.
10. Given the above data, and the known funding and driver shortage issues, further information on the current state of the towage and storage industry is attached in **Appendix One**.

We have identified options that could assist in implementing six-month impoundment

11. The following criteria have been used to analyse options:
 - 11.1. **Cost to the Crown (initial)** – Where applicable, this considers the initial, one-off, costs of meeting requirements to set up the proposed option.
 - 11.2. **Cost to the Crown (ongoing)** – This considers the ongoing cost to the Crown in servicing an option. This also covers any implications on the Justice sector.
 - 11.3. **Complexity** – This considers how this option would sit alongside the current 28-day impoundment and the ease of implementation activities.
 - 11.4. **Time to implement** – This considers the time it could reasonably take to operationalise the option.

- 11.5. **Ability to maintain current value of the vehicle** – Consideration is given as to how to maintain the value of the vehicle once it is impounded, and who would be liable for ensuring this occurs, including the required servicing.
12. For the purposes of this briefing, this criteria focuses on the options only and not the impact on registered owners (i.e., issues of equity).
13. In considering advice on the ability to maintain current values of vehicles, advice has been sought for the Criminal Proceeds Management Unit and Victoria Police. We see that there is a moral obligation on the Crown to return the vehicle in the same condition as which it was seized.
14. The *Land Transport (Requirements for Storage and Towing of Impounded Vehicles) Regulations 1999* currently sets out a duty of care on the operators to prevent loss or damage, but officials would recommend that there is an explicit requirement to mirror obligations set out in the *Criminal Proceeds (Recovery) Act 2009*.
15. Detailed advice on the impact on vehicles that are not used for an extended period of time can be found in **Appendix Two**.
16. A summary of the options, analysed against the criteria covered in paragraph 11, is attached in **Appendix Three**.

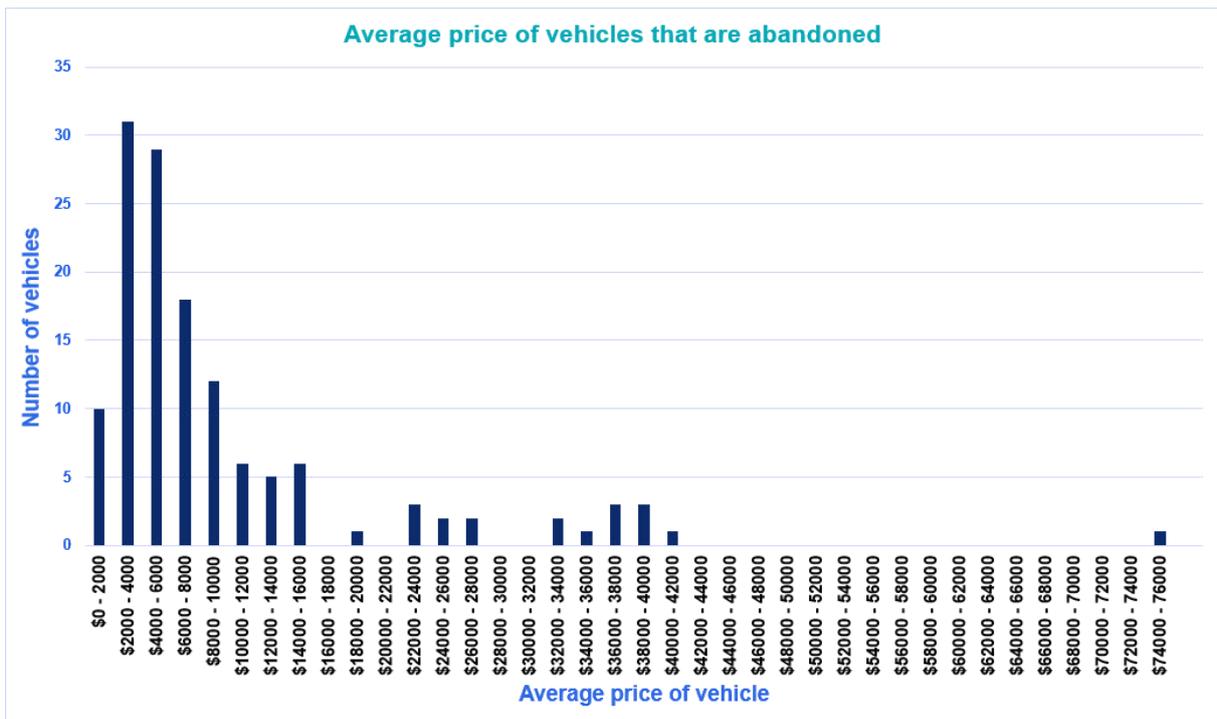
Creating certainty of payment for towage and storage operators

17. Officials have identified two options under this approach, which reflects on prior advice that the towage and storage regime is not reliably achieving the intended safety and system outcomes.
18. The regime is coping with outdated regulated fees which are having flow-on impacts on operators' ability to recover costs. This issue is particularly prevalent when managing abandoned vehicles, or when delivering services rurally where the distances travelled are much greater (OC220670 refers).
19. These options include:
- 19.1. Option 1A: the Crown covering the towage and storage fees where the registered owner fails to retrieve the vehicle (the vehicle is abandoned), or
- 19.2. Option 1B: the Crown covering the towage and storage fees at the outset, and then recovering these costs from the registered owner through the Courts system.

Option 1A: Crown covers the towage and storage fees where the registered owner fails to retrieve the vehicle

20. Under this approach, where a vehicle is abandoned at a storage facility following its six-month impoundment term, the Crown would intervene to pay the required fees associated with the towage and storage of that vehicle. As in the current system, the storage operator would then need to contact NZ Police to sign a declaration that an attempt has been made to contact the owner of the vehicle, before having the vehicle's ownership transferred to the operator.

21. Data from the Motor Trade Association (MTA) indicates that currently, between 10 and 15 percent of vehicles impounded for 28-days are abandoned¹. At present, where a vehicle has been abandoned, the operator is left to carry the costs of towing and storing that vehicle over the 28-day term, as well as dealing with the abandoned vehicle.
22. Using data from vehicles that were abandoned in November 2022, which towage and storage operators claimed rebates from Waka Kotahi NZ Transport Agency (Waka Kotahi) for, we know that there is a large range in the value of vehicles.



23. While there are outliers in the value of vehicles (i.e., a Mercedes saloon with an average resale value of \$74,000), a majority of vehicles will have a resale value of under \$8,000.
24. However, these vehicles have only been seized and impounded for 28 days and are abandoned because of an inability (or unwillingness) to pay the \$350-\$500 towage and storage fee. Therefore, it is reasonable to expect that the rate of abandonment will rise significantly for six-month impoundments, and we could expect between 40-60% of vehicles seized and impounded to be abandoned.

Analysis

25. We do not expect that this option would impose any initial costs to the Crown, but would have ongoing costs. Costs may decrease if the frequency of fleeing driver events decreases, but it is reasonable to expect that this could take several years until the intended impacts of the policy are realised.
26. The towage and storage fees charged for Police impoundments vary depending on the vehicle type, distance towed, and whether the vehicle is towed during business hours.

¹ Roughly 3,500 vehicles per year.

27. We know that these fees will be insufficient and will not encourage operators to take the vehicles. This will be particularly true if there is an expectation to maintain vehicles.

28. s 9(2)(f)(iv)

29. s 9(2)(f)(iv) extending impoundments to six months is likely to intensify issues with the current system. This is because it will result in higher fees to release vehicles, potentially resulting in increased vehicle abandonment rates (OC221038 refers).

s 9(2)(f)(iv)

| Regulated activities with fees | Current max fees | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
|--|------------------|--|--|
| Vehicles 3,500 kg or less | | | |
| Towing Mon-Fri 7am-6pm | \$53.67 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Towing other times | \$71.56 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Daily impoundment (storage) rate (first three days exempt) | \$12.27 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Vehicles over 3,500 kg | | | |
| Towing Mon-Fri 7am-6pm | \$132.89 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Towing other times | \$204.44 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Daily impoundment (storage) rate (first three days exempt) | \$28.62 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Other | | | |
| Fees per kilometre (first 10km included) | \$3.07 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Impoundment rates for six months (using Mon-Fri rates and no extra kms) | | | |
| Light vehicle | \$2,250 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Heavy vehicle | \$5,255.87 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |

30. To test the viability of the proposed storage rates we have investigated the rates charged by commercial storage operators³. The average cost to store a vehicle for six months varies considerably across the country, and depends on whether the facility is managed or non-managed (i.e., self-storage), and any additional services selected (such as the operator turning the vehicle on and running it every fortnight, storage in an air chamber).

s 9(2)(f)(iv)

³ These are typically companies that specialise in the storage of goods or vehicles.

Table two: Cost estimates from commercial storage operators in the Auckland region.

| Regulated activities with fees | Commercial pricing |
|---|--------------------|
| Non-managed, self storage of vehicle | |
| Towing Mon-Fri 7am-6pm | \$52.50 |
| Towing other times | \$70 |
| Daily storage rate | \$21 |
| Managed storage, vehicle moved/charged and in air chamber | |
| Towing Mon-Fri 7am-6pm | \$52.50 |
| Towing other times | \$70 |
| Daily storage rate | \$24 |
| Total cost of service for six months (using Mon-Fri tow rates) | |
| Non-managed service | \$3,874.50 |
| Managed service | \$4,420.50 |

31. The table below uses the expected abandonment rate of between 40-60% to demonstrate the potential cost to the Crown, using the currently regulated fee and the options that will be consulted on.
32. The data in the table below will assume a vehicle under 3,500kg and use the towage rate for normal business hours (Monday – Friday, 7am to 6pm).

Table three: projected costs of abandoned vehicles

| Regulated activities with fees | Current max fees | s 9(2)(f)(iv) | |
|--|------------------|---------------|---------------|
| Total cost of towage and storage – using data in Table 1 | \$2,250 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Annual cost to Crown for abandoned vehicles | | | |
| 40% of vehicles (800 vehicles) | \$1,800,000 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| 60% of vehicles (1,200 vehicles) | \$2,700,000 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |

33. This option does not consider the cost to towage and storage operators to maintain vehicles to the value at which they were seized. If this option were to proceed, officials would consult with towage and storage operators to determine whether additional fees would be required.
34. We expect that this option could be complex to implement for operators as they are likely to require additional physical space to store extra vehicles and training of additional staff. Further advice on the impact to their business is attached in **Appendix One**.

35. This option may require funding in the 2023-24 financial year if the Land Transport (Road Safety) Amendment Bill is intended to pass prior to the 2023 General Election and be in force shortly after.

Risks

36. The key risk under this option is that the real costs faced by the Crown are much greater than anticipated due to an increased number of vehicles being abandoned as people are unable to afford the total towage and storage fees, or determine the value of their vehicle to not be worth paying the towage and storage fees.
37. Data has been modelled on the current rate of resolved events and does not take into consideration the change in operational policy, or the new powers to compel information that will be provided to Police.
38. s 9(2)(g)(i) [REDACTED] s 9(2)(f)(iv) [REDACTED]

Additional considerations to work through

39. These costs could be partially mitigated if the Crown were to receive the proceeds from either the scrappage (around \$500⁴) or sale of abandoned vehicles. However, this is not a source of revenue that could reasonably be relied upon to fund the system consistently.

Recommendation: proceed to consultation, this would ensure that these services are financially viable for operators and make it more likely they are willing to store vehicles.

Option 1B: Crown covers the towage and storage fees from the outset, and recovers these from the registered person through the Courts

40. This option is similar to Option 1A, however the Crown would have the ability to recover the towage and storage fee from the registered person of the vehicle through the Court system.
41. This option would cut towage and storage operators out of the equation as the Crown would cover their costs from the outset. Once the six-month impoundment term ends, the registered person would be able to recover their car from the towage and storage facility if they:
- 41.1. Paid the Crown back in full; OR
 - 41.2. Entered into a payment plan contract with the Crown, that would involve them paying the costs of the impoundment back over an agreed period of time.

⁴ This figure relates to sale in an area with a major port. Much of this figure can be depleted if the vehicle needs to be transported a long distance before sale.

Table four: Cost to Crown to cover all six-month impoundments

| Regulated activities with fees | Current max fees | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
|--|------------------|---------------|---------------|
| Total cost of towage and storage – using data in Table 1 | \$2,250 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |
| Total cost (based on 2,000 vehicles) | \$4,500,000 | s 9(2)(f)(iv) | s 9(2)(f)(iv) |

42. Where a vehicle is abandoned at a storage facility following its six-month impoundment term, then the Crown would need to recover these costs from the registered person through the Courts.
43. This option would have a significant financial and administrative impact on the Crown, as it would involve the Crown fronting the costs of towage and storage for the operators from the outset.
44. Because the towage and storage fees are not a fine or a penalty, the only option for recovering these costs from the registered person is to pursue it as a civil debt. Civil debt recovery is a long and costly process. It would require the Crown to take each case individually to the District Court to seek a civil judgement. Each debt could take years to recover, if at all, and may cost more than the debt is worth.
45. The Ministry of Justice also considers that if the volume of abandoned cars is as high as expected (800-1,200 vehicles annually), attempting civil debt recovery for each would have a significant impact on the civil court system and could lead to case backlogs.
46. Consideration would need to be given as to which agency would take responsibility for taking on the debt and pursuing it through the court. This volume of civil litigation would be a significant undertaking and would be considerably outside the scope of Te Manatū Waka or the Ministry of Justice's current functions.
47. Police does not have a debt management function. Police's debt, e.g., from unpaid fines, is managed by the Ministry of Justice's Collections Unit.
48. This option would also require considerable operational guidance to develop and would be complex to implement.
49. This option does not consider the cost to towage and storage operators to maintain vehicles to the value at which they were seized. If this option were to proceed, officials would consult with towage and storage operators to determine whether additional fees would be required.

Risks

50. As outlined previously, the key risk under this option is that the real costs faced by the Crown are much greater than anticipated due to an increased number of vehicles being abandoned as people are unable to afford the total towage and storage fees, or determine the value of their vehicle to not be worth paying the towage and storage fees.

Recommendation: Do not proceed to consultation, the cost to recover these fees is likely to outweigh the debt and will be a lengthy process which could impact on overall capacity of the Courts.

Option 2: Ensuring the registered person pays the relevant fee regardless of whether they retrieve the vehicle

51. Section 98(1)(b) of the LTA states that if after 28 days the registered owner pays (or enters into an arrangement to pay) the fees and charges for towage and storage of the vehicle, that vehicle must be released into their possession. However, where a registered owner does not come to collect an impounded vehicle, there is no obligation to pay for its towage and storage over the course of the 28 days.
52. Requiring the registered person to pay the relevant fee regardless of whether they retrieve the vehicle would allow the towage and storage operator to recover the fee as a civil debt if the vehicle was abandoned.
53. While this option may have no direct financial impact on the Crown, this would place a significant additional financial and administrative burden on the towage and storage operator. The operator would need to pursue the debt through the District Court, which would be a costly and lengthy process and could take years to recover the debt, if at all.
54. If operators choose to pursue all the cost associated with abandoned cars as civil debts, then this may have some impact on the courts. However, it is unlikely that operators will choose to take this path in most instances, as the costs of pursuing the debt are likely to be greater than the debt is worth.
55. A detailed description of the phases to recover costs is attached as **Appendix Four**. This also outlines the implications on the justice system.
56. As mentioned in prior options, this option does not make assumptions as to whether the vehicle would be maintained at the value at which it was seized. Costs for this service would need to be considered through any further consultation with operators.
57. It is reasonable to expect that some operators would fail to recover their costs, either because an offender may not have sufficient assets, or because of an unwillingness or inability to pay.
58. In implementing this option, legislative change would be required to progress through the Land Transport (Road Safety) Amendment Bill. Guidance material may be required to assist towage and storage operators in understanding their rights and how to progress civil debt.
59. We expect that this option would come into force with the wider legislation.

Risks

60. As outlined previously, given the costs to registered owners to release their vehicle following a six-month impoundment period, it is likely we will see increased rates of vehicle abandonment. There is a risk that simply creating a legal requirement to pay does not give operators the certainty they need that the costs will be recoverable, given the costs and limitations of civil debt recovery.
61. To somewhat mitigate this risk, officials have identified two further options which may reduce the cost to operators from the outset, and therefore the need to engage in debt recovery:
 - 61.1. Providing people with the option to pay a reduced fee to voluntarily abandon their vehicle.
 - 61.2. Providing people with the option to voluntarily abandon their vehicle for free.
62. For consolidated analysis, this is referred as Option 2A. Under this approach, at the time the vehicle is impounded, the registered person would be advised of the cost to have the vehicle released in six months time. Within the first ten days of impoundment, they would then have the option of paying a reduced fee to abandon the vehicle at the start of the six-month term, if they do not consider they will be able to pay the full cost of releasing the vehicle at a later date (and have no intention to enter a repayment plan).
63. This would mean upon payment of the reduced fee, the operator could make arrangements to either scrap or sell the vehicle. This would reduce costs to the operator as they will not have stored the vehicle for six months prior to the registered person making the decision to abandon the vehicle.
64. This approach is likely to have significant equity implications, as it would leave people in a position where they no longer have a vehicle they can use, and they are required to pay a fee.
65. Given this, the preferred approach would be to allow a registered owner to voluntarily abandon their vehicle. This would still have equity concerns, as the offender may not have the ability to fund another vehicle, which could impact on their ability to travel to work.
66. This option could also be hindered by the vehicle finance industry, as a registered person may not have the ability to pay the towage and storage fee, but may also have an outstanding amount owed on a vehicle which prevents them abandoning the vehicle.

Recommendation: proceed to consultation as a combination. However, we do not believe that this will be successful in encouraging operators to pick up vehicles unless a number of offenders utilise the ability to abandon their vehicle.

Option 3: Removing the need for private towage and storage operators

67. Officials have identified two options under this approach:

67.1. Option 3A: storing vehicles on the registered persons' property with an immobiliser device fitted

67.2. Option 3B: establishing a Crown-operated vehicle towage and storage service.

Option 3A: Storing vehicles on the registered persons' property with an immobiliser device fitted

- 68. Under this option, vehicles subject to an impoundment notice would be allowed to be stored on the registered persons' property, however they would be fitted with an immobiliser to prevent any person from driving the vehicle.
- 69. Depending on how the system is designed, there could be both initial and on-going costs to the Crown. This advice has been based on an assumption that immobilisers would be available from a central pool of devices that are owned by the Crown as devices can be reused. Further consideration could be given in further advice as to whether offenders could buy devices from the Crown and leave these in vehicles.
- 70. The total cost would depend on the type of immobiliser device purchase. Basic models provide only one layer of immobilisation (such as cutting electricity to the engine), and as such are cheaper but easier to disable or remove. More expensive models provide multiple layers of immobilisation (such as cutting electricity and fuel to the engine), however come at a higher price.
- 71. Basic immobilisers range from between \$200 and \$300. Given these devices can be easily removed or disabled, officials consider the higher-end devices, priced at around \$800, would provide increased assurance.
- 72. Immobiliser devices need to be installed by an auto electrician. The total cost per vehicle, including labour required to install and remove the device, is estimated at around \$900, depending on the device installed. Installation of higher-end devices is likely to take more time and require more specialist skills.
- 73. Potential costs to the Crown have been modelled using the assumptions in paragraph 7, which assume 2,000 offences a year.

Table five: Funding requirements for immobilisers

| Funding requirements | Total cost |
|---|-------------|
| Purchase of immobiliser (\$800) | \$1,600,000 |
| Installation and removal (\$900) | \$1,800,000 |

- 74. This could be minimised if costs were placed on offenders, or this was only a partial subsidy, but consideration would need to be given to the equity of this given that these individuals are usually low-income and will need to fund alternative means of transport during this time.
- 75. It is unlikely that this option would allow vehicles to be maintained at current value as the deactivating of an immobiliser to allow the vehicle to be moved and/or serviced could undermine the intent of the sentence.

76. Given this, officials expect that there are a number of design considerations and exceptions to be considered which could result in a complex scheme.
77. There is also a concern as to whether there is sufficient supply of suitable immobilisers immediately available, which could undermine the ability to implement this in a timely manner. The supply of immobilisers could be built up over time.
78. Higher-end devices, while more effective, can require specialist auto electrician expertise. At present, there is a labour shortage of auto electricians in New Zealand, and it is unclear how many are qualified to fit higher-end immobiliser devices, whether they would be able to take on this role, and on what timeframes.

Risks

79. Without ongoing monitoring and surveillance of the vehicle on the registered person's property, there is the opportunity for people to attempt to remove or disable the immobiliser without the knowledge of enforcement authorities. Using these devices in combination with other technology such as GPS tracking may provide some assurance that a device has not been removed and the vehicle being driven illegally.
80. This option is also based on the assumption that offenders have property on which a vehicle could be safely stored for six months, which is unlikely to be the case for many people.

Additional considerations to work through

81. Some newer vehicles may already have immobilisers fitted. Original Equipment Manufacturer devices are integrated into the vehicle and can be challenging to remove or disable. Therefore, having a process to identify whether a vehicle is already fitted with an immobiliser device may be appropriate to save costs.
82. As mentioned previously, there may be a need for some vehicles to be exempted from this process. For example, if the registered owner lives at a distance from an operator who can install and remove the device. There may also be people who are unable to pay for installation / removal. The current exemptions process for alcohol interlock devices may provide a useful model for how we manage cases where a person lives at a distance from an auto electrician, and the implementation of a subsidy scheme for low-income offenders.

Recommendation: Do not proceed to consultation. This will be costly to implement and run, it is unlikely many people will have suitable areas to immobilise vehicles for a six-month period and the vehicles could deteriorate given the inability to carry out maintenance.

Option 3B: Establishing a Crown-operated vehicle towage and storage service

83. Under this option, the Crown would establish towage and storage services for Police vehicle impoundments. Once a vehicle is impounded, the operator would need to apply for an immediate pause of the registration of the vehicle with Waka Kotahi. The vehicle would then be transported to the nearest Crown-run storage facility where it will be kept for the six-month impoundment term.

84. To model initial and ongoing costs for Crown, data has been used from the Ministry of Business, Innovation and Employment (MBIE). MBIE operates the Criminal Proceeds Management Unit (CPMU), which stores goods (including vehicles) in alignment with their duties and requirements under the *Criminal Proceeds (Recovery) Act 2009*. Analysis of how this facility currently runs has been used to inform the costs of this option: The average cost per vehicle per day depends on the type of vehicle being stored. 9(2)(g)(i)

[Redacted]

[Redacted]

84.2. Personnel requirements include a warehouse manager, security, a mechanic, a logistics officer, and case officers (responsible for documenting and dealing with the matters relating to the vehicles held at the site).

84.3. Along with personnel, there will likely be additional security costs to consider:

s 9(2)(k)

[Redacted]

85. It is likely that there would need to be at least four facilities across Auckland, Wellington, Christchurch, and Dunedin, with vehicles transported between locations as required. The table below considers the costs mentioned in paragraph 84 and is based on the assumption of four locations in the interim.

Table six: potential costs to establish Crown-owned lots

| Service type | Cost | Total cost (4 locations) |
|-------------------|------------|--------------------------|
| Warehouse rental | 9(2)(g)(i) | [Redacted] |
| Personnel | 9(2)(g)(i) | [Redacted] |
| Security costs | s 9(2)(k) | s 9(2)(k) |
| Total cost | | s 9(2)(k) |

86. These costs could be mitigated if the Crown were able to model towage and storage fees charged by private operators. As with other options, consideration would then need to be given as to whether it is possible to recover costs of maintaining vehicles from registered persons.
87. This option would be complex to implement as this would require an agency being given the responsibility to oversee this work, similar to how the CPMU sits within MBIE. This would require consideration as to which agency may be the most appropriate, but also from where funding could be provided from as well as how this fits within existing functions.
88. There is a chance that this level of market intervention may have a negative impact on the towage and storage industry. Further conversations with the industry and how this could impact on them would need to occur during targeted consultation.
89. Further complexity would exist in finding suitable locations for storing vehicles and may require either waiting for existing leases to end or buildings to be built. It is likely that there may be a delay in implementing this option once legislation has passed, given this requirement.
90. There may also be difficulties in finding suitable staff, noting the wider labour market shortages.

Recommendation: proceed to consultation. This would remove the need to engage with the towage and storage operators through a system that is not fit for purpose. Depending on the number of vehicles impounded, some of the operating costs could be met through the payment of fees by offenders.

Consultation with industry will support the detailed policy implementation work

91. We intend to consult with the towage and storage industry, and Māori, on these proposed options in January-February 2023. Input from these groups will help identify whether the options are workable and any unintended or adverse impacts they may have on particular population groups.
92. A summary of this engagement feedback, and further advice will be provided in early March 2023.

APPENDIX ONE: TOWAGE AND STORAGE OPERATORS

93. We know that the current system is not fit for purpose, operators are struggling to find and retain staff on top of financial pressures (OC220921 refers).

Towage and storage operators are needing to be creative in order to sustain their businesses

94. Anecdotally, early conversations with several providers have raised that private one-off work is more lucrative, but contracts with insurance companies and Government (both Police and Council) are necessary for the volume that maintains cashflow.
95. However, insurance companies have been using market power to drive down contracted prices which means that once costs (labour and vehicle expenses) are taken into account, the margins on these particular jobs very small.
96. However, while Council contracts for removal of vehicles from clearways (as an example) can prove to be lucrative, COVID restrictions and the number of people working from home has impacted the volume of vehicles being towed. This does mean that some operators may have additional capacity to store Police-ordered impoundments.

Alongside financial constraints, there are workforce shortages

97. Anecdotally, operators have also raised that there is a real issue in finding and retaining drivers. One operator raised that they had lost a third of their workforce since the pandemic.
98. Operators are finding themselves in direct competition with other operators, but also with bus companies and Councils. Some companies are offering significantly more (\$40 compared to \$28) for contractor drivers and while some companies may offer a bonus structure for drivers that are able to tow a higher number of vehicles a day, this does impact on the financial margins of operators.
99. We have also heard that there is a significant time constraint in moving drivers through the required training, and the application time to apply for a 'vehicle recovery licence' from Waka Kotahi NZ Transport Agency, which is currently take up to 3 months. Once this is received, there is no guarantee that a driver may stay on, which can result in significant sunk costs (\$1,331 (courses) and \$363.30 (five-year licence)).
100. On top of this, there are also significant costs (around \$1,000 for courses, with additional truck hire) to gain the relevant heavy vehicle licence.

APPENDIX TWO: IMPACT ON VEHICLES OF SIX MONTHS STORAGE

| Vehicle part/type | Issue and mitigation |
|-----------------------------|---|
| Internal combustion engines | Newer vehicles have car alarms that continue to use power from the battery even when the car is not running. This could be mitigated by disconnecting the battery once the vehicle is impounded |
| Electric vehicles | Computer systems may drain the battery even when the vehicle is not running. Ideally, batteries should be reduced to between 33 and 50% charge before they are disconnected. If this does not occur, the battery may either need to be charged, or in some instances replaced altogether. |
| Damaged vehicles | Would need to be monitored for fire risk due to the potential for live but damaged electrical circuits to cause fuel tanks or batteries to catch fire. |
| Biofuels | These vehicles are likely to build up a level of 'sludge' in the engines and it is recommended that petrol is used shortly before a vehicle is stored for an extended period of time to prevent this from occurring. |
| Tyres | Left under pressure, tyres may develop flat spots. Tyres should either have higher pressures prior to being stored, or be stored off the ground. |
| Automatic transmissions | Transmissions of older vehicles can seize due to oil residue building up. This could be mitigated by using degreaser or replacing valves before the vehicle is released. |
| Brake pads | If the handbrake is engaged when the vehicle is stored, there is a chance that brake pads can bond together and brake pads may need to be replaced prior to the vehicle being used again. |

APPENDIX THREE: CONSOLIDATED ANALYSIS OF OPTIONS

| | Option 1A – Crown covers towage and storage fees when vehicle is abandoned | Option 1B – Crown covers towage and storage fees at the outset and recovers debt through Court system | Option 2: Ensure registered person pays the relevant fee regardless of whether they retrieve vehicle | Option 2A: Providing people the ability to abandon vehicle for a low fee or for free | Option 3A – Removing the need for private operators by storing vehicles in the registered persons’ property with a immobiliser | Option 3B – Removing the need for private operators by established a Crown-operated service |
|---|---|---|---|--|--|---|
| Cost to Crown (initial) | <i>This would not impose any initial costs to the Crown.</i> | <i>This would not impose any initial costs to the Crown.</i> | <i>This would not impose any initial costs to the Crown.</i> | <i>This would not impose any initial costs to the Crown.</i> | <i>The initial purchase of immobilizers could cost \$1.6 million and this would be dependant on sufficient supply of immobilizers being available.</i> | <i>This option could require \$9.6 million (based on 4 locations) to implement. These are estimates so it is likely that this figure may increase.</i> |
| Cost to Crown (ongoing) | <i>This would have ongoing costs for the Crown of between \$18-2.7m (based on 2,000 vehicles at current fee levels). § 9(2)(f)(iv)</i> | <i>This would involve ongoing payments to cover towage and storage operators costs, and ongoing debt recovery through the Courts. This option is likely to cost more than the debt is worth in order to retrieve.</i> | <i>Ongoing costs to the Court system as these debts are pursued.</i> | <i>This would not impose any ongoing costs to the Crown.</i> | <i>If there was a need for a subsidy scheme similar to that for alcohol-interlocks then there would be an on-going cost to the Crown.</i> | <i>This would have ongoing costs to the Crown, but could be mitigated if there were towage and storage fees associated with the offering of this service.</i> |
| Maintain current value of vehicles | <i>If this becomes a legislative requirement on the industry and costs can be recovered, then the highest proposed penalty level would likely cover some of the maintenance costs. Additional fees may be required.</i> | <i>If this becomes a legislative requirement on the industry and costs can be recovered, then the highest proposed penalty level would likely cover some of the maintenance costs. Additional fees may be required.</i> | <i>If this becomes a legislative requirement on the industry and costs can be recovered, then the highest proposed penalty level would likely cover some of the maintenance costs. Additional fees may be required.</i> | <i>As the vehicles are abandoned at the start of the impoundment period, this would allow vehicles to be on-sold at an early stage and not impact on the value of the vehicle.</i> | <i>This option would not allow vehicles to be maintained.</i> | <i>If this becomes a legislative requirement on the industry and costs can be recovered, then the highest proposed penalty level would likely cover some of the maintenance costs. Additional fees may be required.</i> |
| Complexity | <i>This would be relatively easy to implement, but could be complicated due to needing to seek funding.</i> | <i>This would be complex to implement. It could cause backlogs in the Courts, which would place a significant delay in receiving final funds.</i> | <i>Would have a greater impact on lower socio-economic people.</i> | <i>This option would be relatively simple to implement but consideration would need to be given on the impact of those with vehicle finance.</i> | <i>This option would be complex to implement as consideration would need to be given in to how to manage vehicles with the devices already installed, and any exceptions that may be required.</i> | <i>This could be complex to implement and may require consideration of where to locate lots to meet demand across the country.</i> |
| Time to implement | <i>The time required for implementation would depend on whether this option requires funding.</i> | <i>The time required for implementation would depend on which Agency takes the responsibility for this work.</i> | <i>This option would be relatively simple to implement.</i> | <i>This option would be relatively simple to implement.</i> | <i>Implementation could be hindered by the inability to source a sufficient number of immobilizers.</i> | <i>This may be difficult to implement depending on the availability of staff and buildings to accommodate this work.</i> |
| Overall assessment | <i>Proceed to consultation</i> | <i>Do not proceed to consultation</i> | <i>Proceed to consultation with 2A</i> | <i>Proceed to consultation with 2</i> | <i>Do not proceed to consultation</i> | <i>Proceed to consultation</i> |

APPENDIX FOUR: DEBT RECOVERY PROCESS AND IMPACT ON JUSTICE SYSTEM

Phase one – seeking a judgement via civil jurisdiction

| Activity | Implications for claimant / operator | Implications for Ministry of Justice |
|--|---|--|
| Operator initiates a civil claim | Fee to file claim = \$200 | Registry staff time to process claim |
| Operator engages services of a lawyer | Likely to be a few thousand dollars but this can be added to claim (to recover costs) | |
| OR operator self represents | | Self representation imposes a significant burden on court staff as claimant (Operator) does not necessarily know correct process etc and has to be helped through it |
| Case is heard at District Court – there is a fee to pay for a hearing | \$900 per half day, likely to cost \$1,800 at minimum | Court Registry Officer (CRO) and Judge time required to prepare, run hearing etc. Minimum of 2 days effort for each of CRO and Judge. |
| It could take a year (or more) between filing a claim, completing a hearing and receiving a judgment. | Long wait for Operator before they can even start to recoup costs. | |

Phase 2 – civil enforcement is pursued (assuming judgment is made in favour of claimant)

| Activity | Implications for creditor | Implications for Ministry of Justice |
|---|--|--|
| Operator initiates enforcement | Application for enforcement fee is \$200 | Central Processing Officer (CPO) time required to process application |
| Central registry attempts to set up arrangements for repayment | An arrangement to pay back over time means it could take many years for Operator to receive the full amount of their claim | CPO time required to set up arrangements from wages/benefit or bank account. |
| If arrangements fail, Operator has to go through civil enforcement procedure again. Arrangements may fail for reasons such as Registered Person's bank or employment details changing. | Further costs to Operator – application for enforcement fee another \$200 | More CPO time required to set up new arrangements |

| | | |
|---|--|--|
| <p>Operator wishes to use bailiffs to seize assets in order to recover amount</p> | <p>Warrant to seize (WTS) application is \$200 Additional fee of \$50 for bailiff</p> | <p>CPO time required to process WTS</p> |
| <p>Assets are seized by bailiff. It is possible the Registered Person's purchased a second vehicle during the 6-month period they were without the original vehicle.</p> | | <p>Bailiff may have to make multiple visits to address before they make contact with debtor and seize any assets. Note that a vehicle is generally the only asset worth seizing.</p> |
| <p>After 7 days, process is begun to sell assets (if Registered Person does not pay)</p> | <p>Sale of second vehicle may still not be sufficient to clear amount owing.</p> | <p>CPO time required to initiate and complete steps related to sales process Turners is used to run auction and sell a vehicle, there are costs associated with storage and a commission fee. MoJ pays these out of proceeds.</p> |

IN CONFIDENCE



23 March 2023

OC230138

Hon Kiri Allan**Action required by:****Associate Minister of Transport**

Friday, 31 March 2023

cc Hon Ginny Andersen

Minister of Police

FEASIBILITY OF PROGRESSING SIX-MONTH IMPOUNDMENTS FOR FLEEING DRIVER EVENTS

Purpose

To provide advice, informed by stakeholder engagement, on the feasibility of progressing six-month impoundments for fleeing driver events and next steps, if options are to progress.

Key points

- Following agreement from Hon Michael Wood, Minister of Transport (OC221046 refers), we have engaged with stakeholders and agencies on the feasibility of options for six-month impoundment. A wide range of complexities were brought up, some of which can be mitigated through funding, and others that will remain. Feedback focused on the following issues:
 - maintenance of vehicles, including Warrant of Fitness requirements once vehicles leave towage and storage lots
 - financial assurance for operators, particularly given the current driver shortage
 - impact on the vehicle finance market
 - limitations of the appeals process as currently set out in the *Land Transport Act 1998*
 - impact on low income families or those with disabled family members.
- There are additional implementation issues for the towage and storage industry, with recent weather events impacting North Island storage facilities, and the delay to the proposed review of the towage and storage fees. The towage and storage industry is already operating at a significant financial loss and facing difficulty storing vehicles damaged by recent weather events.
- This raises implementation issues for the industry with six-month impoundment and the impoundment provisions already confirmed in the Land Transport (Road Safety) Amendment Bill and the Criminal Activity Intervention Legislation Bill, which expands

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the circumstances under which Police can order 28-day impoundments. There is a risk that operators will refuse to undertake Police-ordered impoundments.

- In light of the feedback received, Te Manatū Waka does not believe that this additional penalty will support the Government's objective in deterring fleeing drivers, as it may encourage offenders to take extra risks to avoid detection. Overall, we consider the possible road safety benefit of this proposal (which is likely only for repeat offenders) is out-weighed by the cost and implementation difficulties and should not be progressed.
- If you decide not to progress this work, the original in-principle decision will need to be rescinded by the Social Wellbeing Committee prior to the Land Transport (Road Safety) Bill being introduced in May 2023. Officials will provide you with papers to progress this as soon as decisions are made.
- However, if this were to progress, there are two potential options that could mitigate some implementation difficulties, which include:
 - *Option One*: Crown covers the towage and storage fees to provide financial assurance for operators (recommended); or
 - *Option Two*: Crown covers the towage and storage fees and ensuring the registered person pays the relevant fee regardless of whether they retrieve the vehicle, to allow for debt collection activities to occur, and enabling vehicles to be abandoned within the first 14 days.
- We also recommend the following changes be made to the existing regime to support six-month impoundment by addressing issues that have been identified by stakeholders:
 - Progressing a time study with the Motor Trade Association to determine a suitable fee for the maintenance of vehicles. Further information on the impact on vehicles from the regime is provided in **Appendix Two**.
 - To support the regime, we would reasonably expect the following administration tasks to be carried out, which may require prescription in the *Land Transport Act 1998*:
 - putting a vehicle registration on hold (with administrative fees payable to Waka Kotahi passed on)
 - widening existing appeal provisions for six-month impoundment only, to include extreme or undue hardship.
- While some of the recommended options could feasibly sit with Waka Kotahi for administration, there are significant resource implications and it is likely that this could detract from the delivery of core regulatory functions.
- Given the scale of implementation activities needed to support this regime, if progressed, we would recommend a delayed commencement of at least two-years. This would allow for scoping activities to occur to support a 2024/25 Budget bid and to enable sufficient time for implementation activities to be carried out by Waka Kotahi, NZ Police and the Ministry of Justice. Recommendations

We recommend you:

- | | | |
|-----------|--|----------|
| 1 | agree not to proceed with an amendment to the Land Transport Act 1998 to enable six-month impoundments for fleeing driver events | Yes / No |
| 2 | note that to rescind the prior Cabinet decision, this will need to be referred back to the Social Wellbeing Committee, <u>prior</u> to the Land Transport (Road Safety) Bill being introduced in May 2023 | Noted |
| OR | | |
| 3 | agree to progress options to help alleviate some of the system pressures, which could be: | |
| | <ul style="list-style-type: none"> • <i>Option One:</i> Crown covers the towage and storage fees to provide financial assurance for operators (recommended); or | Yes / No |
| | <ul style="list-style-type: none"> • <i>Option Two:</i> Crown covers the towage and storage fees to provide financial assurance for operators, <u>and</u> | Yes / No |
| | <ul style="list-style-type: none"> • Ensuring the registered person pays the relevant fee regardless of whether they retrieve the vehicle, to allow for debt collection activities to occur, <u>and</u> | Yes / No |
| | <ul style="list-style-type: none"> • Enabling vehicles to be abandoned within the first 14 days | Yes / No |
| 4 | agree to progress proposals to address concerns that were raised during the targeted engagement phase, to support implementation: | |
| | <ul style="list-style-type: none"> • Creating a specific requirement to ensure that vehicles are maintained | Yes / No |
| | <ul style="list-style-type: none"> • Clarifying that an operator must put a vehicle registration on hold and applicable fees can be passed on to the registered person | Yes / No |
| | <ul style="list-style-type: none"> • Widening existing appeal provisions for six-month impoundment only, to include extreme or undue hardship | Yes / No |
| 5 | agree to a delayed commencement, to enable implementation activities to support this work | Yes / No |
| 6 | note that any implementation activities are reliant on a successful 2024/25 budget bid. | Noted |
| 7 | refer this briefing to Hon Ginny Andersen, Minister of Police | |



 Megan Moffet
Manager, Regulatory Policy
 23 / 03 / 2023

 Hon Kiri Allan
Associate Minister of Transport
 / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|--|-----------|--------------------------|
| Bronwyn Turley, Deputy Chief Executive, System and Regulatory Design | s9(2)(a) | <input type="checkbox"/> |
| Megan Moffet, Manager, Regulatory Policy | s9(2)(a) | |

FEASIBILITY OF PROGRESSING SIX-MONTH IMPOUNDMENTS FOR FLEEING DRIVER EVENTS

Following an in-principle agreement from Cabinet to allow for six-month impoundments, we have undertaken direct engagement with key stakeholders

- 1 In November 2022 Cabinet agreed-in-principle to amend the *Land Transport Act 1998* (LTA) to allow an enforcement officer to seize and impound, or seize and authorise the impoundment of, a motor vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required (CAB-22-MIN-0514 refers).
- 2 Te Manatū Waka Ministry of Transport (Te Manatū Waka) and NZ Police provided the Ministers of Transport and Police with further advice on the options that could be used to implement six-month impoundment. You received a copy of this advice in your role as Minister of Justice (OC221046 refers).
- 3 Minister Wood confirmed a preference for five of the options to progress to direct engagement with key stakeholders. These included:
 - 3.1 The Crown covering operator costs once a vehicle is abandoned
 - 3.2 Ensuring that the registered person pays the relevant fee regardless of whether they retrieve the vehicle, by creating an ongoing obligation to pay costs irrespective of the vehicle being collected
 - 3.3 Introducing the ability to voluntarily surrender vehicles in the first week of impoundment for a lower fee, or no fee
 - 3.4 Allowing vehicles to remain on a registered persons' property, which devices installed to prevent the vehicle being used
 - 3.5 Creating a Crown-run towage and storage service.
- 4 The only option that did not proceed was considering removing operators from the financial transaction by the Crown meeting the costs, with the costs then recovered through the Court system. This option would have a significant impact on the Courts and the cost of progressing it would be more than the original debt.

Impact of recent flooding in Auckland, and Cyclone Gabrielle, on capacity of impoundment lots

- 5 In providing feedback, the Motor Trade Association (MTA) canvassed operators nationwide. Of interest, operators in Auckland, Northland, Hawkes Bay and Tairāwhiti indicated that they are experiencing significant operational challenges following these two weather events, such as storing a large number of flood damaged vehicles creating a shortage of storage space.
- 6 As an example, s 9(2)(ba)(i) [REDACTED] This will only partially cover the estimated 10,000 vehicles that will be insurance write offs through the flooding events.

- 7 It is reasonable to expect that storage lots will need to store vehicles for a period of time while insurance claims are settled and vehicles are then either on sold to overseas markets or domestically for parts.
- 8 Alongside this, storage lots in the Hawkes Bay and Tairāwhiti have been damaged but are also at capacity. We expect that there may be a period of time before these lots would be able to accommodate vehicles seized by Police.
- 9 We can expect that given the frequency of such weather events, that the towage and storage industry will continue to be under a level of stress to accommodate extra vehicles.

Our targeted consultation confirmed previous advice about the difficulties of this proposal

- 10 As previously advised (OC221046), we expect the cost of six-month impoundment to be a significant barrier to the registered person collecting their vehicle. Using the regulated fees, offenders would be required to pay at least \$2,250¹ (or \$5,255 for vehicles over 3,500kg) at the end of the six-month impoundment prior to their vehicle being released.
- 11 During our targeted consultation we heard that there has been an increase in the number of vehicles being abandoned under the 28-day impoundment regime (at a cost of approximately \$360). Previously we have estimated an abandonment rate of around 10 to 15 percent of vehicles. However, in conversation with the MTA, we have heard that this is now averaging around 50 percent, or even higher in some locations. While we do not have direct evidence regarding why there has been such an increase, it is reasonable to expect that this reflects the current economic climate.
- 12 We would expect that for a six-month impoundment regime with much higher costs, this abandonment rate would be significantly higher. Given the anecdotal advice from the MTA, this may be closer to 90 percent of vehicles impounded. This could mean that a six-month impoundment regime is tantamount to forfeiture.
- 13 All stakeholders expressed concern that the policy could have a perverse impact in creating extra incentive for fleeing drivers to take evasive action. One such example was that it is likely that street-racers, who will often have significant loans against their vehicle, would likely be willing to take risks to avoid their vehicle being seized.
- 14 In light of the feedback received, Te Manatū Waka does not believe that this additional penalty will support the Government's objective in deterring fleeing drivers, as it may encourage offenders to take extra risks to avoid detection.
- 15 Overall, we consider the possible road safety benefit of this proposal (which is likely only for repeat offenders) is out-weighted by the cost and implementation difficulties and should not be progressed.
- 16 While impoundment is an evidence based approach for reducing re-offending, this is in the context of 28-day impoundments which prevent instances of immediate re-offending due to the loss of the vehicle. Evidence from the Ministry of Justice shows that increased penalties do not reduce the initial offending, as offenders are not

¹ Additional costs may be charged if the vehicle was towed a long distance or after hours.

making rational choices in the heat of the moment. In this instance, offenders are not likely to consider the consequence of having a vehicle impounded for six-months.

- 17 **Appendix One** provides a summary of the advice previously provided in relation to the potential number of vehicles that could be impounded.

| |
|---|
| Recommendation: Do not proceed with six-month impoundment. |
|---|

Other feedback from stakeholders has been consistent on several topics

- 18 Alongside the MTA, Te Manatū Waka also engaged with Te Arawhiti, the Ministry of Social Development (MSD), the Automobile Association of New Zealand (the AA) and the Financial Services Federation (the FSF) on the five options outlined in paragraph 3.

- 19 Stakeholders noted a range of concerns in how this work could be implemented, noting that the system is already under pressure and this could increase the risk that towage and storage operators do not undertake Police-ordered impoundments.

- 20 Feedback has focused on several key themes, including:

20.1 maintenance of vehicles, which includes Warrant of Fitness requirements once vehicles leave towage and storage lots

20.2 financial assurance for operators, particularly given the current driver shortage

20.3 the impact on the vehicle finance market

20.4 limitations of the appeals process as currently set out in the *Land Transport Act 1998*

20.5 administrative tasks that are required of operators.

- 21 Some of these concerns could be mitigated, recommendations on these are below.

Maintenance of vehicles

- 22 As per previous advice (OC221046 refers), it is clear that there is a moral obligation on the Crown to return the vehicle in the same condition as which it was seized.

- 23 The *Land Transport (Requirements for Storage and Towage of Impounded Vehicles) Regulations 1999* currently sets out a duty of care on the operators to prevent loss or damage, but officials would recommend that there is an explicit requirement to mirror obligations set out in the *Criminal Proceeds (Recovery) Act 2009* which requires that the value of seized property must be maintained.

- 24 Detailed advice on the impact on vehicles that are not used for an extended period of time can be found in **Appendix Two**.

- 25 We heard from the MTA that it is likely that if there was an explicit requirement put onto operators, that it would be reasonable to consider a fee that could be charged to registered person of the vehicle. We already know that operators are often undertaking Police-ordered impoundments at a financial loss and this additional fee could recognise the additional burdens inherent in six-month impoundment.

26 However, if the registered person is already unable to pay the impoundment fee, this additional fee will simply increase the debt owing.

27 Police would support work that ensures vehicles are roadworthy when they are released from impoundment.

Recommendation: Introduce a specific requirement for vehicles to be maintained and enable a fee to be charged.

Next step: Te Manatū Waka will work with the MTA to establish a reasonable fee for carrying out this work, which would consider the length of time required per vehicle during the six-month period to undertake general maintenance activities.

Financial assurance for operators

28 We know that the current system is not fit for purpose and operators are struggling to find and retain staff, on top of financial pressures (OC220921 refers). Police-ordered impoundments are only one of the income streams for towage and storage operators, with insurance companies and private contracts proving to be more lucrative.

29 MTA has provided anecdotal evidence of the difficulty operators face in terms of recovering fees. In particular, in circumstances where operators have offered payment plans because of an inability to pay the required fees.

30 One operator approved a payment plan following a 28-day impoundment which is being paid at \$5 a month. This has occurred as once the registered person defaulted on the original payment plan, the operator has attempted to repossess the vehicle through the Courts. However, the registered person has then made a subsequent payment (of \$5) and the operator has had to honour the original payment plan. This has led to the vehicle being at the storage lot for a two-year period.

31 Te Manatū Waka and Police note that unless this occurs, there will be a real risk that operators could refuse to take seized vehicles given that there are few incentives for towage and storage operators to prioritise this work.

Recommendation: Given the financial pressure that operators are under, § 9(2)(f) (iv) it is strongly recommended to consider a system that would provide a level of financial assurance for operators and a continuity of service. This, and next steps are further addressed on page 11.

Impact on the vehicle finance market

32 We also engaged with the vehicle finance sector, represented by the FSF. Through this engagement, we heard that the sector is concerned at what six-month impoundments could mean in terms of the rates of abandonment and the number of finance contracts that will need to be terminated.

33 For context, the FSF advised that commonly, the act of a vehicle being impounded is often an indicator of an increased likelihood that there will be a default on a vehicle finance contract.

- 34 This means that in the likely event that the vehicle is abandoned, the finance company is needing to repossess a vehicle, often having to go through the Court system to remove a security interest from the towage and storage operator for unpaid fees.
- 35 Any costs incurred for this process are then passed onto the person who took out the vehicle finance contract, which can often put the individual into further debt that they cannot afford.
- 36 The FSF recommended consideration be given to the vehicle finance company being able to repossess a vehicle if there is any indication that the registered person will not be picking up the vehicle at the end of the impoundment period. This would enable the finance company to on sell the vehicle to minimise the debt, but also prevent the towage and storage operator from incurring further costs.

Recommendation: To support this, we recommend considering early notification of a vehicle impoundment to the finance company, noting that there are privacy implications of this.

Next steps: To override the Privacy Act 2020 is a significant action and we would need to work with the Office of the Privacy Commissioner to further understand the implications.

Limitation of the appeals process as currently set out in the Land Transport Act 1998

- 37 MSD raised several concerns on the impact on certain groups in society:
- 37.1 It may cause people to slide into deeper financial hardship, as people whose cars are impounded may lose employment or opportunities for education, training or employment either because they have lost access to their vehicle and/or cannot afford a replacement.
- 37.2 Children may be impacted by the loss of family income or inability to access out of school opportunities they would have accessed by car.
- 37.3 If a vehicle that has disability modifications is impounded, it will be more challenging and expensive to replace. As a result, this policy may impact on disabled people's mobility.
- 38 It is possible to mitigate some of the risks that were raised by MSD. Similar concerns were raised during the Select Committee stage of the Criminal Activity Intervention Bill, which expands the circumstances under which vehicles can be impounded for 28-days, where concern was raised about the impoundment of the sole family vehicle.
- 39 The current appeal provisions are set out in section 102 and 110 of the *Land Transport Act 1998*. At present, appeals can be made to the Commissioner of Police within 14 days and if the appeal is unsuccessful, you can appeal to a District Court.
- 40 Under the section 102 provision the registered vehicle owner can an appeal to Police about an impoundment if the vehicle is stolen, incorrect process was followed by Police, the owner did not know that a driver was not permitted to drive, the owner took all reasonable steps to prevent the vehicle being used or in instances of serious medical emergency.

- 41 However, there are no grounds for extreme or undue hardship. Given the impact six-month impoundment will have on some families, in particular those that have vehicles with disability modifications or those in locations with limited to no access to alternative means of transport, we recommended these appeal provisions should be widened.
- 42 In providing feedback on the initial fleeing driver policy, Crown Law noted that it was important to retain current appeal and review mechanisms for *NZ Bill of Rights Act 1990* purposes.
- 43 There are existing provisions in the LTA which allow a disqualified or suspended driver to apply for a limited licence if this would cause the driver extreme hardship or another person undue hardship. Further advice on how these are used are attached in **Appendix Three**.
- 44 While supporting the reasons above for widening the appeal grounds, the Ministry of Justice notes that doing so may have an impact on court volumes and costs. Although further analysis would be required to assess the impact more fully, greater numbers of appeals would be expected for six-month impoundment compared with the current 28 days. Introducing a hardship appeal ground may also further increase numbers and complexity of appeals, which would increase costs and delay for the courts.
- 45 Police advises that six-month impoundments will likely increase the number of appeal applications. This may have a resourcing impact for Police. In addition, the new appeal grounds would require Police to operate two different appeal processes, one for 28-day impoundments and one for six-month impoundments. As the tests for undue hardship and extreme hardship are subjective, extra guidance would be needed to ensure staff process applications in comparable and fair manner.

Recommendation: Given that exceptions occur in an already existing transport regime, which removes access to the system through an inability to drive vehicles, we would consider it appropriate to extend it to circumstances where a vehicle is removed or an extended period of time to mitigate harm.

Next steps: Te Manatū Waka would work with the Ministry of Justice and NZ Police to understand implications on the Court system.

Administration tasks

- 46 The MTA noted that while there are several tasks that would fall on operators in such a regime, such as the aforementioned maintenance of vehicles, it was noted that there is also a need to manage the registration of vehicles.
- 47 The LTA sets out the requirement for vehicles to be continuously registered, though a specific exemption can be issued under the *Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011* (the Licensing Regulations).
- 48 Exemptions are granted in situations where it is expected that the vehicle will not be used on the road for a three-month period. In comparable regimes, such as the Criminal Proceeds Management Unit, registrations are put on hold once the vehicles are under the custody of the Official Assignee.

- 49 Waka Kotahi NZ Transport Agency (Waka Kotahi) currently issue identification numbers to operators to allow this to be done on behalf of a registered person. There is an administrative fee payable to Waka Kotahi of \$15.90, if the vehicle registration is also no longer current, there may be additional fees to bring this up to date.
- 50 Costs should then be able to be passed on to the registered person.
- 51 Once these vehicles are released back to the registered person, in order to 'reactivate' the registration, vehicles will need to have a current Warrant of Fitness or Certificate of Fitness. This could mean that there is a risk that these vehicles will be used without these inspections having occurred, though the current offences and penalties relating to the use of vehicles, aside from explicit travel for a vehicle inspection, will apply.

Recommendation: Include a requirement for operators to put the vehicle registration on hold for six months and enable fees to be passed to the registered person.

Several initiatives could be progressed to support six-month impoundment

- 52 The targeted engagement has identified a number of issues and re-enforced the view that six-month impoundments will put significant strain on the industry.
- 53 However, if a decision was made to progress the in-principle decision, Te Manatū Waka has developed two options that would either:
- 53.1 include the Crown covering the towage and storage fees (recommended); or
- 53.2 include the Crown covering the towage and storage fees, clarifying that a registered person is liable for fees, and enabling the vehicle to be abandoned in the first 14 days.
- 54 A full process map from the fleeing driver event, to the release of the vehicle is included in **Appendix Four** . This maps out the difference between the two options being presented.
- 55 Stakeholders supported options that would provide financial assurance for towage and storage operators, but noted this could set a precedence for Government intervention if issues were to arise in the ability to deliver 28-day impoundments, in particular the funding to the activity.
- 56 Options that we do not recommend, which include the use of vehicle immobilizers and establishing a Crown-owned towage and storage service, are attached in **Appendix Five**.

Option One: Crown covers the towage and storage fees where the registered owner fails to retrieve the vehicle (recommended)

- 57 To provide financial assurance for operators, and to ensure that they are willing to undertake this work, we strongly recommend creating a monthly payment system. This would be funded by the Crown, and once the six-month period is over, a person would be required to refund the Crown prior to having their vehicle released. This would

acknowledge the most operators would not be in a position to bear the burden of six-months worth of costs before any payment is received.

58 The Crown would also cover the upfront cost of administrative fees, maintenance and towage of the vehicle, which would be payable in order to release the vehicle.

59 We initially consulted on a proposal that would allow for a circumstance where, if a vehicle is abandoned at a storage facility, the Crown would intervene to pay the required fees. However, given the feedback from stakeholders during the engagement period we consider a monthly payment system would be required to ensure operators were able to accept these impoundments.

60 In terms of where this function would sit, the *Land Transport Management Act 2003* sets out that Waka Kotahi has a role in the implementing, operating, delivering and enforcing the regulation of the land transport system. Therefore, we consider Waka Kotahi to be an appropriate home for this payment function.

61 However, Waka Kotahi has expressed concern that this would detract from their ability to deliver core functions and would therefore require Board decisions as to the suitability of such a function.

62 If this option were to be progressed, there would be a significant amount of work required with Waka Kotahi to:

62.1 Undertake a Budget bid in 2024/25, noting that based on estimates on vehicle volumes provided in **Appendix Two**, we estimate that this option could require Crown funding of at least \$4,500,000 per annum.

62.2 Scoping software requirements and recruitment of additional resources, which would include additional costs.

63 Police and the Ministry of Justice would also be required to carry out implementation activities to support

*Option Two: Crown covering the towage and storage fees **and** ensuring the registered person pays the relevant fee regardless of whether they retrieve the vehicle and enabling early abandonment of vehicles*

64 While the Crown covering the costs will support the system to function, it will be expensive. Option two sets out a mechanism for recovering some of these costs but may create equity and *NZ Bill of Rights Act 1990* implications and therefore is not recommended.

65 Section 98(1)(b) of the LTA states that if after 28 days the registered owner pays (or enters into an arrangement to pay) the fees and charges for towage and storage of the vehicle, that vehicle must be released into their possession. However, where a registered owner does not come to collect an impounded vehicle, there is no obligation to pay for its towage and storage.

66 While it was originally envisaged that this option could enable towage and storage operators to recover fees as a civil debt, we could reconfigure this to enable Waka Kotahi to use private debt collectors to recover debts. This could be similar to the

current process for unpaid Road User Charges, where Waka Kotahi engages private debt collectors.

- 67 As the debts from impoundment would still be private debts to Waka Kotahi rather than those relating to a court sentence following a conviction, they would still require the use of the civil debt procedure if enforcing them through the courts. Waka Kotahi could choose to pursue the debt through the District Court, although this would be a costly and lengthy process, and would not be cost-effective in many instances.
- 68 If vehicles were abandoned at the end of the six-month period, the operator could then either dispose of the vehicle through on-selling it (based on a judgement call of the value) or scrap the vehicle in order to claim the rebate from Waka Kotahi to recoup the payment due for the final month.
- 69 The rebate for abandoned vehicles following a 28-day impoundment would continue to be available.
- 70 Either option to include the Crown covering the towage and storage fees will come at a significant cost, however, this option could enable Waka Kotahi to undertake debt recovery action.
- 71 However, if the person abandons their vehicle knowing that they are unable to pay the required fees, this could be perceived as a double penalty (loss of vehicle and financial cost of at least \$2500 with no conviction) and could have *NZ Bill of Rights Act 1990* implications.
- 72 As noted, this is a significant function for Waka Kotahi to undertake and this would require a delayed commencement period to work through funding and resource implications.
- 73 There is a risk that undertaking such a debt recovery role could impact on the ability of Waka Kotahi to undertake core regulatory functions.

Enabling vehicles to be abandoned by registered person within the first 14 days

- 74 Once the total fee payable is made known to the registered person at the start of the impoundment period, it is likely that some may know that they will be unable to pay the fees required to release the vehicle.
- 75 Therefore, we would recommend enabling the early abandonment of vehicles within the first 14 days of impoundment for no cost to the registered person. Following this period, an operator could dispose of the vehicle and recoup (to some degree) the costs incurred to date.
- 76 This would essentially amount to forfeiture of the vehicle. This raises equity concerns, as it suggests a higher penalty for those who cannot afford to pay the fees associated with six-month impoundment. The offender also may not have the ability to fund another vehicle, which could impact on their ability to travel to work or access essential services. If this option were to proceed, advice would be sought from Crown Law on any *NZ Bill of Rights Act 1990* implications.
- 77 If a vehicle still has finance owing and is abandoned, it would be expected that the vehicle is returned to the finance company to allow for the recovery of any debts.

Next steps

- 78 It is likely that a bid in Budget 2024 will be required to fund the initiatives. As part of this, Te Manatū Waka would need to work with Waka Kotahi to scope the required system changes and resource requirements. It is likely that the ability to impound vehicles for six-months for fleeing driver events would require a delayed commencement date of up to two years.
- 79 This would also then enable Police and the Ministry of Justice to undertake the required operational changes to support this work e.g. developing guidance on the new appeal provisions and new impoundment notices.
- 80 Depending on which, if any options, are progressed, the current drafting of the Land Transport (Road Safety) Amendment Bill (Road Safety Bill) contains an empowering provision for six-month impoundment.
- 81 A delayed commencement date would then enable Te Manatū Waka to progress regulations to enable the new six-month impoundment regime, which would be passed prior to any Budget announcement.

APPENDIX ONE: ADVICE ON THE NUMBER OF VEHICLES IMPOUNDED

- 1 Over the course of 2022, NZ Police have observed a substantial increase to the number of fleeing driver events. In the 12 months up to 31 August 2022, 8,673 such events were recorded, compared to 6,757 for the 2021 calendar year.
- 2 In the year prior to the Police Fleeing Driver policy change in December 2020 (November 2019 - November 2020), Police was identifying on average 52 percent of all offenders. Since December 2020 (December 2020 – July 2022), Police is identifying on average 34 per cent of all offenders. Initial advice from Police is that it is likely that changes to the operational fleeing driver policy (likely to be implemented in 2023) may mean that more fleeing driver events are resolved, and vehicles therefore impounded.
- 3 Not all identified offenders result in impoundment. For the purposes of this briefing, a conservative figure of 2,000 vehicles being impounded per year has been used, but this could be more in practice. There are on average 722 fleeing driver events a month at present and 34% of these events are resolved (data referred to in paragraph 5).
- 4 Given the system is designed on the assumption that vehicles are held for a single month, one vehicle that is held for a six-month period will have a similar impact as six vehicles. This could mean that even if only 2,000 vehicles are impounded for a six-month period, that it is likely to have a similar impact as 12,000 extra vehicles within the system.
- 5 This would then need to be combined with the potential impact of increased seizure powers introduced by the Criminal Activity Intervention Legislation Bill. Currently there are, on average, between 3,500 and 4,000 relevant offences, which will further impact on the towage and storage industry.
- 6 Given a current 28-day impoundment rate of 20-30,000 vehicles per year, the introduction of up to 16,000 extra 28-day impoundments (or equivalent) is an approximately 50-70% increase.

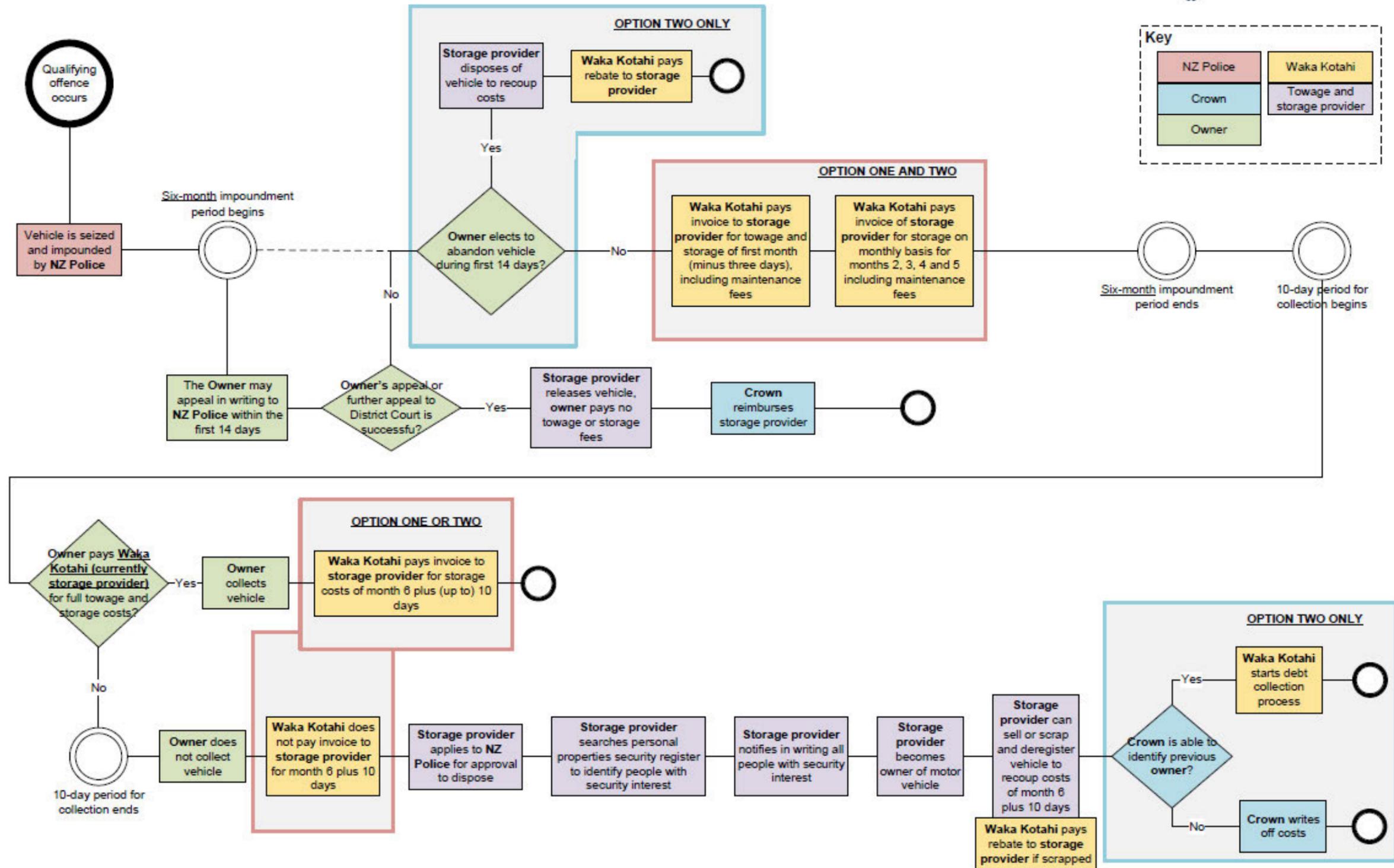
APPENDIX TWO: IMPACT ON VEHICLES OF SIX MONTHS STORAGE

| Vehicle part/type | Issue and mitigation |
|------------------------------------|--|
| Internal combustion engines | Newer vehicles have car alarms that continue to use power from the battery even when the car is not running. This could be mitigated by disconnecting the battery once the vehicle is impounded |
| Electric vehicles | Computer systems may drain the battery even when the vehicle is not running. Ideally, batteries should be reduced to between 33 and 50% charge before they are disconnected. If this does not occur, the battery may either need to be charged, or in some instances replaced altogether |
| Damaged vehicles | Would need to be monitored for fire risk due to the potential for live but damaged electrical circuits to cause fuel tanks or batteries to catch fire. |
| Biofuels | These vehicles are likely to build up a level of 'sludge' in the engines and it is recommended that petrol is used shortly before a vehicle is stored for an extended period of time to prevent this from occurring. |
| Tyres | Left under pressure, tyres may develop flat spots. Tyres should either have higher pressures prior to being stored, or be stored off the ground. |
| Automatic transmissions | Transmissions of older vehicles can seize due to oil residue building up. This could be mitigated by using degreaser or replacing valves before the vehicle is released. |
| Brake pads | If the handbrake is engaged when the vehicle is stored, there is a chance that brake pads can bond together and brake pads may need to be replaced prior to the vehicle being used again. |

APPENDIX THREE: EXTREME AND UNDUE HARDSHIP

- 1 Extreme hardship is often proved if the person can demonstrate that disqualification/suspension would result in them losing their job, business or livelihood. For example, where an applicant is required to drive for work and their disqualification means they will not be able to carry out their job.
- 2 The non-availability of alternative transport options is another factor that may cause extreme hardship to someone.
- 3 Undue hardship is a lower threshold than extreme hardship and therefore easier to prove. When someone loses their licence, it is likely to cause inconvenience to their family and friends, but inconvenience is not a good enough reason to obtain a limited licence. There must be something more. For example, an employer may suffer undue hardship if it would be difficult to shuffle responsibility around within the employer's business so as to accommodate someone's disqualification/suspension, or if it would be a burden on an employer to employ someone to take over for the period of the person's disqualification/suspension.
- 4 Undue hardship to family members could also arise where the applicant is the sole or designated caregiver and is required to drive in order to care for dependent family members.

Appendix four: Possible process for six-month impoundment



APPENDIX FIVE: OTHER OPTIONS WERE NOT CONSIDERED SUITABLE TO PROGRESS

1 Te Manatū Waka had also earlier identified two options that would remove the need for private towage and storage operators in the market. These included:

- 1.1 Storing vehicles on the registered persons' property with an immobiliser device fitted
- 1.2 Establishing a Crown-operated vehicle towage and storage service

Storing vehicles on the registered persons' property with an immobiliser device fitted

2 Under this option, vehicles subject to an impoundment notice would be allowed to be stored on the registered persons' property, however they would be fitted with an immobiliser to prevent any person from driving the vehicle.

3 Early advice from stakeholders highlighted that there are likely to be several issues that could arise under such an option:

3.1 Immobilisers are easily removed, especially those that are installed after market. This could mean that there would be an additional requirement to install a tracking system in the vehicle to ensure that it is not used, or require an enforcement agency to carry out periodical checks that the vehicles were not being used. Otherwise, the system would be operating on a high level of trust. To add a tracking system to vehicle would require some level of consistent monitoring, similar to that undertaken for offenders undertaking a home detention sentence with an electronic monitoring bracelet. This would likely have a significant cost attached. As an example, in their 2021/22 Annual Report, the Department of Corrections noted an average daily cost of \$109 for home detention sentences, which includes the use of an electronic monitoring system. Using this regime as a proxy, it could mean that the monitoring of vehicles could cost \$19,720 per vehicle.

3.2 There is a strong level of inequity in this system, as this option may not be suitable for those that rent (or are otherwise transient), are in high-density social housing or do not have adequate parking available. We considered whether this could be an opt-in penalty, however this would create further equity considerations given this could effectively mean that those that have secure housing, with adequate parking, could chose how they are penalised.

3.3 This could create further road safety issues. We know that vehicles that are parked on the side of a road can cause safety concerns if the road is not sufficiently wide, or the vehicles are parked in unsuitable locations. To deter this behaviour, there are applicable offences for not moving a parked vehicle in a seven-day period.

4 This option would not support the ability to maintain vehicles, unless a specific exception was created to allow vehicles to either be transported to a mechanic, or used for short periods to ensure the vehicle does not degrade over the six-month period. This would create additional complexity in relation to monitoring vehicles. It is highly

unlikely that mechanics would be willing to travel to specifically maintain these vehicles at the homes of offenders without charging significant costs.

Establishing a Crown-operated vehicle towage and storage service

- 5 Under this option, the Crown would establish towage and storage services for Police vehicle impoundments. We previously provided advice of initial advice on the costs involved in establishing such a regime, based on data from the Criminal Proceeds Management Unit (OC221046 refers)
- 6 We estimated that is likely that there would need to be at least four facilities across Auckland, Wellington, Christchurch, and Dunedin, with vehicles transported between locations as required. Given the need for multiple locations, we would estimate that this could cost up to \$9.6 million to establish, and then in ongoing costs to offer the service.
- 7 This option is not recommended as it does not represent value for money for Crown given that we can only estimate the number of vehicles that will be impounded given that ongoing operational review by Police of the Fleeing Driver policy.

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26 April 2023

OC230124

Hon Kiri Allan

Action required by:

Associate Minister of Transport

Monday, 1 May 2023

CABINET PAPER – LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL: APPROVAL FOR INTRODUCTION

To provide you with a draft Cabinet paper, and a draft Bill, for your consideration and Ministerial consultation.

Key points

- The attached paper seeks Cabinet's agreement to the introduction of the Land Transport (Road Safety) Amendment Bill. The paper is scheduled for discussion at Cabinet Legislative Committee on 11 May 2023.
- The Land Transport (Road Safety) Amendment Bill has two main objectives.
- Part 1 gives effect to decisions made by Cabinet on fleeing driver proposals on 21 November 2022 (CAB-22-MIN-05144 refers). It amends the *Land Transport Act 1998* (and consequentially relevant Land Transport Regulations), and the *Sentencing Act 2002*, to:
 - 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
 - increase the period of licence disqualification after a second convictions for a failing to stop offence
 - create a new sentencing option to enable Courts to order that a vehicle be forfeited on conviction for a failing to stop offence.
- Cabinet also agreed in-principle to enable an enforcement officer to seize and impound a vehicle for a period of six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop.
- In order to ensure that six-month impoundment can be implemented successfully, you decided to provide financial assurance to towage and storage operators (OC230138 refers), and to widen appeal provisions under section 102 of the *Land Transport Act 1998* to consider cases of extreme and undue hardship.
- We are working with the Parliamentary Counsel Office on the legislation changes required to enact this regime. It is expected that we may need to recommend further

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amendments as the Land Transport (Road Safety) Amendment Bill progresses through the Select Committee stage and/or progress a Supplementary Order Paper.

- Part 2 gives effect to decisions made by Cabinet on the Regulatory Systems (Transport) Amendment Bill No.2 on 28 November 2022 (CAB-22-MIN-0532 refers). It amends the *Land Transport Act 1998* (and consequentially relevant Land Transport Rules) to address various safety matters including:
 - electronic service of documents and electronic signatures; and
 - enforcement of point-to-point safety cameras; and
 - automated issuing of infringement notices; and
 - introducing emergency powers for the Director of Land Transport.
- The paper recommends that the Bill be introduced as soon as possible and referred to the Transport and Infrastructure Committee. The paper also recommends that the Bill be enacted by August 2023. Your Office has arranged for the Bill to be introduced under Budget Day urgency, which will also incorporate the first reading and a debatable motion under Standing Order 298 to have a shortened Select Committee process.
- To achieve this, Ministerial consultation on the attached Cabinet paper needs to take place between 6-21 April 2023. Departmental consultation will take place concurrently, as departments provided feedback that was otherwise considered and addressed during original Cabinet processes in late 2022.
- We recommend consulting with Minister Wood on the use of a Ministerial direction under section 103 of the *Crown Entities Act 2004* to direct Waka Kotahi to undertake the payment function to support a six-month impoundment regime.
- Waka Kotahi is currently scoping the ability to fund activities through baselines. However, this may require further approval from the Minister of Finance if funding needs to be moved between appropriations. If this is the case, further advice will be provided.
- Funding through baselines may have impacts on implementing other work. We anticipate that if baseline funding is not feasible for Waka Kotahi, that funding from alternative sources may be required and advice would be provided to your Office in due course.

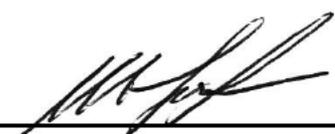
Recommendations

We recommend you:

- | | | |
|---|--|----------|
| 1 | agree to undertake Ministerial consultation on the draft Cabinet paper seeking approval to introduce the Bill between 6-21 April 2023 | Yes / No |
| 2 | note that departmental consultation will occur concurrently | Noted |
| 3 | provide feedback to officials on the draft Cabinet paper in time for a final version to be lodged on 4 May 2023, for consideration by the Cabinet Legislation Committee | Yes / No |

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- | | | |
|---|---|--------|
| 4 | provide a copy of this briefing to Minister Wood, to support discussions on the use of a Ministerial direction to direct Waka Kotahi NZ Transport Agency to commence implementation work, and take up the payment function for six-month impoundment | Yes/No |
| 5 | provide feedback, following discussions with Minister Wood, on the use of a Ministerial direction | Yes/No |
| 6 | note that officials will provide further documentation to support the issuance of a Ministerial direction, prior to the Land Transport (Road Safety) Amendment Bill receiving first reading | Noted |
| 7 | note that Waka Kotahi is currently scoping the ability to fund this work through baselines in the interim, prior to a Budget bid being prepared for the 2024/25 financial year | Noted |
| 8 | note that if funding is required to be moved between appropriations, Te Manatū Waka will provide advice on how to manage the approval process with the Minister of Finance | Noted |
| 9 | note that this approach could impact on the ability for Waka Kotahi to carry out other work, Te Manatū Waka will provide further advice if this is the case | Noted |



Megan Moffet
Manager, Regulatory Policy
 26 / 04 / 2023

Hon Kiri Allan
Associate Minister of Transport
 / /

- Minister's office to complete:**
- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Seen by Minister | <input type="checkbox"/> Not seen by Minister |
| <input type="checkbox"/> Overtaken by events | |

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------------------|---------------|
| Bronwyn Turley, Deputy Chief Executive, Systems & Regulatory Design | s 9(2)(a) s9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | s9(2)(a) | |

CABINET PAPER – LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL: APPROVAL FOR INTRODUCTION

The Land Transport (Road Safety) Amendment Bill contains a number of powers to maintain and ensure road safety

- 1 The Land Transport (Road Safety) Amendment Bill (Road Safety Bill) provides enforcement agencies with effective tools and powers to maintain and ensure road safety by enabling enforcement activities to be carried out in a timely manner.
- 2 There are two main objectives to the Bill: the first part responds to fleeing drivers, and second part addresses various safety matters within the land transport system.

Amendments to address fleeing driver events are included

- 3 The Road Safety Bill gives effect to decisions made by Cabinet on 21 November 2022 on fleeing drivers proposals [CAB-22-MIN-05144 refers]. It amends the *Land Transport Act 1998* (LTA) (and consequentially relevant Land Transport Regulations), and the *Sentencing Act 2002*, to:
 - 3.1 increase the period of licence disqualification for a second failing to stop offence
 - 3.2 enable a court to order that a vehicle be forfeited on conviction for failing to stop
 - 3.3 enable Police to seize and impound a motor vehicle for 28 days for failing to provide information about a fleeing driver.
- 4 The Road Safety Bill reflects the second-tier decisions made by the Minister of Transport [OC220991 refers] with delegated authority, by:
 - 4.1 amending the prescribed impoundment notice to address privacy concerns
 - 4.2 correcting references of ‘owner’ to ‘registered person’ to better reflect where liabilities should sit for any fees and fines incurred by a vehicle.

We have undertaken further work to determine how six-month impoundment will be implemented and funded

- 5 Cabinet also agreed in-principle to enable an enforcement officer to seize and impound a vehicle for a period of six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop [CAB-22-MIN-0514].
- 6 In order to ensure that six-month impoundment can be implemented successfully, you decided to provide financial assurance to towage and storage operators (OC230138 refers), and to widen appeal provisions under section 102 of the Land Transport Act 1998 to consider cases of extreme and undue hardship.

Use of Ministerial direction

- 7 Officials have discussed the placement of the payment function with Waka Kotahi NZ Transport Agency (Waka Kotahi). While this does not strictly fit within the functions of Waka Kotahi, we consider this the most appropriate placement.
- 8 This would be in line with similar payments that Waka Kotahi currently administers, which include:
- 8.1 a subsidy for a mandatory alcohol interlock sentence
 - 8.2 a Court-ordered drug or alcohol assessment following applicable land transport offences
 - 8.3 a rebate to towage and storage operators once a vehicle has been abandoned.
- 9 Section 103 of the *Crown Entities Act 2004* (CE Act) provides the ability for Ministers to give a direction to a Crown entity to give effect to Government policy, that relates to the entity's functions and objectives.
- 10 Under section 112 of the CE Act, the responsible Minister is also provided the power to add to the functions of a Crown entity.
- 11 To carry this out, Minister Wood would need to be consulted. Minister Wood would then, under the CE Act, be required to consult with Waka Kotahi before the Direction is Gazetted and tabled in the House.
- 12 Ministerial Directions have previously been used in relation to the Clean Car Discount and Clean Car Upgrade, and Social Leasing schemes.
- 13 We would recommend discussing the matter with Minister Wood. Once feedback is provided, we would anticipate providing the required documents to progress this shortly after the Road Safety Bill is introduced.

Financial implications

- 14 Should this function be placed with Waka Kotahi, it will require additional resourcing to both establish and administer this function on an ongoing basis.
- 15 Dependent upon the final design of the payment process, this may have significant cashflow implications for Waka Kotahi. The scale of impact could also differ based on the volume of impounded vehicles.
- 16 The Road Safety Bill, as currently drafted, provides a level of flexibility for Waka Kotahi in how the payment to towage and storage operators can be managed.
- 17 This could mean that payments could occur towards the end of the six-month period (which is likely to fall in the next financial year), with the flexibility for earlier payments to be made to smaller operators who may not have the financial resources to wait to receive payment.
- 18 The direct numbers of vehicles impacted is not yet known as this is a discretionary power, and some vehicles may not be able to be identified e.g. if a licence plate is

obscured or removed. However, using Police and Waka Kotahi data, we have been able to extrapolate a range of eligible vehicles, taking into consideration that:

- 18.1 An estimated 10% of offenders will successfully appeal the impoundment of their vehicle under the expanded extreme or undue hardship provisions. This is based on the limited licence regime, which is the only comparable land transport regime.
 - 18.2 An average of 22.5% of vehicles used in fleeing driver events are stolen, which would be returned to the registered person, not seized and impounded.
 - 18.3 6%¹ of fleeing driver events end in vehicles being crashed. Severely damaged vehicles cannot be seized and impounded under the LTA.
- 19 NZ Police recorded 9,795 fleeing driver events in 2022, from 6,757 in 2021 – reflecting an increasing trend over the last several years. As we will not know how many fleeing driver events will take place in the next financial year, the table below outlines possible scenarios for decreasing or increasing events. Funding requirements are based on the minimum regulated towage and storage fee being \$2,250², and do not include possible administration costs.

| Number of offences | 5,897 (50% of offences) | 7,836 (80% of offences) | 9,795 (100% of offences) | 11,754 (120% of offences) |
|-------------------------|-------------------------|-------------------------|--------------------------|---------------------------|
| Hardship appeals | 590 | 784 | 980 | 1,175 |
| Stolen vehicles | 1,297 | 1,724 | 2,155 | 2,568 |
| Damaged vehicles | 354 | 470 | 588 | 705 |
| Total eligible vehicles | 3,656 | 4,858 | 6,072 | 7,306 |
| Funding required | \$8,226,000 | \$10,930,500 | \$13,662,000 | \$16,438,500 |

- 20 Some of the money may be recovered via offenders paying for their vehicle to be released. However, given the low value of vehicles generally expected to be used in fleeing driver events, we expect this to be a small percentage of vehicles impounded, with most abandoned.
- 21 In regard to the short-term costs, we are currently working with Waka Kotahi to understand the level of resourcing required and whether this function can initially be funded from within existing baselines. If required, we may seek additional funding for these initial costs. Alternatively, we will provide further advice on reprioritisation and any associated changes to appropriations that may be required as a result.

¹ Data based solely on 2022 Police crash information.

² This figure will differ if the vehicle is towed after hours, is more than 10km from the towage and storage lot or if the vehicle is over 3,500kg. The fee may also increase if the proposed consultation on the potential increase to regulated fees progresses.

- 22 If funding needs to be reallocated, the Minister of Finance will need to approve any required changes to appropriations. We are unlikely to know if this is required until payments start to become due and advice would be provided on this as, and when, needed.
- 23 Further work will be undertaken to determine the most appropriate funding source for this function on an ongoing basis (including application of the transport funding principles) and we will provide further advice by the end of June. If additional Crown funding is the preferred option, this will be sought through Budget 2024/25.
- 24 We anticipate that the period through between Royal assent and Budget 2024/25 will better enable us to collect data on the actual level of offences, which would enable a better understanding of the ongoing funding required. As noted in paragraph 21, we would anticipate that any funding requests would also reflect any extra resources that may be required, or system changes.

Safety matters within the land transport system

- 25 The Road Safety Bill also amends the LTA (and consequentially relevant Land Transport Rules) to address various safety matters within the land transport system including:
- 25.1 enabling the electronic service of documents and electronic signatures
 - 25.2 enabling the use of point-to-point safety cameras
 - 25.3 enabling automated issuing of infringement notices
 - 25.4 introducing emergency powers for the Director of Land Transport.
- 26 The Road Safety Bill reflects the decision made by the Minister of Transport [OC220991 refers] to transfer the above four proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Road Safety Bill. The LEG paper seeks final Cabinet approval for this transfer.
- 27 These four proposals have previously received policy approval from Cabinet on 28 November 2022 [CAB-22-MIN-0532].

Next steps

Finalising the Land Transport (Road Safety) Amendment Bill

- 28 The Road Safety Bill attached to this paper is complete and Officials are satisfied that it gives effect to the policy decisions. As the implementation planning for six-month impoundment is progressed, we expect that further legislation changes will be required. Any such changes would be recommended through the Select Committee stage and/or progress via a Supplementary Order Paper.
- 29 Officials will continue to work with the Parliamentary Counsel Office on technical drafting matters and may make further refinements to the Bill ahead of the paper being lodged on 4 May 2023.

- 30 Following concurrent departmental and Ministerial consultation on the LEG paper, a final version will also be provided alongside the Bill for lodgement.

Introduction and progression through the House

- 31 The draft paper recommends that the Road Safety Bill be introduced as soon as possible. Your Office has arranged for the Bill to be introduced under Budget Day urgency, which will also incorporate the first reading and a debatable motion under Standing Order 298 to have a shortened Select Committee process. The paper recommends that the Bill be referred to the Transport and Infrastructure Select Committee for consideration.
- 32 Te Manatū Waka will work to support the Road Safety Bill through the Parliamentary process.
- 33 The table below provides an indicative timeline for the Road Safety Bill.

| Milestone | Indicative timing |
|--|---------------------------|
| Departmental and Ministerial consultation on the draft LEG paper | 6 – 21 April |
| LEG committee | 11 May |
| Cabinet approval to introduce the Bill | 15 May |
| Bill introduced to Parliament and First reading | Week of 8 May |
| Select Committee – Public Consultation | Closing late July |
| Select Committee Departmental Report | Week of 31 July |
| Select Committee report back | Week of 14 August |
| Final House stages (likely to require urgency) | Weeks of 21 and 28 August |

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Office of the Associate Minister of Transport
Cabinet Legislation Committee

Land Transport (Road Safety) Amendment Bill: Approval for Introduction**Proposal**

- 1 This paper seeks approval to introduce the Land Transport (Road Safety) Amendment Bill into the House as soon as possible.

Executive Summary

- 2 The Land Transport (Road Safety) Amendment Bill creates new powers aimed at ensuring road safety and provides enforcement agencies with new tools to ensure they can carry out enforcement activities in a timely manner.
- 3 The Bill has two main objectives: firstly, to improve legislative responses to fleeing drivers, and secondly, to address various safety matters within the land transport system.
- 4 The Land Transport (Road Safety) Amendment Bill targets fleeing drivers through amendments to the Land Transport Act 1998 (LTA) (and consequentially relevant Land Transport Regulations), and the Sentencing Act 2002, to:
 - 4.1 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
 - 4.2 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
 - 4.3 increase the period of licence disqualification after a second conviction for a failing to stop offence; and
 - 4.4 create a new sentencing option to enable Courts to order that a vehicle be forfeited on conviction for a failing to stop offence.
- 5 The Land Transport (Road Safety) Amendment Bill also amends the LTA to address various safety matters including:
 - 5.1 providing for the electronic service of Notices

- 5.2 ensuring point-to-point safety cameras can be used as an enforcement tool for speeding offences; and
 - 5.3 providing for the automated issuing of certain infringement notices; and
 - 5.4 introducing emergency powers for the Director of Land Transport.
- 6 The Land Transport (Road Safety) Amendment Bill has a priority of category 3 currently on the 2023 Legislation programme.

The Land Transport (Road Safety) Amendment Bill: Policy

- 7 The Land Transport (Road Safety) Amendment Bill's purpose is to strengthen and modernise the tools and powers provided to regulatory agencies to ensure our roads are safe.

Proposals relating to fleeing drivers

- 8 In July 2022, officials provided Cabinet with advice on fleeing drivers. Cabinet invited the Minister of Police, in consultation with the Minister of Justice and the Minister of Transport, to report back to Cabinet on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22- MIN-0264].
- 9 On 21 November 2022, Cabinet considered the policy paper *Responding to Fleeing Drivers* ^{s 9(2)(f)(iv)} and agreed to progress proposals to respond to fleeing drivers as part of the Road Safety Bill [CAB-22-MIN-0514 refers]. Cabinet agreed to:
- 9.1 increase the period of licence disqualification for a second failing to stop offence; and
 - 9.2 enable a Court to order that a vehicle be forfeited on conviction for failing to stop; and
 - 9.3 enable Police to seize and impound a motor vehicle for 28 days if the registered person fails to provide information about a fleeing driver and Police form a reasonable belief that impounding the vehicle is necessary to prevent a threat to road safety.

Second tier decisions agreed

- 10 Cabinet also delegated authority to the Minister of Transport, the Minister of Police, and the Minister of Justice, to make second tier policy decisions as necessary to give effect to the policies contained in the Land Transport (Road Safety) Amendment Bill [CAB-22-MIN-0514].
- 11 The Minister of Transport agreed to the following second-tier decision:
- 11.1 amending the prescribed impoundment notice to ensure details of a registered vehicle owner and a driver do not need to go on the same form in order to address potential privacy concerns; and

- 11.2 correcting references of 'owner' to 'registered person' to better reflect where liabilities should sit for any fees and fines incurred by a vehicle.

Six-month impoundment agreed

- 12 Cabinet also agreed in-principle to enable an enforcement officer to seize and impound a vehicle for a period of six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop [CAB-22-MIN-0514].
- 13 Ministers further decided to provide financial assurance to towage and storage operators through the Crown to ensure that six-month impoundment can be implemented.
- 14 In recognition of this extended timeframe for impoundment, appeal provisions under section 102 of the LTA will also be widened to consider cases of extreme hardship to the registered person of the vehicle and undue hardship to a person other than the registered person.
- 15 Initial estimates are that providing financial assurance may cost between \$8.2 and \$16.4 million per annum, though the accuracy of this figure is dependant on a number of factors, which include: the new power being discretionary, and the fact that it cannot be used on vehicles that are stolen, used for joy riding or have suffered severe damage.
- 16 The extended impoundment will require a new administrative regime to support the processing of payments to towage and storage operators. It is likely that the administrative agency¹ may also require additional resources to carry out administrative tasks.
- 17 Funding will initially come out of Waka Kotahi NZ Transport Agency (Waka Kotahi) baselines and further funding advice will be provided when more detailed information about how the policy is being operationalised is known.
- 18 I have been advised that the payment function should sit with Waka Kotahi, however this does not strictly fit within the current functions provided for by the Land Transport Management Act 2003.
- 19 Therefore, shortly after the Land Transport (Road Safety) Amendment Bill has been introduced and progressed through first reading, the Minister of Transport intends to use section 103 of the Crown Entities Act 2004 to issue a Ministerial direction. This will direct Waka Kotahi to:
- 19.1 Commence operational work to implement the payment function; and
- 19.2 To undertake the payment function once the Land Transport (Road Safety) Amendment Bill has been passed.
- 20 While a majority of the required enabling provisions have been included in the Land Transport (Road Safety) Amendment Bill, it is likely that as

¹ Waka Kotahi NZ Transport Agency

implementation activities are carried out, Officials may need to recommend further legislative amendments through the Select Committee process.

Proposals to address various safety matters within the land transport system

- 21 Several proposals from the Regulatory Systems (Transport) Amendment Bill No.2 have also been transferred to the Land Transport (Road Safety) Amendment Bill. These include:
- 21.1 enabling the electronic service of documents and electronic signatures; and
 - 21.2 enabling the use of point-to-point safety cameras; and
 - 21.3 enabling automated issuing of infringement notices; and
 - 21.4 introducing emergency powers for the Director of Land Transport.
- 22 These four proposals have previously received policy approval from Cabinet on 28 November 2022 [CAB-22-MIN-0532].

Need for legislation

- 23 The Land Transport (Road Safety) Amendment Bill is required to give effect to the policy decisions outlined above because they require changes to primary legislation.

Impact Analysis

- 24 A Regulatory Impact Statement on fleeing drivers has been prepared by Te Manatū Waka Ministry of Transport in accordance with the necessary requirements, and accompanied the paper seeking Cabinet approval of the policy relating to the Bill [CAB-22-MIN-0514].
- 25 A Regulatory Impact Statement on the Directors emergency powers has been prepared by Te Manatū Waka Ministry of Transport in accordance with the necessary requirements, and accompanied the paper seeking Cabinet approval of the policy relating to the Regulatory Systems (Transport) Amendment Bill No.2 [CAB-22-MIN-0532].
- 26 The Treasury granted the other proposals, which were transferred from the Regulatory Systems (Transport) Amendment Bill No.2, an exemption from the requirements for the Regulatory Impact Statement for the reasons that the changes are technical in nature and are suitable for inclusion in a revision Bill (as provided for in the *Legislation Act 2019*).

Privacy Impact Assessments

- 27 Privacy Impact Assessments (PIAs) are used to identify and assess the privacy risks arising from the collection, use, and handling of personal information.

- 28 Following Cabinet policy approval [CAB-22-MIN-0532], Waka Kotahi has undertaken a PIA in relation to automated infringements, to reflect the change in how personal information is used.
- 29 This has considered how the automated system will operate on correct factual information, and that there are systems in place to ensure information is factual. There will be systems in place to protect individuals' information.

Compliance

- 30 The Land Transport (Road Safety) Amendment Bill complies with each of the following:
- 30.1 the principles of the Treaty of Waitangi. However as noted at paragraph 36-39 there is tension between the policies contained within the Land Transport (Road Safety) Amendment Bill and Treaty rights. We acknowledge that this Bill is likely to disproportionately affect Māori youth.
 - 30.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. However, as noted at paragraphs 31 and 34, the Land Transport (Road Safety) Amendment Bill may limit some rights contained in the NZBORA.
 - 30.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper.
 - 30.4 the principles and guidelines set out in the Privacy Act 2020.
 - 30.5 relevant international standards and obligations.
 - 30.6 the Legislation Guidelines (2021 edition).

Land Transport (Road Safety) Amendment Bill: potential conflict with the New Zealand Bill of Rights Act 1990

- 31 The new power in the Land Transport (Road Safety) Amendment Bill to enable 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 (section 21), as recognised in the NZBORA.
- 32 However, we consider the potential for limitation on this right to be justified in the circumstances considering the significant harms caused by fleeing drivers.
- 33 The potential for unjustifiable limitation is reduced by the fact 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.

- 34 Impoundment for long periods of time would also engage section 27 of the NZBORA: 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.
- 35 However, 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.

Land Transport (Road Safety) Amendment Bill: potential conflicts with the principles of te Tiriti O Waitangi/the Treaty of Waitangi

- 36 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.
- 37 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.
- 38 In considering whether the Crown is meeting its Treaty obligations to Māori, I have sought to balance the Crown kāwanatanga and Māori rangatiratanga as they relate to fleeing driver offences.
- 39 I 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.
- 40 Specifically, to ensure the Crown is achieving its outcomes equitably, the legislation provides several mechanisms. This includes:
- 40.1 ensuring that the power to impound vehicles for six months is discretionary rather than compulsory; and
 - 40.2 widening existing appeal provisions for vehicles impounded for six months to include extreme hardship to the vehicle owner or undue hardship to another person.
- 41 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,

- 41.1 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
- 41.2 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.
- 42 Although I recognise the importance of robust and sincere consultation, there has been insufficient time during the policy development process to consult with Māori. However, I expect key Māori organisations and communities to be consulted throughout the legislative process, particularly throughout the Select Committee process.

Consultation

- 43 Due to time constraints, all consultation on the amendments to date, excluding six-month impoundment, has been limited to government officials. The public (including Māori) will have opportunities for consultation during the progression of the legislative process.
- 44 The Ministry of Justice, NZ Police, Waka Kotahi NZ Transport Agency and Crown Law have been involved in developing the policy and have been consulted on the draft Road Safety Bill.
- 45 The following departments have been consulted on the relevant parts of the draft Road Safety Bill: the Ministry of Justice, New Zealand Police, 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.

Agency views

New Zealand Police

- 46 New Zealand Police supports a delayed commencement for the implementation of six-month impoundment sanction. This would ensure that suitable and sustainable funding arrangements are identified for the Crown to cover towage and storage fees of an estimated \$8.2 and \$16.4 million per annum and that the new processes are well communicated and able to be implemented.

Ministry of Justice

- 47 The Ministry of Justice noted that the use of electronic notices was a relatively novel approach that deviated from the standard process for serving an infringement notice. In this instance, Te Manatū Waka Ministry of Transport has advised that this is a justified approach, as Waka Kotahi research shows that early intervention significantly reduces future traffic

offending and given the expected increase in volume as the safety camera network expands, this will deliver significant efficiencies.

- 48 Comment was also provided on the use of automated infringement; in that it would be appropriate to use such a system for infringement offences given the uniform behaviour that has straight forward issues of fact.

Ministry of Social Development

- 49 The Ministry of Social Development expressed concern with the short timeframe (14 days) for the six-month impoundment appeal process. Officials advise that this is justified, however will consider this further if required during the Select Committee process.
- 50 The importance of engaging with Māori during the remaining legislation stages was also highlighted.

Te Arawhiti

- 51 Te Arawhiti comment focused on the potential conflicts with the principles of te Tiriti O Waitangi/the Treaty of Waitangi. The relevant section above was amended to reflect these concerns.

Binding on the Crown

- 52 The Land Transport (Road Safety) Amendment Bill amends the Land Transport Act 1998 (and consequentially relevant Land Transport Rules and Regulations) and the Sentencing Act 2002, which binds the Crown.
- 53 The Land Transport (Road Safety) Amendment Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

- 54 The Land Transport (Road Safety) Amendment Bill allocates decision-making powers to the judiciary for issuing new forfeiture orders. It also allocates decision making powers under certain circumstances to the Director of Land Transport.

Associated regulations

- 55 Other than consequential amendments, no other regulations are likely to be required.

Commencement of legislation

- 56 The Land Transport (Road Safety) Amendment Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 57 The Land Transport (Road Safety) Amendment Bill has a priority of category 3 on the 2023 Legislation programme.
- 58 The Land Transport (Road Safety) Amendment Bill should be introduced as soon as possible following Cabinet approval.
- 59 I propose that the Bill be referred to the Transport and Infrastructure Select Committee for a consideration period of two months.
- 60 I propose that the Bill should be enacted by late August 2023.

Proactive Release

- 61 This paper will be proactively released on Te Manatū Waka Ministry of Transport's website following the Bill's introduction into the House of Representatives, with any redactions in line with the Official Information Act 1982.

Recommendations

- 62 I recommend that the Cabinet Legislation Committee:
- 1 **note** that on 21 November 2022, Cabinet confirmed decisions made by the Cabinet Social Wellbeing Committee on final policy proposals and agreed to [CAB-22-MIN-0514 refers]:
 - 1.1 increase the period of licence disqualification for a second failing to stop offence; and
 - 1.2 enable a court to order that a vehicle be forfeited on conviction for failing to stop; and
 - 1.3 enable Police to seize and impound a motor vehicle for 28 days for failing to provide information about a fleeing driver;
 - 2 **note** that on 21 November 2022, Cabinet also agreed-in-principle to enable an enforcement officer to seize and impound a vehicle for a period of six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop;
 - 3 **note** that Ministers with delegated authority have agreed to the following second-tier policy decision:
 - 3.1 that the prescribed impoundment notice be amended to address the potential for privacy concerns;
 - 3.2 that references of 'owner' be corrected to 'registered person' to better reflect where liabilities should sit for any fees and fines incurred by a vehicle;
 - 4 **note** that the Associate Minister of Transport has agreed that financial assurance will be provided to towage and storage operators involved in six-month impoundment through Crown funding;

I N C O N F I D E N C E

- 5 **note** that the commencement of six-month impoundment is contingent on further implementation planning and assurance of funding;
- 6 **note** that the Associate Minister of Transport has agreed to expand the grounds fleeing drivers may appeal to Police against impoundment under section 102 of the Land Transport Act 1998 to include extreme or undue hardship;
- 7 **note** the Minister of Transport agreed to transfer the following proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Land Transport (Road Safety) Amendment Bill. These include:
- 7.1 enabling the electronic service of documents and electronic signatures; and
 - 7.2 enabling the use of point-to-point safety cameras; and
 - 7.3 enabling automated issuing of infringement notices; and
 - 7.4 introducing emergency powers for the Director of Land Transport;
- 8 **agree** to the transfer of proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Land Transport (Road Safety) Amendment Bill;
- 9 **note** that the Land Transport (Road Safety) Amendment Bill is on the Government's 2023 Legislation Programme with a category 3 priority;
- 10 **note** that the Land Transport (Road Safety) Amendment Bill will amend Acts that bind the Crown;
- 11 **approve** the Land Transport (Road Safety) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 12 **agree** that the Land Transport (Road Safety) Amendment Bill be introduced as soon as possible after Cabinet approval;
- 13 **agree** that the government proposes that the Land Transport (Road Safety) Amendment Bill be:
- 13.1 referred to the Transport and Infrastructure Committee for consideration;
 - 13.2 enacted by end August 2023.

Authorised for lodgement

Hon Kiri Allan

Associate Minister of Transport

I N C O N F I D E N C E



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Land Transport (Road Safety) Amendment Bill: Approval for Introduction

Portfolio **Associate Transport**

On 11 May 2023, the Cabinet Legislation Committee:

- 1 **noted** that in November 2022, Cabinet confirmed decisions made by the Cabinet Social Wellbeing Committee on final policy proposals and agreed to [CAB-22-MIN-0514]:
 - 1.1 increase the period of licence disqualification for a second failing to stop offence; and
 - 1.2 enable a court to order that a vehicle be forfeited on conviction for failing to stop; and
 - 1.3 enable Police to seize and impound a motor vehicle for 28 days for failing to provide information about a fleeing driver;
- 2 **noted** that in November 2022, Cabinet agreed-in-principle to enable an enforcement officer to seize and impound a vehicle for a period of six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop [CAB-22-MIN-0514];
- 3 **noted** that in November 2022, Cabinet authorised the Minister of Police, Minister of Transport and Minister of Justice to make any further policy decisions that arise during the drafting process, provided they are consistent with the direction agreed by Cabinet [CAB-22-MIN-0514];
- 4 **noted** that Ministers with delegated authority have agreed to the following second-tier policy decisions:
 - 4.1 that the prescribed impoundment notice be amended to address the potential for privacy concerns;
 - 4.2 that references of 'owner' be corrected to 'registered person' to better reflect where liabilities should sit for any fees and fines incurred by a vehicle;
- 5 **noted** that the Associate Minister of Transport has agreed that financial assurance will be provided to towage and storage operators involved in six-month impoundment through Crown funding;
- 6 **noted** that the commencement of six-month impoundment is contingent on further implementation planning and assurance of funding;

- 7 **noted** that the Associate Minister of Transport has agreed to expand the grounds fleeing drivers may appeal to Police against impoundment under section 102 of the Land Transport Act 1998 to include extreme or undue hardship;
- 8 **noted** the Minister of Transport agreed to transfer the following proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Land Transport (Road Safety) Amendment Bill. These include:
- 8.1 enabling the electronic service of documents and electronic signatures;
- 8.2 enabling the use of point-to-point safety cameras;
- 8.3 enabling automated issuing of infringement notices;
- 8.4 introducing emergency powers for the Director of Land Transport;
- 9 **agreed** to the transfer of proposals from the Regulatory Systems (Transport) Amendment Bill No.2 to the Land Transport (Road Safety) Amendment Bill;
- 10 **noted** that the Land Transport (Road Safety) Amendment Bill has sought a category 3 priority (to be passed before the election if possible) on the 2023 Legislation Programme;
- 11 **noted** that the Land Transport (Road Safety) Amendment Bill will amend Acts that bind the Crown;
- 12 **approved** the Land Transport (Road Safety) Amendment Bill [PCO 25123/15.0], or any bills that it is restructured into, for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 13 **agreed** that the Parliamentary Counsel Office may continue to make minor or technical changes to the Bill that are consistent with the overall policy before introduction;
- 14 **agreed** that the Land Transport (Road Safety) Amendment Bill be introduced as soon as possible after Cabinet approval;
- 15 **agreed** that the government proposes that the Land Transport (Road Safety) Amendment Bill be:
- 15.1 referred to the Transport and Infrastructure Committee for consideration;
- 15.2 enacted by late August 2023.

Rebecca Davies
Committee Secretary

Present:

Hon Grand Robertson
Hon Michael Wood
Hon Kiri Allan
Hon Andrew Little (Chair)
Hon David Parker
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Dr Duncan Webb
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



7 August 2023

Hon David Parker

Minister of Transport

AIDE MEMOIRE: SIX-MONTH IMPOUNDMENT FUNDING

To: Hon David Parker, Minister of Transport

From: Bronwyn Turley, Deputy Chief Executive, Systems and Regulatory Design

Date: 7 August 2023

Summary/Purpose

- 1 To provide you with further advice on the estimated number of vehicles eligible for impoundment for failure to stop offences, the requirement to pay towage and storage operators monthly and a further summary of the funding options considered.
- 2 Decisions relating to early abandonment and funding need to be made as soon as possible to enable the Supplementary Order Paper to be amended.

The six-month impoundment regime requires funding to ensure successful implementation

- 3 We had advised costs of the scheme totalling \$9 million, with the following components:
 - 3.1 \$6.5 million for payments to operators (approx. 2,500 cars). This figure is based on a number of assumptions, depending on the assumptions made, this number can be scaled, Scaled costs are contained in the table in paragraph 8.
 - 3.2 \$1 million for administration costs
 - 3.3 \$1.5 million for establishment costs (this includes communications with operators and process design)
- 4 We consider that Waka Kotahi may be able to scale back the administration costs and establishment costs further. This could be done through the use of existing staff and reprioritisation of other work.
- 5 These administration and establishment costs are based on a manual process which is more intensive for staff, than a digital solution.

Due to the discretionary nature of the power, the total vehicles eligible are based on assumptions

- 6 There were 9,765 fleeing-driver events in 2022, up from 6,757 the year before.
- 7 The number of vehicles that are likely to be impounded under the expanded six-month impoundment power is unknown. This is due to a number of factors, including:
- 7.1 *The discretionary nature of the power*, which enables Police to consider wider factors relating to the offence, such as whether this was a deliberate choice to evade Police or whether the driver was simply ignorant of sirens signalling to pull over.
 - 7.2 *The number of fleeing driver incidents may increase or decrease*. Indications for 2023 from Police is that fleeing driver incidents continue to increase, however the changes made to penalties and the pursuit policy may, over time, decrease the number of events.
 - 7.3 *The number of drivers identified is likely to increase*. Police has revised its operational pursuit policy, which is likely to mean that more drivers are pursued to the end point and the offending vehicle impounded.
- 8 The table below shows a range of scenarios in relation to eligible vehicles, which considers the deterrent nature of the penalties, against the current upward trend of incidents. We have used the 50 percent estimate in providing advice. Note that Waka Kotahi has previously used a rounded figure of 2,500 vehicles in providing their cost estimates.

Table 1: Range of scenarios in relation to eligible vehicles

| Number of offences | 2,494 (25% of offences) | 4,987 (50% of incidents) | 7,836 (80% of incidents) | 9,795 (100% of incidents) | 11,574 (120% of incidents) |
|-------------------------|-------------------------|--------------------------|--------------------------|---------------------------|----------------------------|
| Hardship appeals | 249 | 489 | 784 | 980 | 1,175 |
| Stolen vehicles | 549 | 1,077 | 1,724 | 2,155 | 2,568 |
| Damaged vehicles | 175 | 342 | 470 | 588 | 705 |
| Total eligible vehicles | 1,521 | 2,989 | 4,858 | 6,072 | 7,306 |
| Funding required | \$3,422,250 | \$6,725,250 | \$10,930,500 | \$13,662,000 | \$16,438,500 |

Possible impact of enabling early abandonment

- 9 As previously advised, there could be an opportunity to reduce costs, though the exact reduction is unknown, through the enablement of an early voluntary abandonment of a vehicle. The Land Transport Act 1998 currently only enables this to occur at the end of an impoundment period.
- 10 We estimate that, given the cost of at least \$2,250, the number of vehicles abandoned overall could be as high as 90 percent, noting that the abandonment rate for 28-day impoundment was around 15 percent in 2021. Anecdotal evidence from the Motor Trade Association (MTA) is that this currently sits at around 50 percent.

- 11 We have estimated a conservative figure of 10 percent early abandonment as this would be voluntary and there is no particular incentive for a person to make the decision early in the six-month period, However, this could be higher in practice.
- 12 The table below shows the number of eligible vehicles, noting the range of offences in table 1, with the estimated 90 percent rate of abandonment (and 10 percent of these abandoned early).

Table 2: Funding required if early abandonment enabled

| Number of offences | 2,494 (25% of offences) | 4,987 (50% of incidents) | 7,836 (80% of incidents) | 9,795 (100% of incidents) | 11,574 (120% of incidents) |
|--|-------------------------|--------------------------|--------------------------|---------------------------|----------------------------|
| Eligible vehicles | 1,521 | 2,989 | 4,858 | 6,072 | 7,306 |
| Vehicles paid and retrieved at the end of six-month period (10%) | 152 | 299 | 486 | 607 | 730 |
| Vehicles abandoned early (10%) | 152 | 299 | 486 | 607 | 730 |
| Remaining abandoned at the end of the six-month period (80%) | 1,217 | 2,391 | 3,886 | 4,858 | 5,846 |
| Funding required | \$2,738,250 | \$6,052,00 | \$7,650,000 | \$12,296,250 | \$15,201,000 |

Waka Kotahi has made an operational decision to pay operators monthly

- 13 As identified in the Ministerial Direction issued on 22 June 2023, which directed Waka Kotahi to undertake the administration of funding for six-month impoundment of vehicles under the Crown Entities Act 2004, the financial assurance provided to towage and storage operators is crucial to the success of the scheme.
- 14 Certainty of payment at the end of the six-month period will provide some level of financial assurance for operators. However, during the consultation period officials heard from the MTA that cashflow is a significant issue for many in the sector. This means that for most, there is an inability to cover the cost of the six-month impoundment given the need to cover ongoing operational costs e.g., staff salaries, insurance or rent.
- 15 There is also a significant risk that delaying payment until the end of the six-month period could impact on the goodwill of operators, which will be needed to successfully implement the new regime at pace. Previous advice has highlighted that for many operators, towing vehicles for private companies e.g., insurance, is a more lucrative stream of revenue, which could impact on the desire to otherwise tow and store these vehicles.
- 16 Given these risks, Waka Kotahi has made the operational decision that to ensure the success of the system, operators will be paid monthly.

Funding options

- 17 A summary of all options considered is attached as **annex one**. Officials will work to progress your preferred option.
- 18 You have initially indicated that you are interested in the option of reprioritising road safety funding. We would recommend that this is done through option three in the summary - reprioritisation of Road Safety Partnership funding. As indicated, this would require you to request the Board of Waka Kotahi to revise the Road Safety Partnership Programme.
- 19 If you wish to progress this option, officials will provide you with a letter to send to the Board, requesting it to revise the Road Safety Partnership Programme.
- 20 Following the Board's consideration of how it will incorporate the funding for payments into the plan, and what it would reprioritise to do so, it would seek your agreement to the revised plan. You are then able to approve the revised plan following consultation with the Minister of Police.

Contacts

| Name | Telephone | First contact |
|---|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive, Systems and Regulatory Design | s 9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | | |

Annex One: Table of Options

| Option | Description and officials' advice | Funding available and impact |
|--|--|--|
| <p>1. Funding through section 9(1A) of the Land Transport Management Act (LTMA)</p> | <p>Section 9(1A) of the LTMA allows the Crown to utilise land transport revenue to fund Waka Kotahi regulatory functions, subject to the approval of the Ministers of Finance and Transport.</p> <p>Waka Kotahi's role in the six-month impoundment scheme could be considered a regulatory function, on the basis that Waka Kotahi has been directed to undertake essentially administrative functions to support what is primarily a regulatory enforcement function of the New Zealand Police. However, it may not be sufficiently clear and we recommend a legislative amendment to clarify.</p> <p>This option was not supported by Waka Kotahi and Police due to its impact on competing priorities.</p> <p>Funds appropriated under section 9(1A) reduce the level of funding available in the National Land Transport Fund (NLTF). We note that the NLTF is under significant funding pressure. 'Top-slicing' funding from the NLTF in 2023/24 for this purpose will likely require trade-offs to be made against projects in the 2021-24 National Land Transport Programme (NLTP), or require the Crown to top-up the NLTF to ensure there is sufficient funding for no trade-offs to be required.</p> | <p>We understand this option is not supported by the Ministers of Finance and Transport.</p> <p>Typically, requests are made for approximately \$1-3 million, with the exception of \$31 million in 2023/24 for the Waka Kotahi regulatory function.</p> <p>Total NLTF: \$4.5 billion (excluding short-term facilities)</p> |
| <p>2. Reallocating funding from the Road to Zero Activity Class</p> | <p>The Road to Zero Activity Class is funded through the NLTF.</p> <p>Using NLTF funding for initiatives such as six-month impoundment is ultimately a decision for the Waka Kotahi Board, guided by priorities set out in the Government Policy Statement on land transport (GPS) and statutory requirements in the LTMA.</p> <p>Officials consider this initiative would rate lowly against the current GPS 2021 priorities and it is therefore unlikely the Board would agree to allocate funding for it from the Road to Zero Activity Class. The NLTF is currently under significant funding pressure and would worsen the existing pressures.</p> <p>This option was not supported by Waka Kotahi and Police.</p> | <p>The NLTP is expected to allocate \$2.9 billion over three years to safety improvements.</p> |
| <p>3. Reallocating funding from the Road Safety Partnership Programme (RSPP)</p> | <p>The RSPP provides for a three-year NLTF investment for the period of the 2021-2024 National Land Transport Programme (NLTP). The RSPP focuses on achieving desired road safety outcomes as outlined in Road to Zero, value for money and the efficient delivery of Police activities. It focusses on road policing activity on the high-risk behaviours of restraints, impairment, distraction, and speed. 75% of RSPP investment is targeted to these areas.</p> <p>The LTMA requires the following steps:</p> <ul style="list-style-type: none"> • Waka Kotahi Board recommends variation to RSPP to Ministers (next meeting is 18 August) • Board seeks Ministerial approval • Minister of Transport consults Minister of Police <p>Waka Kotahi does not consider this a feasible option and the funding that may be available through this avenue would not cover all the costs identified. The Ministry considers that funding to implement legislated functions should be prioritised before further improvement activities are considered, and would recommend that you write to the Board requesting it updates the RSPP to give effect to it. As this would be a short term source of funding, the effect would be to re-phase rather than stop planned initiatives.</p> <p>Police does not support due to its impact on competing priorities. Police advised that the following projects would likely be impacted from any funding reallocation:</p> <ul style="list-style-type: none"> • The transfer of traffic safety cameras to Waka Kotahi • Upgrade to the Police Infringement Processing System • Police Infringement Processing System Stabilisation • Procurement of remote access tyre deflation devices (to mitigate health and safety risk for Police officers) • Impaired driving operational processes. | <p>Total RSPP funding in 2023/24 is \$426.1 million. Of this, forecast spending on Change Initiative Programmes (CIP) for 2023/24 amounts to \$5.3 million, comprising:</p> <ul style="list-style-type: none"> • \$3.8 million Infringement Transformation Programme • \$1.5 million Impaired Driver programme <p>Previous underspends: The CIP has been underspent over the past two years, but it is traditionally carried forward and utilised in the next financial year.</p> <p>We understand the rough costs to be as follows:</p> <ul style="list-style-type: none"> • 2021/22 – CIP underspend of \$5.9 million • 2022/23 – CIP underspend of \$15 million [this was not carried forward to 23/23] • 2023/24 – there are differing views between Police and Waka Kotahi as the likelihood of an underspend. <p>Police also require additional funding to meet Collective Employment Agreement cost increases, to any underspend is expected to be allocated towards those costs.</p> |

| Option | Description and officials' advice | Funding available and impact |
|---|---|---|
| <p>4. Sourcing funding from existing Vote Transport appropriations</p> | <p>As part of Budget 2023, the Ministry analysed Vote Transport appropriations and tagged contingencies to identify re-prioritisation and savings options. Several initiatives (such as Social Leasing and Clean Car Upgrade) were stopped and funding was returned to the centre.</p> <p>Agencies were asked to again identify opportunities for savings in a 'Rapid Savings Exercise'. The Ministry put forward options for cutting costs (along with information on the impacts each option would have on work underway). We understand Cabinet considered advice on this exercise this week and has decided to reduce funding available for mode shift by \$50 million. The impacts of this reduction in funding are still being worked through, but you may wish to consider further reprioritisation of funding from this initiative for six-month impoundment.</p> <p><i>Waka Kotahi funding</i></p> <p>Waka Kotahi is funded through various sources for specific purposes. The payment function for six-month impoundment does not fit within existing regulatory activities and therefore cannot be funded from existing fees and charges.</p> <p>Use of the NLTF would ultimately require agreement from the Waka Kotahi Board to de-prioritise another activity within the NLTP.</p> <p>Lastly, any use of existing Crown appropriations to fund this new function would require direction from the Minister of Transport as to what Crown activities currently undertaken by Waka Kotahi are de-prioritised.</p> | <p>Whole Vote: \$10 billion</p> <p>Waka Kotahi: Total budget of \$7.5 billion (including \$5.5bn through NLTF)</p> <p>Ministry: Total budget of \$75 million. Within this:</p> <ul style="list-style-type: none"> • \$25 million in Crown funding for specified programmes, e.g., search and rescue, Climate Emergency Response Fund initiatives. • \$13 million for s9 LTMA requests. • \$1 million third party funding, e.g. Road to Zero, Search and Rescue training (Tertiary Education). • Baseline less than \$40 million (building, staff etc). This is already tight, with overheads used to top up. <p>Funding for Budget initiatives could be reprioritised, but will require Ministerial direction as to what is reprioritised.</p> <p>Current underspends:</p> <ul style="list-style-type: none"> - Ongoing COVID-19 legal services but the amount is unclear, as legal negotiations are ongoing. - Clean Car Standard: \$3.7m, but is likely to be needed in the next financial year for ongoing costs. |
| <p>5. Waka Kotahi absorbs cost through reprioritisation</p> | <p>Waka Kotahi has indicated it would need to re-phase corporate programmes and/or speed of capability build in the regulatory part of the Agency. Using this mechanism for the set up and administration costs (totalling approximately \$2.5m) could provide incentives for it to look for efficiencies resulting in some cost savings.</p> <p>These would be decisions for the Board, as to what aspects are re-prioritised or re-phased.</p> | <p>The amount available through this process would be a decision for the Board – it could be a portion of the costs, or the full amount (\$9 million).</p> |
| <p>6. Crown Loan to Waka Kotahi</p> | <p>Providing Waka Kotahi with a Crown loan could cover their costs for the eight-month bridging period. However, this option would require consideration of an appropriate further revenue source to enable repayment of the loan, which at this time is not clear.</p> <p>Our initial assumption is that a high number of vehicles will be abandoned and that the payments to towage and storage operators will result in a permanent cash outflow for Waka Kotahi, rather than creating an asset and an associated revenue stream. Should our assumptions prove conservative, cashflow support in the form of a loan may be part of our recommendations for long term funding but given the uncertainty we do not consider it prudent at this time. It is not generally recommended that loans are used to fund operating expenditure. The Ministry does not recommend a Crown loan be provided specifically for the purposes of this regime.</p> <p>The Waka Kotahi Board would need to agree to accept any loan. Waka Kotahi already has several loan facilities available (for the National Land Transport Programme (NLTP) and its Regulatory Function) and are reluctant to take on additional debt without associated revenue certainty.</p> <p>As a result of this advice, officials discounted this option.</p> | <p>This option would see officials seeking the full amount of funding.</p> |
| <p>7. Justice Cluster funding</p> | <p>The Justice Cluster initiative looks to enable more efficient and effective inter-agency investment beyond an annual Budget cycle, with the aim of delivering improved and enduring wellbeing outcomes for New Zealanders. Funding is allocated to projects supporting the following priorities:</p> <ol style="list-style-type: none"> 1. better outcomes for victims 2. addressing issues with remand 3. improved access to justice | <p>Through Budget 2022, funding was allocated for the Cluster fund over a four-year period to specified projects, totalling:</p> <ul style="list-style-type: none"> • \$2.7 billion operating • \$65 million capital. |

superseded by OC230716 (Document 4)

| Option | Description and officials' advice | Funding available and impact |
|--|---|--|
| | <p>4. Better enabled organisations and workforce.</p> <p>The Justice Cluster consists of five agencies: the Ministry of Justice, New Zealand Police, the Department of Corrections, the Serious Fraud Office, and the Crown Law Office.</p> <p>The Ministry of Transport and Justice Sector Directorate agree that the Justice Cluster Tagged Contingency is not an option. Waka Kotahi, and Police's RSPP, are not part of the Justice Cluster Pilot, and the six-month impoundment initiative is not consistent with the intent, purpose and Cabinet delegations for the Cluster.</p> | |
| <p>8. Proceeds of Crime Fund</p> | <p>The criteria of the Proceeds of Crime Fund are:</p> <ul style="list-style-type: none"> • Expansion of alcohol and other drug treatment services. • Fight organised criminal groups dealing in methamphetamine and other drugs. • Address mental health issues within the criminal justice system. • Address crime-related harm to communities and improve community wellbeing <p>This fund has been on pause since last year and is not open to new applications. Further, it is unlikely that six-month impoundment fits with the criteria of the fund.</p> | <p>This could be explored as a future Crown funding source, subject to meeting the Fund's criteria.</p> <p>Funding in recent years approved by Cabinet:</p> <ul style="list-style-type: none"> • 2023: \$25.6 million for a NZ Police initiative • 2022: \$50.712 million for initiatives proposed by MBIE, MSD and Ministry of Justice. |
| <p>9. Delay commencement of six-month impoundment</p> | <p>Delay the commencement of the six-month impoundment regime to allow us to seek Budget 2024 funding.</p> <p>This option would not be consistent with the high priority the Government has given the Bill and the desire for this to come into force prior to the 2023 Election.</p> <p>The Minister of Transport provided a clear direction that this would not be an option for further consideration.</p> | <p>This option would see officials seeking the full amount of funding.</p> |
| <p>10. Out -of-cycle Crown contingency funding</p> | <p>This option would see officials seeking funding through an application for Between Budget Contingency funding. Both the Ministry and Waka Kotahi recommend that Crown funding is the most appropriate funding source for the eight-month bridging period.</p> <p>Not supported by the Minister of Finance nor the Minister of Transport.</p> | <p>This option would see officials seeking the full amount of funding.</p> |



4 August 2023

OC230685

Action required by:
Friday, 4 August 2023

Hon David Parker

Minister of Transport

Hon Damien O'Connor

Associate Minister of Transport

FURTHER ADVICE ON FUNDING FOR SIX-MONTH IMPOUNDMENT

Purpose

This briefing:

- provides further advice on options for funding Waka Kotahi's payment function for six-month impoundment of vehicles, provided for in the Land Transport (Road Safety) Amendment Bill; and
- provides you with the ability, if you prefer, to seek agreement with the Minister of Finance to fund the initial costs of the payment function in the 2023/24 financial year by reprioritising existing funding approved for the Waka Kotahi regulatory function under section 9(1A) of the *Land Transport Management Act 2003* (LTMA).

Key points

- Officials have been seeking direction from the Minister of Transport regarding funding for Waka Kotahi's payment function for six-month impoundment. The Associate Minister of Transport at the time agreed to the Crown providing financial assurance for towage and storage operators to support implementation of the regime. There is a considerable risk that without financial assurance, and with the anticipated high rates of vehicle abandonment, operators will refuse to undertake six-month impoundments.
- Following discussion with the Minister of Transport on Tuesday 1 August 2023, officials have given further consideration to other options proposed by the Minister. Those options relate to an Auckland-specific approach, utilising land from the NZ Defence Force and storage facilities of the Criminal Proceeds Management Unit. None of these options will be viable given either operational constraints on the direct purpose of facilities, or the cost to deliver impoundment in terms of leasing sites, and providing adequate insurance and security.

- We have also provided information in response questions about the number of vehicles to be stored, including the proportion of motorcycles.
- Te Manatū Waka has worked with Waka Kotahi to reduce the amount of funding required for the payment function, from \$19.7 million to \$9 million. This will see a heavily manual process implemented, with funding for payments to operators to cover approximately 2,500 vehicles. There are risks with this approach, including the possibility that more vehicles are impounded than are funded for.
- One option to further reduce costs could be to rescind an earlier decision by the prior Associate Minister of Transport to enable a vehicle to be abandoned at any stage during the six-month period, rather than only enabling this to occur at the end of the six-month period. We would recommend a cooling-down period prior to a final decision being made by the registered person to abandon their vehicle.
- Officials have considered and advised on a range of options for funding the payment function. A summary of those options is provided at **Annex 1**.
- Officials understand that Ministers would prefer to reprioritise funding from within current funding sources. In response, we have identified an opportunity to reprioritise existing funding approved for the Waka Kotahi regulatory function under section 9(1A) of the Land Transport Management Act 2003 (LTMA). Section 9(1A) of the LTMA allows the Crown to utilise land transport revenue to fund Waka Kotahi regulatory functions, subject to the approval of the Ministers of Finance and Transport.

s 9(2)(h)

- 

In light of this, we recommend you raise this with your colleagues through an oral item at Cabinet. Should you wish to proceed, we will provide you with material to support this.

- While decision-making about s9(1A) funding is allocated to Joint Ministers of Finance and Transport, Cabinet considered this particular allocation of funding as part of the wider Waka Kotahi fees and funding review changes. If you decide to reallocate this funding for six-month impoundment, we recommend you revisit this issue with Cabinet through an oral item. Officials can provide information to support this.

- Waka Kotahi does not support this approach to funding, and has indicated that reallocating funding will have significant impacts for its regulatory function. s9(2)(g)(i)



s 9(2)(h)

- 

- This amendment could be progressed through a supplementary order paper as part of the Road Safety Bill. We need your direction on this by Monday 7 August 2023, to allow time for drafting.
- s 9(2)(g)(i) 
- Alternatively, you may wish to consider amending the Ministerial Direction issued 22 June 2023 to explicitly state that this role is a regulatory function. However, this does not fully mitigate the risk of legal challenge.

Recommendations

We recommend you:

| | Minister of Finance | Minister of Transport | Associate Minister of Transport |
|--|--|--------------------------------------|--|
| <i>Policy and legislative changes to support six-month impoundment</i> | | | |
| 1 | agree to allow abandonment of vehicles subject to six-month impoundment prior to the end of six months, rescinding a previous direction to only allow abandonment at the end of the six-month period (OC230138 refers) | | Yes / No |
| 2 | agree to introduce a cooling-off period before a registered person can voluntarily abandon an impounded vehicle | | Yes / No |
| 3 | agree to amend section 95 of the Land Transport Management Act 2003 to expressly include the payment function for six-month impoundment as a regulatory function, through a supplementary order paper for the Road Safety Bill | Yes / No | Yes / No |
| 4 | OR | | |
| 5 | agree to amend the Ministerial Direction issued 22 June 2023 regarding Waka Kotahi's role in providing the payment function, to clarify that this role is a regulatory function | Yes / No | |
| 6 | | | |

Reprioritising section 9(1A) funding for the Waka Kotahi regulatory function

- | | | | |
|----|--|----------|----------|
| 7 | agree to reprioritise \$9 million in 2023/24 within the Vote Transport appropriation 'Non-Departmental Output Expenses: Waka Kotahi Regulatory Functions PLA' to fund the six-month impoundment payment function. | Yes / No | Yes / No |
| 8 | endorse the creation of a new component in the Vote Transport appropriation 'Non-Departmental Output Expenses: Waka Kotahi Regulatory Functions PLA' to enable recommendation 5. | Yes / No | Yes / No |
| 9 | note that to enable recommendation 5, Waka Kotahi will have reduced funding for its agreed-upon regulatory activities, limiting its ability to implement its regulatory strategy and compromising its frontline regulatory response, and could lead to partial de-funding of staff. | Noted | Noted |
| 10 | agree to share this briefing with the Minister of Finance, if you agree to recommendation 5. | Noted | Noted |

Megan Moffet
Manager, Regulatory Policy

..... / /

Hon Grant Robertson
Minister of Finance

..... / /

Hon David Parker
Minister of Transport

..... / /

Hon Damien O'Connor
Associate Minister of Transport

..... / /

- Minister's office to complete:**
- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Seen by Minister | <input type="checkbox"/> Not seen by Minister |
| <input type="checkbox"/> Overtaken by events | |

Contacts

| Name | Telephone | First contact |
|---|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive, Systems and Regulatory Design | s 9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | | |

FURTHER ADVICE ON FUNDING FOR SIX-MONTH IMPOUNDMENT

Officials have explored further options for implementing six-month impoundment

- 1 Following officials' discussion with Minister Parker, we have undertaken further analysis of options suggested.

You queried if there was a need for an Auckland centric option

- 2 One concern that was raised with officials was whether this was mainly an issue for the Auckland region and if it was possible to consider a specific Auckland option.
- 3 The table below uses data from Police of the number of fleeing driver events by region. Given that greater Auckland equates to around a quarter of all events, this would align with the current population base of Auckland, which forms a third of New Zealand's population.

| | 2020 | 2021 | 2022 | 2023 (to March) |
|-------------------------|------|------|-------|-----------------|
| Auckland City | 300 | 369 | 486 | 119 |
| BOP | 561 | 521 | 902 | 333 |
| Canterbury | 466 | 696 | 1,230 | 344 |
| Central | 682 | 953 | 1,203 | 302 |
| Counties/Manukau | 609 | 956 | 1,141 | 292 |
| Eastern | 387 | 491 | 793 | 271 |
| Northland | 275 | 226 | 294 | 111 |
| Southern | 226 | 423 | 518 | 142 |
| Tasman | 143 | 229 | 288 | 79 |
| Waikato | 449 | 713 | 1,166 | 308 |
| Waitematā | 276 | 433 | 675 | 146 |
| Wellington | 472 | 718 | 1,022 | 249 |
| Not specified | | 23 | 78 | |

You asked if it was possible to either obtain land, or use existing Government land

Use of Auckland land

- 4 One option that was suggested was whether there was a possibility to obtain land in Auckland to store vehicles.
- 5 We have discussed this with the Motor Trade Association (MTA), as the industry body for towage and storage operators, and considered publicly available costings. Overall this would likely not reduce costs below the regulated fee level (as the fees were set approximately 20 years ago).

6 There is also a risk that costs would be higher than expected due to varying levels of impoundments and the inability of the Crown to off-set costs like towage and storage operators do (by taking other types of vehicle storage like insurance write-offs).

7

s 9(2)(i)

8 There would be significant additional costs in relation to the towage of vehicle (whether this would remain with a private company), and the security and insurance requirements to ensure that obligations as set out in the *Land Transport (Requirements for Storage and Towage of Impounded Vehicles) Regulations 1999* (Requirements Regulations) are met.

9

s 9(2)(i)

10 Given this, we would not recommend creating a specific, bespoke Auckland solution as this will likely not provide the desired cost savings.

Accessing New Zealand Defence Force land

11 Another option was suggested in that New Zealand Defence Force (NZDF) land could be used. In the time available, the NZDF were unable to provide a formal response as each site has unique security requirements.

12 However, immediate concern was raised as to how costs incurred in relation to supporting any security requirements or meeting any obligations under the Requirement Regulations, including the need to have adequate insurance for any loss or damage to a vehicle.

13 It was also noted that the *Land Transport Act 1998* (LTA) sets out that a registered person must be given access to their vehicle to remove any belongings and the security impact this could have given that NZDF land are secure bases. This would be of particular concern if the NZDF was expected to give gang members access to their bases in order to retrieve belongings from vehicles.

14

s 9(2)(i)

Criminal Proceeds Management Unit

15

s 6(c)

s 6(c)



You queried the number of vehicles being stored, and whether it was cheaper to store motorcycles

Use of motorcycles in failure to stop offences

- 16 The *Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999* (Fees Regulations) set out the fees payable for the towage and storage of vehicles.
- 17 In setting these out, the Fees Regulations only provide differential fees for vehicles with a gross weight of not more than 3,500 kilograms (motorcycles through to passenger vehicles) or a vehicle with a gross weight of more than 3,500 kilograms (normally trucks but could include utility vehicles with additional accessories).
- 18 Given the paper-based nature of the impoundment notices, Police do not have data on the vehicles used to commit these offences and we are unable to test the assumption that motorcycles are the predominant vehicle used in these offences.
- 19 Data held by Te Manatu Waka shows that the current vehicle fleet composition is 4% motorcycles (in the 2021 annual fleet statistics), so it could be reasonable to expect that motorcycles could be only a small portion of the vehicles seized and impounded.

Number of vehicles needing to be stored

- 20 Fleeing-driver events have been steadily increasing in New Zealand over the last decade. There were 9,765 fleeing-driver events in 2022, up from 6,757 the year before.
- 21 Since December 2020 (December 2020 – July 2022), Police is identifying on average 34 per cent of all offenders. Initial advice from Police is that it is likely that changes to the operational fleeing driver policy may mean that more fleeing driver events are resolved, and vehicles therefore impounded.
- 22 There is a significant level of uncertainty to the number of offences that are likely to occur, and how Police will use a discretionary power to impound these vehicles.

- 23 However, it is reasonable to expect that in the circumstance that events decrease, that there will be an increase in the number of vehicles impounded given the new power for Police to impound a vehicle in relation to the provision of information of a driver for a failure to stop offence.
- 24 A conservative figure of 4,897 has been used in previous calculations of costs, which is 50 percent of the current offence level. In reality, this could be lower given the estimated number of hardship appeals, stolen vehicles (on average, 22 percent of vehicles) and damaged vehicles (on average 7 percent of vehicles).
- 25 Considering these carveouts, the total number of eligible vehicles (if all offending vehicles were impounded), could decrease further. In relation to our conservative estimate of 4,897 vehicles being used, this could come down to 2,989 vehicles¹ which would require funding of \$6.7 million.

s9(2)(f)(iv)

26 s 9(2)(f)(iv)

27

s 9(2)(f)(iv)

¹ This would be based on 342 vehicles being damaged, 489 vehicles being released under hardship appeals and 1,077 vehicles being stolen.

We have explored opportunities to reduce the amount of funding required

29 We previously advised (OC230623, OC230655 refer) that Waka Kotahi requires funding of \$19.7 million to cover the following resourcing requirements for an administrative system during the initial phase of the new regime (until 30 June 2024):

29.1 Towage and storage fees: \$6.5 million.

29.2 Establishment costs (including advertising, communications and engagement with operators, and business change costs): \$5.6 million.

29.3 Administration costs (including staff resourcing for administration, revenue management, financial processing, call centres and management): \$1 million.

29.4 Contingency (50 percent of costs, to allow for uncertainties regarding the number and circumstance of vehicles likely to be impounded): \$6.6 million.

30 We have since pared back these costs, to a total of \$9 million, with the following components:

30.1 \$6.5 million for payments to operators (approx. 2,500 cars)

30.2 \$1 million for administration costs

30.3 \$1.5 million for establishment costs (down from \$5.6m).

30.4 Removal of the 50 percent contingency.

We have identified an opportunity to reduce costs further, by allowing vehicles to be abandoned earlier

31 Currently, 10 days after the impoundment period has ended, the LTA enables a towage and storage operator to apply to Police to have a vehicle signed over to them if no-one has paid the fees to retrieve the vehicle. In doing so, it is considered that the vehicle is 'abandoned'.

32 We have advised previously that we anticipate a high rate of vehicle abandonment (up to 90 percent) as a result of six-month impoundment. The Associate Minister of Transport at the time of final policy decisions decided not to allow vehicles to be abandoned prior to the end of the six-month period (OC230138 refers). However, allowing this to occur sooner could reduce the amount of required payments to operators, which makes up the majority of costs for this function.

33 We would recommend enabling voluntary abandonment at any time. While we have no way of knowing how many people would take up this option, it could result in cost savings.

34

s 9(2)(h)

superseded by OC230716 (Document 4)

35 Police would be in support of this being introduced, noting that this could reduce cost pressures. However, the LTA is very clear that there are two pathways for early release of a vehicle; either the appeal on the grounds available are successful (e.g. undue hardship, extreme hardship, enforcement officer did not have reasonable grounds to impound the vehicle etc), or that Police do not lay charges and no prosecution is sought (new section 96AAA(3)(a) of the Road Safety Bill).

36 Therefore, the registered person should not be able to declare their vehicle abandoned, until Police decide to lay charges or not, as there is a possibility that the vehicle could be returned. The LTA, or other relevant legislation, does not introduce a timeframe for Police to press charges.

37 Advice from Police frontline is that if an event is pursued until the end point, charges will be laid immediately, however if the driver abandons the vehicle at a scene (for example), it could take some time to investigate.

38 s 9(2)(h)

39 Police suggest that if a cooling-off period were to be introduced, the preference would be at least 14-days to align with existing appeal provisions.

40 Given the advice above, we suggest that a 28-day cooling off period be introduced.

41 Waka Kotahi have also provided support in enabling early abandonment, noting that this would reduce pressures.

42 If this option were to be progressed, this would be provided in a Supplementary Order Paper (SOP) for the Committee of the Whole stage, following final conversations on legislative design and operational implications with Police and Waka Kotahi. The complexities inherent in this proposal would require additional drafting time for Parliamentary Counsel Office and the SOP may not be ready to present until approximately 18 August 2023.

Proposed way forward on funding

43 Consistent with previous advice, the Ministry considers Crown funding to be the most appropriate funding source for this function. The Ministry plans to develop a Budget 2024 bid to fund the initiative from 1 July 2024 onwards. However, there remains an eight-month bridging period (from 1 September 2023 to 30 June 2024) where Waka Kotahi requires funding to stand up and run the six-month impoundment programme.

44 As outlined above, Waka Kotahi requires funding of \$9 million to cover the costs of undertaking the payment function during the eight-month bridging period. This funding would enable Waka Kotahi to stand up and operate a heavily manual administration system, but there are significant limitations and risks associated with this reduced budget:

- 44.1 The allocation of \$6.5 million for payments to operators is based on a low scenario of 2,500 vehicles being impounded, but is critical for operator participation. There is a risk that if this funding is exhausted prior to confirmation of long-term funding arrangements through Budget 2024, operators will not be paid and as a result may refuse to take any more vehicles. This would compromise the success of the scheme.
- 44.2 The funding does not include establishment of a digital solution, and funding for this would need to be sought through Budget 2024. This would mean the heavily manual system would need to remain in place beyond the current financial year, with introduction of a digital solution delayed until the first quarter of 2025.
- 44.3 Operating a heavily manual process would be less efficient for Waka Kotahi and incur greater administrative costs. There is a considerable risk of longer timeframes and inaccuracies with processing impoundment information and payments compared to what would be achievable with a digital solution. This could result in reduced cost recovery and disputes with operators and customers. It would be particularly frustrating for operators and could impact their goodwill.
- 45 The Ministry has explored several options to fund the function for this eight-month period, and the majority of these have been discounted. **Annex 1** includes a summary of all funding options considered.
- 46 Officials understand that Ministers would prefer to reprioritise funding from within current funding sources. In response, we have identified an opportunity to reprioritise existing funding approved for the Waka Kotahi regulatory function under section 9(1A) of the Land Transport Management Act 2003 (LTMA). Section 9(1A) of the LTMA allows the Crown to utilise land transport revenue to fund Waka Kotahi regulatory functions, subject to the approval of the Ministers of Finance and Transport.

In 2022, Joint Ministers approved funding under section 9(1A) for the Waka Kotahi regulatory function

- 47 Waka Kotahi undertook a comprehensive review of its regulatory funding, fees, and charges (the Funding and Fees Review). The Funding and Fees Review proposed changes to the Waka Kotahi regulatory funding model, including changes to some fees and charges, and funding several regulatory activities from land transport revenue. Waka Kotahi consulted the public on these proposals.
- 48 In October 2022 (Waka Kotahi briefing BRI-2586 refers) Joint Ministers considered the proposals in the Funding and Fees Review and approved the use of land transport revenue for the following purposes:

Table 1: Funding approved under section 9(1A) for Waka Kotahi regulatory functions in October 2022

| Regulatory activity | \$m | | | | |
|---|--------------|---------------|---------------|---------------|----------------------|
| | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 and outyears |
| Funding oversight for the regulatory function | 3.850 | 20.400 | 20.400 | 20.300 | 11.000 |
| Funding efficient and fair collection of the costs of specific activities | - | 10.280 | 13.800 | 13.900 | - |
| Funding loan repayment for rectifications costs to address regulatory failure | - | 0.670 | 0.670 | 0.670 | 0.670 |
| Total approved | 3.850 | 31.350 | 34.870 | 34.870 | 11.670 |

49 This briefing includes financial recommendations for Joint Ministers to reprioritise funding within the \$31.350 million approved in 2023/24 to cover the \$9 million required to pay for the six-month impoundment function for the eight-month bridging period. .

There are some implications with this approach

Waka Kotahi does not support the proposed approach

50 s 9(2)(h) 

51

Reprioritising \$9 million from the Waka Kotahi Regulatory Functions PLA will require trade-offs to be made against other regulatory work

52 Waka Kotahi advises that repurposing this funding will compromise its ability to improve the integrity of the regulatory system.

53 s 9(2)(g)(i) 

54

Officials consider it may be necessary to advise Cabinet of proposed approach, should you wish to proceed

55 s9(2)(h) [Redacted]

56 s9(2)(h) [Redacted]

57 In light of this, we recommend you raise this with your colleagues through an oral item at Cabinet. Should you wish to proceed, we will provide you with material to support this.

We seek agreement on how to enable this approach

58 s9(2)(h) [Redacted]

59 s9(2)(h) [Redacted]

60 Should you wish to proceed with an amendment to the LTMA, we recommend proceeding through a SOP, as part of the Road Safety Bill. We require your direction on this by Monday 7 August 2023, to allow time for SOP drafting. The Bill is partway through second reading but is expected to complete Committee of the Whole House shortly after second reading.

61 s9(2)(g)(i) [Redacted]

62 An alternative approach may be to issue an amended Ministerial Direction to the Waka Kotahi Board, to clarify the payment role is a regulatory function. This could be done reasonably quickly and provides more opportunity for changes in the future; however, it would not address the risk of legal challenge or provide certainty, to the same extent as amending the LTMA.

63 Should you wish to proceed with an amended Ministerial Direction, officials will provide the Minister of Transport with a draft Direction by Friday 11 August 2023.

ANNEX 1 SUMMARY OF FUNDING OPTIONS

| Option | Description and officials' advice | Reason discounted |
|---|--|---|
| <p>1. Seeking funding from the NLTF in accordance with section 9(1A) of the Land Transport Management Act (LTMA)</p> | <p>Section 9(1A) of the LTMA allows the Crown to utilise land transport revenue to fund Waka Kotahi regulatory functions, subject to the approval of the Ministers of Finance and Transport.</p> <p>Waka Kotahi's role in the six-month impoundment scheme could be considered a regulatory function, on the basis that Waka Kotahi has been directed to undertake essentially administrative functions to support what is primarily a regulatory enforcement function of the New Zealand Police. However, as we note in this briefing, it may not be sufficiently clear and may require legislative amendment to clarify.</p> <p>This option was not supported by Waka Kotahi and Police due to its impact on competing priorities.</p> <p>Funds appropriated under section 9(1A) reduce the level of funding available in the National Land Transport Fund (NLTF). We note that the NLTF is under significant funding pressure. 'Top-slicing' funding from the NLTF in 2023/24 for this purpose will likely require trade-offs to be made against projects in the 2021-24 National Land Transport Programme (NLTP), or require the Crown to top-up the NLTF to ensure there is sufficient funding for no trade-offs to be required.</p> | <p>We understand this option is not supported by the Ministers of Finance and Transport.</p> |
| <p>2. Reallocating funding from the Road to Zero Activity Class</p> | <p>The Road to Zero Activity Class is funded through the NLTF.</p> <p>Using NLTF funding for initiatives such as six-month impoundment is ultimately a decision for the Waka Kotahi Board, guided by priorities set out in the Government Policy Statement on land transport (GPS) and statutory requirements in the LTMA.</p> <p>Officials consider this initiative would rate lowly against the current GPS 2021 priorities and it is therefore unlikely the Board would agree to allocate funding for it from the Road to Zero Activity Class. The NLTF is currently under significant funding pressure and would worsen the existing pressures.</p> <p>This option was not supported by Waka Kotahi and Police.</p> | <p>Option considered and not supported by the Minister of Transport (OC230655 refers).</p> |
| <p>3. Reallocating funding from the Road Safety Partnership Programme (RSPP)</p> | <p>The RSPP provides for a three-year NLTF investment for the period of the 2021-2024 National Land Transport Programme (NLTP). The RSPP focuses on achieving desired road safety outcomes as outlined in Road to Zero, value for money and the efficient delivery of Police activities. It focusses on road policing activity on the high-risk behaviours of restraints, impairment, distraction, and speed. 75% of RSPP investment is targeted to these areas.</p> <p>The LTMA requires the following steps:</p> <ul style="list-style-type: none"> • Waka Kotahi Board recommends variation to RSPP to Ministers (next meeting is 18 August) • Board seeks Ministerial approval • Minister of Transport consults Minister of Police <p>Waka Kotahi does not consider this a feasible option and the funding that may be available through this avenue would not cover all the costs identified.</p> <p>Police does not support due to its impact on competing priorities. Police advised that the following projects would likely be impacted from any funding reallocation:</p> <ul style="list-style-type: none"> • The transfer of traffic safety cameras to Waka Kotahi • Upgrade to the Police Infringement Processing System • Police Infringement Processing System Stabilisation • Procurement of remote access tyre deflation devices (to mitigate health and safety risk for Police officers) • Impaired driving operational processes. | <p>Option considered and not supported by the Minister of Transport.</p> |
| <p>4. A combination of sources (1-3)</p> | <p>This option would spread out the financial impacts on each source outlined above by taking funding from a variety of sources.</p> <p>As above, this option is not supported by Waka Kotahi and Police.</p> | <p>The same concerns with options 1-3 above apply with this approach. Option considered and not supported by the Minister of Transport.</p> |
| <p>5. Delay commencement of six-month impoundment</p> | <p>Delay the commencement of the six-month impoundment regime to allow us to seek Budget 2024 funding.</p> <p>This option would not be consistent with the high priority the Government has given the Bill and the desire for this to come into force prior to the 2023 Election.</p> | <p>The Minister of Transport provided a clear direction that this would not be an option for further consideration</p> |

| Option | Description and officials' advice | Reason discounted |
|---|--|--|
| 6. Out -of-cycle Crown contingency funding | This option would see officials seeking funding through an application for Between Budget Contingency funding. Both the Ministry and Waka Kotahi recommend that Crown funding is the most appropriate funding source for the eight-month bridging period. | Not supported by the Minister of Finance nor the Minister of Transport. |
| 7. Crown Loan to Waka Kotahi | <p>Providing Waka Kotahi with a Crown loan could cover their costs for the eight-month bridging period. However, this option would require consideration of an appropriate further revenue source to enable repayment of the loan, which at this time is not clear.</p> <p>Our initial assumption is that a high number of vehicles will be abandoned and that the payments to towage and storage operators will result in a permanent cash outflow for Waka Kotahi, rather than creating an asset and an associated revenue stream. Should our assumptions prove conservative, cashflow support in the form of a loan may be part of our recommendations for long term funding but given the uncertainty we do not consider it prudent at this time. It is not generally recommended that loans are used to fund operating expenditure. The Ministry does not recommend a Crown loan be provided specifically for the purposes of this regime.</p> <p>The Waka Kotahi Board would need to agree to accept any loan. Waka Kotahi already has several loan facilities available (for the National Land Transport Programme (NLTP) and its Regulatory Function) and are reluctant to take on additional debt without associated revenue certainty.</p> | As a result of this advice, officials discounted this option. |
| 8. Justice Cluster funding | <p>The Justice Cluster initiative looks to enable more efficient and effective inter-agency investment beyond an annual Budget cycle, with the aim of delivering improved and enduring wellbeing outcomes for New Zealanders.</p> <p>The Justice Cluster consists of five agencies: the Ministry of Justice, New Zealand Police, the Department of Corrections, the Serious Fraud Office, and the Crown Law Office.</p> <p>The Ministry of Transport and Justice Sector Directorate agree that the Justice Cluster Tagged Contingency is not an option.</p> <p>Waka Kotahi, and Police's RSPP, are not part of the Justice Cluster Pilot, and the six-month impoundment initiative is not consistent with the intent, purpose and Cabinet delegations for the Cluster.</p> | As a result of this advice and discussions with agencies, this option was discounted by officials. |
| 9. Proceeds of Crime Fund | <p>The criteria of the Proceeds of Crime Fund are:</p> <ul style="list-style-type: none"> • Expansion of alcohol and other drug treatment services. • Fight organised criminal groups dealing in methamphetamine and other drugs. • Address mental health issues within the criminal justice system. • Address crime-related harm to communities and improve community wellbeing <p>This fund has been on pause since last year and is not open to new applications. Further, it is unlikely that six-month impoundment fits with the criteria of the fund.</p> | This option was discounted by officials, due to the fund being on pause and our understanding that six-month impoundment would not meet the fund criteria. |
| 10. Sourcing funding from existing Vote Transport appropriations | <p>As part of Budget 2023, the Ministry analysed Vote Transport appropriations and tagged contingencies to identify re-prioritisation and savings options. Several initiatives (such as Social Leasing and Clean Car Upgrade) were stopped and funding was returned to the centre.</p> <p>Agencies were asked to again identify opportunities for savings in a 'Rapid Savings Exercise'. The Ministry put forward options for cutting costs (along with information on the impacts each option would have on work underway). We understand Cabinet considered advice on this exercise this week and has decided to reduce funding available for mode shift by \$50 million. The impacts of this reduction in funding are still being worked through.</p> <p>Waka Kotahi is funded through various sources for specific purposes. The payment function for six-month impoundment does not fit within existing regulatory activities and therefore cannot be funded from existing fees and charges.</p> <p>Use of the NLTF would ultimately require agreement from the Waka Kotahi Board to de-prioritise another activity within the NLTP.</p> <p>Lastly, any use of existing Crown appropriations to fund this new function would require direction from the Minister of Transport as to what Crown activities currently undertaken by Waka Kotahi are de prioritised.</p> | As a result of this advice, officials discounted this option. |



Advice superseded by
OC230716 (Document 4)

11 August 2023

OC230704

Hon David Parker

Action required by:

Minister of Transport

Monday, 14 August 2023

Hon Damien O'Connor

Associate Minister of Transport

PROGRESSING FUNDING OPTIONS AND EARLY ABANDONMENT OF VEHICLES

Purpose

Seek your agreement to a proposed approach for initial funding of Waka Kotahi NZ Transport Agency's payment function for six-month impoundment.

Seek your agreement to a Supplementary Order Paper for the Land Transport (Road Safety) Amendment Bill, enabling early abandonment of vehicles impounded for six months.

Key points

- Officials have been seeking direction from the Minister of Transport regarding funding for Waka Kotahi's payment function for six-month impoundment of the vehicles of fleeing drivers. Provision for this is included in the Road Safety Bill which is currently before the House, awaiting its Committee of the Whole House stage.
- The Associate Minister of Transport agreed in March to the Crown providing financial assurance for towage and storage operators to support implementation of the regime. This provision is designed to address the risk that with anticipated high rates of vehicle abandonment, operators will refuse to undertake six-month impoundments.
- Funding options discussed in this paper are only for 2023/2024 and advice will be provided in the future on ongoing funding sources, which are likely to include a Budget 2024 bid.

The need for financial assurance

- The low regulated fee (set approximately 20 years ago) and the costs of abandoned vehicles have led some towage and storage operators to refuse to pick up Police impoundments. The Motor Trade Association has advised officials that some operators are owed \$100,000 or more in relation to Police-ordered 28-day impoundment.
- Police advise that in remote, rural locations in particular, there is an ongoing issue with towage and storage operators refusing to pick up Police-ordered impoundments. This is due to the low likelihood of being paid for the service by the registered person, but also

Advice superseded by

the cost involved and the inability to sell what are normally low-value vehicles for an amount sufficient to cover costs.

A supplementary order paper is recommended

- Any amendments by SOP need to be agreed by Monday, 14 August 2023, in order for drafting instructions to be issued.
- In reviewing the draft Road Safety Bill, officials have identified a drafting issue in relation to the ability for Waka Kotahi to hold back payment for the last (usually sixth) month of impoundment if a vehicle is abandoned. We recommend Minister O'Connor approve changes by Supplementary Order Paper (SOP) to the Road Safety Bill to ensure the initial policy intent is achieved.
- As drafted, section 97A(4) states that regulated fees and charges are "recoverable from the Agency by a vehicle recovery service operator or a storage provider". This does not take into account a situation where the vehicle is abandoned and Waka Kotahi is not intended to pay the full regulated fee to the operator.
- The operator would therefore be entitled to both the regulated storage fee for the last month and any funds received from disposal of the vehicle.
- We recommend that the SOP amends the Bill to outline when a vehicle is abandoned, operators are not entitled to recover the last month of storage costs from Waka Kotahi.

Removing the funding assurance regime in favour of reviewing the regulated towage and storage system first (not recommended)

- To relieve the considerable stress in the regulated towage and storage system for 28-day impoundments, in September 2022, the then Minister of Transport decided to progress improvements to regulatory settings for towage and storage in two stages starting with an increase to the regulated fees and following this with a full system review in 2024.
- This work was put on hold by the then Associate Minister of Transport in early 2023 due to the Government's focus on the cost-of-living crisis, and the recovery from weather-related events.
- Given the changes created by the Road Safety Bill, the Ministry proposes to progress the full system review together with reconsideration of the regulated fees in late 2023 / 2024.
- Officials have considered an option to remove the financial assurance provisions in the current Bill through the SOP and progress the review first. Ministers could then consider wider options for system amendment once the review is complete. This option is not recommended.
- Given the financial pressures that operators are experiencing, the Ministry considers successful implementation of six-month impoundment would need the provision of financial assurance when the Road Safety Bill is passed.

Creating a process which would deem a vehicle to have been abandoned early at 38 days, if the registered person does not make arrangements for payment of the fee (not recommended)

- This process could provide that when a vehicle is impounded for six-months, the registered owner has 38-days in which to either:
 - contact Waka Kotahi to enter into a formal arrangement (which the Road Safety Bill enables through the new section 97B); or
 - pay the fees in full at the end of the 38-day period.
- Otherwise, the vehicle is deemed to have been abandoned and the operator could dispose of the vehicle.
- This would mean that if a payment arrangement is set up, or registered person has paid the lump sum, this would provide assurance to the towage and storage operator that they will be paid for offering this service.
- While this could result in a somewhat cost neutral scheme, this is likely to introduce NZ Bill of Rights Act 1990 (BORA) issues. In particular, this could engage section 21, unreasonable search and seizure, and section 27, right to justice, of the BORA.
- During the Select Committee process for the Road Safety Bill, both Committee members and submitters raised concerns in relation to the social impacts of six-month impoundment. This option could impact those most vulnerable, in that they may not have immediate access to funds and/or may be amongst social groups that are not comfortable engaging with Government systems. This would then make the system particularly unfair for Māori, Pasifika and young people, who are over-represented in fleeing driver offences.

Allowing the registered person to voluntarily abandon their vehicle early (recommended)

- As previously advised (OC230685 refers), there is an opportunity to reduce some costs through enabling registered persons to make a voluntary decision to abandon a vehicle after an initial cooling-off period.
- We have estimated a conservative figure of 10 per cent early abandonment as this would be voluntary and there is no particular incentive for a person to make the decision early in the six-month period. However, this could be higher in practice.
- Our modelling shows savings are not significant at 10 percent of impoundments (approximately \$0.5m) but could be if the uptake is higher than estimated or the overall number of vehicles is high.

Consideration of delaying initial payments

- Officials have considered whether the 2023/24 financial year cost of the payment assurance could be reduced by making payments at the end of the 6-month impoundment process. We do not consider this to be viable option given the *Public Finance Act 1989* (PFA) expects expenditure to be accounted for as it is incurred, rather than when a financial obligation is settled. This will mean that delaying the costs of the scheme through delaying payments to operators will not be in accordance with the PFA.

- Further to this, the *Business Payment Practices Act 2023* was granted royal assent earlier this year. The Act addresses a manifesto commitment to reduce the stress and costs to small businesses of long payment wait times. The Act requires large businesses and entities (including Government departments and Crown entities) to provide information on their payment terms and how long they will take to pay invoices, for a public register run by the Ministry of Business, Innovation and Employment.
- It is therefore likely that if payments were to be deferred, Waka Kotahi would have to declare a six-month payment delay to these operators. With this visibility, operators may make a conscious decision to not pick up these vehicles.

Funding options have been considered

- The Ministry has undertaken a review of Vote Transport appropriations to identify areas for reprioritisation within the vote. This is attached in **appendix one**.
- We consider that this activity is closely aligned to the Road to Zero Activity class within the National Land Transport Plan when compared to the other activity classes. As such the Ministry's first best advice is that you seek to manage the costs of this activity within the Road to Zero Activity class. We have discussed this approach with the Treasury Vote team and they agree that the Road to Zero activity class is the most natural/principled fit as a funding source, with respect to the nature of the outcomes being purchased.
- The Waka Kotahi Board is responsible for making investment decisions within this activity class. We recommend that you write to the Board, making it clear that funding the six-month impoundment payment function is a priority for you, and for the Government in improving safety for all road users. Officials will work with the Crown Law Office to provide you with a draft letter.

s 9(2)(h)

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- Officials have identified two other options for reprioritisation but note that as these two initiatives are funded from the Climate Emergency Response Fund (CERF), we understand from the Treasury that decisions seeking to reprioritise this funding towards non-CERF initiatives (such as six-month impoundment) may not be supported. Should you wish to explore these options further we recommend you discuss them with the Minister of Finance. These options include:
 - **Clean Vehicle Discount Crown Grant:** The Clean Vehicle Discount Crown Grant represents funding provided to support the cash flows of the Clean

Vehicle Discount Scheme in the event that revenue from the scheme was not sufficient to cover rebates. This grant was topped up by \$100m through Budget 2023 in response to higher-than-expected uptake of eligible vehicles.

- **Mode-Shift (Transport Choices and VKT Reduction Plans)** - Through the recent Rapid Savings Process, funding available to these programmes was reduced by \$50m. The impact of this scaling is still being assessed.
- Waka Kotahi do not support the use of CERF funding, as this would likely result in projects previously approved for funding being cancelled and could result in payments being required for contractual breaches.
- Given the time constraints, a preference for a single funding source has been expressed by Waka Kotahi. This takes into consideration the administrative burden in applying to numerous funding sources.

Recommendations

We recommend you:

Minister Parker Minister O'Connor

- | | | |
|---|---|----------|
| 1 | agree to commence a comprehensive review of the regulatory framework for regulated towage and storage including the fees and charges set by the Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999 | Yes / No |
| 2 | note that the financial assurance regime in the Bill, provides for towage and storage operators to recover the fees and charges, as set by the Regulations, from the Crown. | Noted |
| 3 | agree that financial assurance is still needed to give certainty to operators accepting vehicles that have been impounded for 6 months that they will receive payment, as set by the Regulations, for their services | Yes / No |
| 4 | agree to proceed with one or more of the following funding options: | |
| | a) Write to the Waka Kotahi Board making it clear that the six-month impoundment payment function is a priority for you and the Government in improving safety for all road users, and asking for this be taken into account as part of Waka Kotahi funding decision-making, including in relation to any re-allocation of spend in the Road to Zero activity class (Ministry preference); or | Yes / No |
| | b) Utilise a portion of the \$100 million buffer in the Clean Vehicle Discount Grant (subject to Joint Ministers of Finance and Transport approval); or | Yes / No |

- | | | |
|----|--|----------|
| c) | Utilise a portion of the Transport Choices appropriation (subject to Joint Ministers of Finance and Transport approval); or | Yes / No |
| d) | Reallocate funding from the Road Safety Partnership Programme (this is not supported by Waka Kotahi or Police) | Yes / No |
| 5 | note that if a vehicle that has been impounded is abandoned, the ownership of the vehicle is transferred to the towage and storage operator. | Noted |
| 6 | agree to progress a Supplementary Order Paper to: | |
| a) | Provide that if a vehicle is abandoned, the towage and storage operator is not entitled to full payment of the fees and charges from the Crown. Amend to provide that they are entitled to recover the fees for the number of days the vehicle has been impounded, minus 28 days, and | Yes / No |
| b) | Provide for the registered owner of a vehicle impounded to make a voluntary decision to abandon their vehicle in order to avoid liability of the fees and charges, and that this decision can be made at any point during the 6-month period (after a 38-day cooling off period). This may decrease the number of vehicles stored over a 6-month period by 10%, or | Yes / No |
| c) | Require that the registered owners of vehicles impounded pay the fees and charges, or enter into a payment relationship with Waka Kotahi for the ongoing payment of those fees and charges within 38 days of the impoundment, or their vehicle is deemed to have been abandoned. However, this may have NZ Bill of Rights Act 1990 implications and may impact Māori, Pasifika and young people unfairly given they are over-represented in fleeing driver offences. | Yes / No |

Megan Moffet
Manager, Regulatory Policy
 11 / 08 / 2023.

Hon David Parker
Minister of Transport
 / /

Hon Damien O'Connor
Associate Minister of Transport
 / /

Minister's office to complete:

Approved

Declined

Seen by Minister

Advice superseded by OC230716 (Document 4)

Not seen by Minister

Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|--|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive Systems and Regulatory Design | s 9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | | |

PROGRESSING FUNDING OPTIONS AND EARLY ABANDONMENT OF VEHICLES

Your Office has asked for further advice on the approach to and funding of six-month impoundment

1. This briefing provides advice and considerations on:
 - 1.1. the context and current design of the six-month impoundment regime
 - 1.2. the underlying assumptions on the costs of the regime as it stands
 - 1.3. possible variations on the design of the regime and the cost implications
 - 1.4. ways to shift the timing of costs and implications of this
 - 1.5. options for funding the regime.

The Road Safety Bill establishes six-month impoundment as an enforcement response for the first time

2. Following Cabinet's in-principle decision to implement six-month impoundment for fleeing driver events in November 2022, officials developed advice regarding the feasibility of progressing this proposal (OC230138 refers).

Towage and storage operators are already under financial pressure

3. Private towage and storage operators are essential to the success of the Police impoundment regime. Police rely on these operators to provide the practical service of picking up and storing a vehicle for the required period. If the service is not provided, these impoundments cannot take place.
4. Under the current 28-day impoundment regime, these private operators rely on the registered person picking up the vehicle and paying the regulated fee (approximately \$360). If the vehicle is abandoned, the operators can only recoup a proportion of their costs by selling or scraping the vehicle.
5. Towage and storage operators have told us that there has been an increase in the number of vehicles abandoned under the current 28-day impoundment regime, with abandonment rates now averaging around 50 per cent.
6. The low regulated fee (set approximately 20 years ago) and the costs of abandoned vehicles have led some towage and storage operators to refuse to pick up Police impoundments. We have been informed by the Motor Trade Association (MTA), who are the industry body for towage and storage operators, that some operators are owed \$100,000 or more in towage and storage fees from 28-day impoundment.¹

¹ While acknowledging that this is an issue, at this point 28-day impoundments will continue to remain a contract between a towage and storage operator and a registered person of a vehicle, there is no obligation on the Crown.

Six-month impoundment creates new financial pressures on these operators

7. Under the new regime, it will cost at least \$2,250 to for the registered person to reclaim a vehicle, based on regulated towage and storage fees over a six-month period. Given the current rate of abandonment for 28-day impoundments and considering that the fee for six-month impoundment is likely higher than the value of many vehicles impounded, we estimate up to 90 percent of vehicles impounded for six-months could be abandoned.
8. Given this context, the MTA consider that most operators would be unwilling, and unable, to carry the financial risk of six-month impoundment without an assurance that payment would be made. If towage and storage operators refuse to accept six-month impoundments the regime will not be implementable.

In response, a financial assurance system for six-month impoundment was agreed

9. In light of this advice, the Associate Minister of Transport agreed to the Crown providing financial assurance to towage and storage operators (OC230138 refers) in March 2023.
10. When the Land Transport (Road Safety) Amendment Bill (Road Safety Bill) was provided to the Cabinet Legislation Committee for approval for introduction, it was noted that commencement of six-month impoundment was contingent on assurance of funding (LEG-23-MIN-0052 refers).
11. Waka Kotahi has been directed by the Minister of Transport (OC230436 refers) to undertake the required payment function to provide this financial assurance.

We have established some assumptions that underpin our estimates of the costs involved in six-month impoundment

12. The number of vehicles that are likely to be impounded under the expanded six-month impoundment power is unknown. This is due to a number of factors, including:
 - 12.1. *The discretionary nature of the power.* This enables Police to consider wider factors relating to the offence, such as whether this was a deliberate choice to evade Police or whether the driver was simply ignorant of sirens signalling to pull over.
 - 12.2. *The number of fleeing driver incidents may increase or decrease.* Indications for 2023 from Police is that fleeing driver incidents continue to increase; however, the changes made to penalties and the pursuit policy may, over time, decrease the number of events.
 - 12.3. *The number of drivers identified is likely to increase.* Between December 2020 – July 2022, Police were identifying on average 34 percent of all offenders. Police has revised its operational pursuit policy, which is likely to mean that more drivers are pursued to the end point and the offending vehicles impounded.
13. In order to estimate possible costs of the regime we have made a number of assumptions based on the information available.

14. There were 9,765 fleeing-driver events in 2022, up from 6,757 the year before. We have used this figure as a starting point for our calculations about the possible number of vehicles eligible for six-month impoundment.
15. Of that number, we have estimated a percentage that may be eligible for impoundment. Police have indicated that they usually use the current ability to impound for 28-days when actively identifying the vehicle and driver during the incident. Previously this was approximately a third of incidents. However, Police expect that the revised operational pursuit policy is likely to increase this. Prior to the more restrictive policy (pre-2020), Police were identifying approximately 70% of fleeing drivers.
16. We have modelled up to 120% of incidents to recognise the fact that fleeing driver events have been increasing over the last ten years.
17. From this number we have removed vehicles that:
 - 17.1. are stolen vehicles (22 per cent of fleeing driver incidents)
 - 17.2. are damaged vehicles (7 per cent)
 - 17.3. have successful hardship appeals (10 per cent success rate based on a comparable transport regime, limited licences, which allows an offender to appeal under extreme or undue hardship grounds for the return of their driver licence).
18. Each small vehicle tow costs at least \$2,250. We have used this figure in our calculations, making them the minimum possible costs. However, individual costs can increase where the vehicle is towed after business hours or from a long distance, or if the vehicle is a heavy vehicle.
19. The table below shows a range of scenarios based on the factors outlined above. We have used the 50 per cent estimate, which we consider to be conservative, in providing advice throughout the remainder of this briefing.

Table 1: Range of scenarios in relation to eligible vehicles

| Number of eligible offences | 2,441 (25% of incidents) | 4,883 (50% of incidents) | 7,812 (80% of incidents) | 9,765 (100% of incidents) | 11,718 (120% of incidents) |
|-----------------------------------|--------------------------|--------------------------|--------------------------|---------------------------|----------------------------|
| Hardship appeals | 244 | 488 | 781 | 977 | 1,172 |
| Stolen vehicles | 537 | 1,074 | 1,719 | 2,148 | 2,578 |
| Damaged vehicles | 171 | 342 | 547 | 684 | 820 |
| Total eligible vehicles | 1,489 | 2,979 | 4,765 | 5,958 | 7,148 |
| Funding required per year (\$000) | \$3,350 | \$6,703 | \$10,721 | \$13,405 | \$16,083 |
| For 9-months (\$000) | \$2,513 | \$5,027 | \$8,041 | \$10,054 | \$12,062 |

Waka Kotahi have done their own modelling of potential costs, including administration

20. Waka Kotahi has previously used a rounded figure of 2,500 vehicles in providing their cost estimates, and used a figure of \$2,600 per vehicle to recognise the additional costs that could be added as per paragraph 18 above.
21. Waka Kotahi considers that a manual payment system for the initial period to June 2024 could be provided for a total of \$9 million, with the following components:
 - 21.1. \$6.5 million for payments to operators (approximately 2,500 vehicles)
 - 21.2. \$1 million for administration costs
 - 21.3. \$1.5 million for establishment costs.

The Supplementary Order Paper provides a short opportunity to make final changes to the design of the six-month impoundment regime if desired

22. This section sets out a recommended change to improve the drafting of the existing regime, and three options that would amend the design of the regime. These options include:
 - 22.1. removing the funding assurance regime in favour of reviewing the regulated towage and storage system first (not recommended)
 - 22.2. creating a process which would deem a vehicle to have been abandoned early at 38 days, if the registered person does not make arrangements for payment of the fee (not recommended)
 - 22.3. allowing the registered person to voluntarily abandon their vehicle early (recommended).
23. Any amendments by SOP need to be agreed by Monday, 14 August 2023, in order for drafting instructions to be issued.

There are concerns in relation to how the existing six-month regime, as reported back, is drafted and further decisions will be required if this regime progresses as designed

24. In reviewing the draft Road Safety Bill, officials have identified an issue in relation to the ability for Waka Kotahi to hold back payment for the last (usually sixth) month of impoundment if a vehicle is abandoned. We recommend Minister O'Connor approve changes by Supplementary Order Paper (SOP) to the Road Safety Bill to ensure the initial policy intent is achieved.
25. When the registered person pays the regulated fee to Waka Kotahi, Waka Kotahi pays the full amount to the towage and storage operator.
26. However, the policy intent has been that, when a vehicle was abandoned, Waka Kotahi would pay for the initial five months, and the sixth month would either be covered by:

- 26.1. the operator deregistering the abandoned vehicle and claiming the existing rebate of \$253 from Waka Kotahi, and (if possible) selling the vehicle for scrap metal; or
- 26.2. if the operator assesses the vehicle as having enough residual value, on selling it.
27. This would in-effect treat the last month of a six-month impoundment like a 28-day impoundment when the vehicle is abandoned. The system was designed in this way in order to avoid the Crown (via Waka Kotahi) becoming the default owner of the abandoned vehicles spread around the country and then being responsible for the resulting scrappage or sale. Our assessment is that the administration costs of this role are likely to far outweigh any possible ability for the Crown to recoup costs, and this role better sits with individual operators.
28. However, as drafted, section 97A(4) of the Road Safety Bill states that regulated fees and charges are “recoverable from the Agency by a vehicle recovery service operator or a storage provider”. This does not take into account the situation described above where the vehicle is abandoned, and Waka Kotahi is not intended to pay the full regulated fee to the operator.
29. The operator would therefore be entitled to both the regulated storage fee for the last month and any funds received from disposal of the vehicle. This is would not align with the intent of the system.
30. We recommend that the SOP amends the Bill to outline when a vehicle is abandoned, operators are not entitled to recover the last month of storage costs from Waka Kotahi.
31. We recognise that some individual transactions (where the vehicle is worth on-selling) will result in the operator being financially better off than they would be from only receiving the regulated fee. Similarly, some individual transactions (where the vehicle is unregistered and of very low value) will result in the operator being worse off than if they had received the regulated fee. However, without existing data on patterns of vehicle abandonment for six-month impoundment, we consider it may even out over time for operators.
32. The planned review of the regulated towage and storage system (outlined below) would consider how this aspect of the system is working for six-month impoundment and could recommend changes if the pattern of abandonment is different from expected.

Removing the funding assurance regime in favour of reviewing the regulated towage and storage system first (not recommended)

33. As outlined in the first section above, we know that there are fundamental system issues with the design of the 28-day impoundment regime, along with significantly outdated fee levels. The addition of a six-month impoundment regime has added complexity to the wider regulated towage and storage system.
34. To relieve the considerable stress in the regulated towage and storage system for 28-day impoundments, in September 2022, the Minister of Transport agreed to progress improvements to regulatory settings for towage and storage in two stages. The first

stage being an increase to the regulated fees and the second stage being a full system review in 2024.

35. In October 2022, the Minister of Transport also agreed to progress consultation on the regulated fees alongside consultation on a review to parking offences and penalties. Cabinet approval to consult on both proposals did not proceed, due to the Government's focus on addressing the cost of living and responding to the severe weather events earlier this year.
36. Given the changes created by the Road Safety Bill, the Ministry proposes to progress the full system review together with reconsideration of the regulated fees in late 2023 / 2024.
37. Officials have considered an option to remove the financial assurance provisions in the current Bill through the SOP and progress the review first. Ministers could then consider wider options for system amendment once the review is complete. This option is not recommended.
38. Given the financial pressures that operators are experiencing, the Ministry considers successful implementation of six-month impoundment would need the provision of financial assurance when the Road Safety Bill is passed.
39. However, as mentioned earlier, there are broader issues with the impoundment regime that contribute to the willingness of operators to undertake Police-ordered impoundments. Addressing these issues would better ensure that enforcement activities can happen in a timely manner in reducing unsafe behaviour on New Zealand roads in the long run.
40. Because the challenges in the regulated towage and storage system are multi-faceted and involve various actors, systems, and financial sources, reviewing current regulatory settings would require stakeholder engagement and further policy work. The Ministry considers to effectively undertake this work, the review would take at least one year, notwithstanding the Parliamentary processes if Act level changes are required.
41. Delaying assurance to operators that they would be reimbursed for their costs while a review is being conducted risks further decreasing the number of operators who are willing to undertake any Police-ordered impoundment when the Road Safety Bill is passed. Operators would be risking larger financial loss under the new six-month impoundment regime than they currently do with 28-day impoundment.
42. In addition, as the financial assurance provisions are currently in the Road Safety Bill there is an expectation from operators it will progress and there would be considerable concern if it was removed. Feedback from the MTA indicates that some operators are already arranging to lease facilities in preparation for the storage of these vehicles, based on the financial assurance provisions as drafted.

Creating a process which would deem a vehicle to have been abandoned early at 38 days, if the registered person does not make arrangements for payment of the fee (not recommended)

43. Adding a process to deem a vehicle to have been abandoned early could address some concerns raised about costs in relation to the existing regime. However, there may be significant impacts on vulnerable people and is therefore not recommended.
44. This process could provide that when a vehicle is impounded for six-months, the registered owner has 38-days in which to either:
 - 44.1. contact Waka Kotahi to enter into a formal arrangement (which the Road Safety Bill enables through the new section 97B); or
 - 44.2. pay the fees in full at the end of the 38-day period.
45. Otherwise, the vehicle is deemed to have been abandoned and the operator could dispose of the vehicle.
46. This would mean that if a payment arrangement is set up, or registered person has paid the lump sum, this would provide assurance to the towage and storage operator that they will be paid for offering this service.
47. In the instance of a payment arrangement, Waka Kotahi would have the option of charging interest and carrying out debt collection activities, which are provided for in the Road Safety Bill currently.
48. 38-days would extend the circumstances provided in the current 28-day impoundment regime, where, after the 28-day period, operators are required to wait for an extra 10-days before they can seek agreement from Police for the vehicle to be considered abandoned and have the vehicle transferred to them.
49. This means in practice that operators currently wait for 38-days before they have any certainty over whether the vehicle will be paid for, and released, or considered abandoned.
50. While this could result in a somewhat cost neutral scheme, this is likely to introduce *NZ Bill of Rights Act 1990* (BORA) issues. In particular, officials are concerned that this could engage section 21, unreasonable search and seizure, especially because the registered person may not have committed the offence or could be waiting for final Police decisions on charges being laid before making a decision on how to proceed in relation to their vehicle.
51. Officials note that this could effectively be seen as forfeiture by default, which could also then engage section 27, right to justice, of the BORA.
52. During the Select Committee process for the Road Safety Bill, both Committee members and submitters raised concerns in relation to the social impacts of six-month impoundment. This option could impact those most vulnerable, in that they may not have immediate access to funds and/or may be amongst social groups that are not comfortable engaging with Government systems.

53. These individuals may not be able to sort through available options in time, particularly if there are wider impacts from the fleeing driver event such as hospitalisation or being placed in Police custody.
54. However, these individuals may, given time, be able to pay for the towage and storage fees through accessing third party loans or similar (noting that they may be unwilling to enter a payment arrangement with the Government).
55. Officials expect that this option would significantly reduce their ability to make rational decisions that may benefit them. This would then make the system particularly unfair for Māori, Pasifika and young people, who are over-represented in fleeing driver offences.
56. Waka Kotahi do not support this option, noting the potential BORA issues and the wider societal impacts. Alongside this, Waka Kotahi note that this would add administrative burden to the regime and there has not been sufficient time to consider the impact this may have on resourcing.

Allowing the registered person to voluntarily abandon their vehicle early (recommended)

57. As previously advised (OC230685 refers), there is an opportunity to reduce some costs through enabling registered persons to make a voluntary decision to abandon a vehicle after an initial cooling-off period.
58. We have estimated a conservative figure of 10 per cent early abandonment as this would be voluntary and there is no particular incentive for a person to make the decision early in the six-month period. However, this could be higher in practice.
59. The table below shows the number of potential impounded vehicles as per Table 1 above, and the number of early abandonments at 10 percent and 20 percent for example.
60. In estimating savings, we have used 3 months of regulated storage costs (approximately \$1,095) per vehicle.

Table 2: Costs that could be reduced if early abandonment enabled

| | 2,441 (25% of offences) | 4,883 (50% of incidents) | 7,812 (80% of incidents) | 9,765 (100% of incidents) | 11,718 (120% of incidents) |
|--------------------------------|-------------------------|--------------------------|--------------------------|---------------------------|----------------------------|
| Number of offences | 2,441 (25% of offences) | 4,883 (50% of incidents) | 7,812 (80% of incidents) | 9,765 (100% of incidents) | 11,718 (120% of incidents) |
| Est. eligible vehicles | 1,489 | 2,979 | 4,765 | 5,958 | 7,148 |
| Vehicles abandoned early (10%) | 244 | 488 | 781 | 977 | 1,172 |
| Est. cost reduction (\$000) | \$267 | \$534 | \$855 | \$1,070 | \$1,283 |
| Vehicles abandoned early (20%) | 488 | 976 | 1,562 | 1,954 | 2,344 |
| Est. cost reduction (\$000) | \$534 | \$1,068 | \$1,710 | \$2,140 | \$2,567 |

61. Based on these calculations, savings are not significant at 10 percent of impoundments, but could be if the uptake is higher than estimated or the overall number of vehicles is high. Clear information provision to affected people may support higher uptake.

Reducing costs through changes to the timing of the payment regime

62. Officials have considered if changes to the frequency of payments would alleviate the immediate need for funding, once the Road Safety Bill comes into force.

Financial assurance is intended to help ensure the successful implementation of the new six-month impoundment regime

63. Certainty of payment at the end of the six-month period will provide some level of financial assurance for operators. However, during the consultation period officials heard from the MTA that cashflow is a significant issue for many in the sector. This means that for most, there is an inability to cover the cost of the six-month impoundment given the need to cover ongoing operational costs e.g., staff salaries, insurance or rent.
64. There is also a significant risk that delaying payment until the end of the six-month period could adversely impact the goodwill of operators, which will be needed to successfully implement the new regime at pace. Previous advice has highlighted that for many operators, towing vehicles for private companies e.g., insurance, is a more lucrative stream of revenue, which could impact on their willingness to otherwise tow and store these vehicles.
65. There have already been instances where Police-ordered 28-day impoundments have not occurred due to an unwillingness to take on the financial risk of recovering and storing these vehicles. ^{s9(2)(g)(i)} [REDACTED]
66. Given these risks, Waka Kotahi has made the operational decision that to ensure the success of the system, operators will be paid monthly.
67. This is in line with the *Public Finance Act 1989* (PFA) which sets out the expectation that expenditure to be accounted for as it is incurred, rather than when a financial obligation is settled. This will mean that delaying the costs of the scheme through delaying payments to operators will not be in accordance with the PFA.
68. Further to this, the Business Payment Practices Act 2023 was granted royal assent earlier this year. The Act addresses a manifesto commitment to reduce the stress and costs to small businesses of long payment wait times. The Act requires large businesses and entities (including Government departments and Crown entities) to provide information on their payment terms and how long they will take to pay invoices, for a public register run by the Ministry of Business, Innovation and Employment.
69. It is therefore likely that if payments were to be deferred, Waka Kotahi would have to declare a six-month payment delay to these operators. With this visibility, operators may make a conscious decision to not pick up the related vehicles.

70. Given this, delaying payments will not have the intended impact on immediate funding requirements as the financial obligation will be recorded on Waka Kotahi (and therefore the Crown's) account as vehicles are impounded.

Depending on the decisions made on the options outlined above, there likely remains the need for a funding source to be identified

71. The sections below outline possible funding sources, taking into account advice from your Office, Waka Kotahi, the Treasury and New Zealand Police.
72. While a range of scenarios are considered given the assumptions listed in paragraphs 12-21, there is inherent risk that if a lower scenario is funded, there could be insufficient funding in the later months, prior to Budget 2024.
73. Police will be recording how the new power to impound a vehicle for six-months is being utilised and had previously committed to providing this information to assist with a future Budget 2024 bid.
74. However, if there shows that there is an immediate need for further funding e.g., the worst-case scenario of a further increase in offences, the Ministry will seek an early Budget 2024 decision and as part of this, will seek the ability to draw down funding early.

Further work to identify funding sources has identified the Road to Zero activity class as the most viable funding source

75. The Ministry has undertaken a review of Vote Transport appropriations and consider that this activity is most aligned to the Road to Zero Activity class within the National Land Transport Plan when compared against other funding within the Vote.
76. As such the Ministry's first best advice is that you seek to manage the costs of this activity within the Road to Zero Activity class. We have discussed this approach with the Treasury Vote team and they agree that the Road to Zero activity class is the most natural/principled fit as a funding source, with respect to the nature of the outcomes being purchased.
77. The Waka Kotahi Board makes statutorily independent decisions within this activity class. We recommend that you write to the Board, making it clear that the six-month impoundment payment function is a priority for you and the Government in improving safety for all road users, and asking for this be taken into account as part of funding decision-making, including in relation to any re-allocation of spend in the Road to Zero activity class.
78. This option allows for costs associated with six-month impoundment to be evaluated against other investments seeking similar outcomes. We understand that there is sufficient uncommitted funding within this activity class to enable the Board to fund this activity should it meet their investment criteria.

79. s 9(2)(h)

s 9(2)(h)

80.

81.

82. Officials will work with the Crown Law Office in drafting this letter. We will provide you with the draft letter early in the week beginning 14 August 2023, to be sent to the Board in advance of its meeting on 18 August.
83. Should you not wish to progress this option, or should you wish to consider further options that may be required in the event that the Board declines to fund these costs, we have included further options below.

If Ministers do not wish to progress the Road to Zero option, we have found two further opportunities within our Climate Emergency Fund (CERF) initiatives; however, the conditions of the fund may restrict re-prioritisation towards non-CERF initiatives

84. We have conducted a review of all Vote Transport initiatives and we have identified **two potential options for reprioritisation** but note that as these two initiatives are funded from the Climate Emergency Response Fund, we understand from the Treasury that decisions seeking to **reprioritise this funding towards non-CERF initiatives (such as six-month impoundment) may not be supported**. Should you wish to explore these options further we recommend you discuss them with the Minister of Finance.
- 84.1. **Clean Vehicle Discount Crown Grant:** The Clean Vehicle Discount Crown Grant represents funding provided to support the cash flows of the Clean Vehicle Discount Scheme in the event that revenue from the scheme was not sufficient to cover rebates. This grant was topped up by \$100m through Budget 2023 in response to higher-than-expected uptake of eligible vehicles. Changes to scheme settings were made alongside the increase to the Crown grant and actuals levels of revenue and expenditure have meant that the Scheme has not required the grant top-up – although the risk remains that it may do so in the future. Whilst some level of buffer is appropriate, we consider reducing the Grant by \$9 million would not impact the effectiveness of the Scheme.

84.2. Mode-Shift (Transport Choices and VKT Reduction Plans) - Through the recent Rapid Savings Process, funding available to these programmes was reduced by \$50 million. The impact of this scaling is still being assessed and further advice on a scaled programme will be presented to Ministers in December. Should you wish to further reduce funding, the programme could be further scaled to fit but we note that such scaling **will have an impact on the achievement of outcomes** (as well as impacting local Government) and that we are unable to quantify that impact at this time.

85. Waka Kotahi do not support any options that consider using CERF funding as this would likely result in projects previously approved for funding being cancelled, which will likely cause negative reactions from local government and must result in Waka Kotahi being liable for payments in contractual breaches.

If the above options are not palatable, reprioritisation could be considered, however reducing funding in other appropriations and doing so within short time-frames comes with a range of risks and challenges

86. For the purposes of analysing the Vote for re-prioritisation opportunities it is helpful to break up the Vote in the following way:

Table 3 – Vote Transport Funding 2022/23-2025/26

| | 22/23 | 23/24 | 24/25 | 25/26 |
|---|--------|--------|-------|-------|
| Total Vote | 10,484 | 10,114 | 7,927 | 7,104 |
| Less | | | | |
| Capital Appropriations | 4,527 | 4,867 | 3,325 | 2,431 |
| NLTF and other PLAs | 2,047 | 3,409 | 3,763 | 3,919 |
| HSWA Funded Activities | 12 | 15 | 12 | 12 |
| Remaining Operating Appropriations | 3,898 | 1,823 | 827 | 741 |
| % of Vote | 37% | 18% | 10% | 10% |

87. Opportunities within the National Land Transport Fund and CERF funded initiatives are discussed above and capital appropriations have been excluded from further analysis as Waka Kotahi are seeking operating funding.

88. We have focussed our analysis on the remaining operating appropriations and, **in the time available have been unable to identify any straightforward options for reprioritisation.** We also note that seeking to reduce funding immediately for the current financial year is particularly challenging as funding has often already been contractually committed and procurement may already be underway.

89. The Ministry baseline is under pressure in the out-years with funding declining significantly as time-limited funding ends.

90. Given the number of appropriations and the need to engage with other agencies, providing detailed advice on a range of re-prioritisation options is challenging and will take time. Should you wish to explore specific options within certain programmes,

appropriations or priority areas we can work with your office to provide you with further advice. superseded by OC230716 (Document 4)

91. Attached in **appendix one** is a breakdown of the funding we have analysed over the forecast period, along with a table providing our initial advice about reprioritisation of funding available for 2023/24.

Beyond Vote Transport appropriations, you may wish to consider reallocation of Road Safety Partnership Programme funding, subject to Waka Kotahi Board endorsement

92. We have previously advised of an option to reallocate funding from the Road Safety Partnership Programme (RSPP) (OC230623, OC230655, OC230685 refer). The RSPP focuses on achieving desired road safety outcomes as outlined in Road to Zero, value for money and the efficient delivery of Police activities. It focusses on road policing activity on the high-risk behaviours of restraints, impairment, distraction, and speed. 75% of RSPP investment is targeted to these areas.
93. We have indicated possible reallocation of approximately \$5.3 million from the Change Initiatives Programme (CIP) for 2023/24. This amount comprises:
- 93.1. \$3.8 million for the Infringement Transformation Programme
- 93.2. \$1.5 million of the Impaired Driver Programme.
94. It is unclear at this stage how much of this funding has been committed or spent. The CIP has been underspent over the past two years, but it is traditionally carried forward and utilised in the next financial year. NZ Police also requires additional funding to meet Collective Employment Agreement cost increases, so any underspend is expected to be allocated towards those costs.

Waka Kotahi and NZ Police do not support this approach

95. Waka Kotahi does not consider reallocation of RSPP funding to be a feasible option; furthermore, any funding reallocated to six-month impoundment would only cover some of the costs identified.
96. Police does not support due to its impact on competing priorities. Police advised that the following projects would likely be impacted from any funding reallocation:
- 96.1. The transfer of traffic safety cameras to Waka Kotahi
- 96.2. Upgrade to the Police Infringement Processing System
- 96.3. Police Infringement Processing System Stabilisation
- 96.4. Procurement of remote access tyre deflation devices (to mitigate health and safety risk for Police officers)
- 96.5. Impaired driving operational processes.

97. The Ministry considers that funding to implement legislated functions should be prioritised before further improvement activities are considered. As this would be a short-term source of funding, the effect would be to re-phase rather than stop planned initiatives.
98. The process for reallocating RSPP funding under the Land Transport Management Act 2003 requires a recommendation from the Waka Kotahi Board to the Minister of Transport, to approve a funding variation. Prior to any approval, the Minister of Transport must consult the Minister of Police on the proposed variation.
99. Should you wish to proceed with this option, we recommend that you write to the Board requesting it updates the RSPP to give effect to it. The Ministry can provide your office with a draft letter to this effect.

Appendix One: Analysis of Vote Transport

Operating Funding 2022/23 to 2025/26 (\$m) - as at Budget 2023

| Category | 22/23 | 23/24 | 24/25 | 25/26 |
|----------------------------------|----------|----------|--------|--------|
| Departmental | 82.10 | 75.17 | 62.06 | 61.09 |
| NLTF Crown Top-ups | 2,292.11 | 336.17 | 0.00 | 0.00 |
| Emissions | 398.51 | 464.45 | 160.97 | 162.41 |
| Rail | 626.08 | 658.38 | 436.02 | 349.85 |
| Road - Projects outside the NLTF | 16.83 | 24.69 | 0.00 | 0.00 |
| Crown Entity Core functions | 155.25 | 163.94 | 65.42 | 64.60 |
| Resilience | 0.00 | 20.00 | 20.00 | 20.00 |
| SuperGold Concessions | 36.12 | 36.12 | 37.12 | 37.12 |
| Time-limited COVID funding | 207.54 | 0.00 | 0.00 | 0.00 |
| Other | 83.70 | 43.61 | 45.21 | 46.18 |
| | 3,898.23 | 1,822.53 | 826.78 | 741.25 |

Analysis of 2023/24 Funding

| Category | Description/Significant components | Considerations for Reprioritisation |
|---|---|---|
| Departmental funding Search and Rescue \$5.70m | Search and Rescue Activity Coordination PLA (\$5m) Search and Rescue Training and Training Co-ordination (\$700k) | No opportunities Identified |
| Departmental funding Policy Advice, ministerial servicing, governance and other functions \$70.14m | Includes: Section 9 funded activities (\$3.8m) CERF funded activities (\$6.3m) Milford Aerodrome (\$1.7m) Fuel Excise Duty refunds (\$3.9m) | Limited scope for reprioritisation without impacting priority programmes There are a number of risks associated with reprioritising departmental baseline funding. In particular, given that there are already significant cost pressures within the baseline, any 'reprioritisation' is highly likely to create a further cost pressure rather than generating an actual saving – unless Ministers are comfortable with slowing or stopping some work programmes altogether. Re-prioritisation of this nature requires the Ministry to reduce expenditure below planned levels in order to return funding, as opposed to re-prioritisation that involves moving resources within the Ministry across workstreams or priority areas. Short –term options would therefore be limited to reducing expenditure where it has not already been committed rather than necessarily allowing for a more strategic re-prioritisation of resources. We consider that decisions to reduce the baseline would need to be worked through in detail in consultation with other agencies, with due consideration of priorities, trade-offs and risks, to ensure that the resultant changes to the Ministry's work programme do not adversely impact the ability to deliver on key outcomes or Ministerial expectations. As such, from a timing perspective, we do not consider that departmental savings are a viable funding option to address the immediate issue at hand. |
| NLTF Crown Top-ups \$336.17m | Crown top-ups to the NLTF. Includes funding for: Cyclone Gabrielle NLTF Cost Pressure Funding (\$275.0m) | No opportunities Identified – actively seeking additional funding |

| Category | Description/Significant components | Considerations for Reprioritisation |
|---|---|---|
| | Emergency works (\$60.6m) | Even before any reprioritisation here, we are already seeking additional Crown top-ups through the NRP process. As such, reprioritising some existing Crown top-up funding towards six-month impoundment costs would be very likely to simply generate a further cost pressure in the near future, and we therefore do not consider it to be a genuine option. |
| Emissions \$464m | CERF funded initiatives including the Clean Vehicle Discount, Community Connect and Mode-Shift | Some opportunities identified See above for potential savings opportunities. |
| Rail Network Investment Plan (RNIP) \$530.8m | Crown and NLTF funding provided to deliver the RNIP | No opportunities Identified – actively seeking additional funding The RNIP is facing cost pressures and is currently seeking additional funding through the NRP process. |
| Other Rail \$127.5m | Includes: Auckland Light Rail Detailed Planning Phase (\$70.4m) KiwiRail non-commercial activities outside of RNIP (\$42.8m) Funding for KiwiRail to prepare for CRL (\$6.5m) Provincial Growth Fund (\$5.5m) CRL Targeted Hardship Fund (\$2.2m) | Limited scope for reprioritisation without impacting priority programmes Reprioritising Auckland City Rail Link Targeted Hardship funding would require making changes to the conditions of the Fund (which would need to be agreed with Auckland Council) Reprioritising ALRL detailed planning phase funding is likely to impact delivery. Further work would need to be done, with ALRL, to understand the impact of any reduction in funding. As noted above, KiwiRail are actively seeking further funding through the NRP process |
| Other Road (NZUP only in 23/24) \$24.7m | Operating funding for the New Zealand Upgrade Programme | Options for scaling NZUP recently considered during Rapid Savings and not progressed. Options for making scope changes within the New Zealand Upgrade Programme were recently considered as part of Rapid Savings and not progressed. We also note that decisions to scale or stop capital projects already in train can sometimes increase immediate operating expenditure (due to write-offs and wind up costs) even whilst reducing overall fiscal cost. |
| Crown Entity Core functions \$163.9m | Includes: Waka Kotahi Regulatory Crown Funding (\$10.8m) Waka Kotahi Regulatory Section S9(1A) (\$31.35m) CAA and MNZ liquidity facility (\$98.6m) Other funding for CAA and MNZ (\$13.8m) TAIC (\$9.2m) | No savings identified. Any re-prioritisation would require scaling/trade-offs and/or increase the risk of future funding requests and would need to be worked through with each Agency. We have been unable to identify surplus funding within these appropriations. Any re-prioritisation will likely require our Crown Entity Boards to make trade-offs. CAA and MNZ are currently undergoing funding reviews and Waka Kotahi are in the final stages of implementing their recently approved changes to fees and charges. There are interdependencies between the level of Crown funding provided through these appropriations and fees and charges set through funding reviews. |

| Category | Description/Significant components | Considerations for Reprioritisation |
|--|---|--|
| Resilience \$20.0m | The local road component of the "Improving Regional Resilience" programme funded through Budget 2023 | No opportunities Identified Further funding for Resilience outcomes is being sought through the National Resilience Plan Process |
| SuperGold Concessions \$36.1m | SuperGold Concessions | No opportunities Identified. Funding committed for 23/24. |
| Other \$43.6m | Includes: MetService Contract funding (\$27.2m) Surf Life Saving NZ and Coastguard NZ funding (\$15.1m) | No opportunities Identified. Funding largely committed for 23/24 Most of the funding in this category is already committed and would be challenging to re-prioritise |



15 August 2023

OC230716

Hon David Parker

Action required by:

Minister of Transport

Wednesday, 16 August 2023

Hon Damien O'Connor

Associate Minister of Transport

REMOVAL OF FINANCIAL ASSURANCE REGIME FROM LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL

Purpose

To provide you with advice and allow you to make final decisions on removing the financial assurance regime for six-month impoundment from the Land Transport (Road Safety) Amendment Bill.

Key points

- The Associate Minister of Transport agreed in March to the Crown providing financial assurance for towage and storage operators to support implementation of the regime. This provision is designed to address the risk that with anticipated high rates of vehicle abandonment, operators will refuse to undertake six-month impoundments.
- Advice has been provided to your Office on the various funding sources that have been considered, and not progressed. Following receipt of final advice, your Office has indicated that given the funding options considered are not viable, that you wish to progress removing financial assurance for six-month impoundment and progress an option to:
 - remove Waka Kotahi involvement from the six-month impoundment regime, and
 - enable vehicles to be considered 'abandoned' and transferred to the towage and storage operator after 38 days if the registered owner or hirer has not:
 - paid for the six-month impoundment in full; or
 - entered into a payment arrangement with the towage and storage operator.
- The Land Transport (Road Safety) Amendment Bill (Road Safety Bill) is expected to progress through final House stages the week of 21 August 2023. This means that final policy decisions to support a Supplementary Order Paper (SOP) are required by 10am, Wednesday 16 August 2023, to ensure that these changes can be reflected.

- Officials have discussed the impact this change will have with Police and the Ministry of Justice. Both departments have raised concerns about the implementation of six-month impoundments, given the late stage of the Road Safety Bill.
- The 38-day point has been chosen to provide early financial assurance to towage and storage operators, so that they will continue to hold the vehicle or otherwise have the opportunity to offset the fees by taking possession and selling the vehicle.
- These changes will undermine the goodwill of towage and storage operators and it is likely that there will be areas within New Zealand where Police-ordered impoundments will no longer be picked up. This creates a significant financial liability and reputational risk for Police as they are responsible for vehicles once the impoundment has been ordered.
- It is likely that this will therefore impact on not only the ability to successfully implement the six-month impoundment regime, which was intended to support the revised operational pursuit policy, but also will impact on the ability to use existing 28-day impoundment powers.

s 9(2)(h)

Recommendations

We recommend you:

| | |
|--------------------|----------------------|
| Minister Parker | Minister O'Connor |
|--------------------|----------------------|

1 **agree** to amend the Land Transport (Road Safety) Amendment Bill through a Supplementary Order Paper to:

- | | |
|---|----------|
| a) to require the registered person for a vehicle impounded for six months enter into a payment arrangement with the storage operator for the fees and charges that they are liable for within the first 38 days of the impoundment, or pay the full liability of the fees; | Yes / No |
| b) to clarify that the registered person whose vehicle is impounded for six months is given clear notice of the consequences as part of the impoundment notice, including the fact they will be required to pay storage costs for the full six months within the first 38 days, or enter into a payment arrangement and that failing to do so will result in the loss of their vehicle, and clear information about their right to appeal the impoundment to Police and how to do so; | Yes / No |
| c) provide the ability for the storage provider to apply to the Police for approval to consider the vehicle abandoned if the registered person does not enter into | Yes / No |

a payment arrangement within the first 38 days, or if they do not pay the full liability of the fees;

- d) require that if the vehicle is released to the registered person because the Police decide not to prosecute or an appeal to the Police or District Court is successful, any fees paid to the storage provider are to be returned to the registered person. Yes / No

2 **agree** to either:

- a) to remove all reference to fees and charges for six-month impoundment being payable to the Agency and instead provide for these fees to be directly payable to the storage provider; Yes / No
- OR**
- b) retain the role of Waka Kotahi as an intermediary to manage payment arrangements Yes / No

3 **agree** to revoke the Ministerial Direction (OC230436) that required Waka Kotahi to establish and maintain the payment and administrative function to support six-month impoundment. Yes / No

4 **refer** this briefing to Hon Minister Ginny Andersen, Minister of Police Yes / No



Megan Moffet
Manager, Regulatory Policy
 15 / 08 / 2023

Hon David Parker
Minister of Transport
 / /

Hon Damien O'Connor
Associate Minister of Transport
 / /

- Minister's office to complete:**
- Approved Declined
 - Seen by Minister Not seen by Minister
 - Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|--|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive Systems and Regulatory Design | s 9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | | |

REMOVAL OF FINANCIAL ASSURANCE REGIME FROM LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL

You have indicated interest in removing financial assurance for six-month impoundment

Background

- 1 Following Cabinet's in-principle decision to implement six-month impoundment for fleeing driver events in November 2022, officials developed advice regarding the feasibility of progressing this proposal (OC230138 refers).
- 2 In light of advice that without financial assurance, system issues would prevent the successful implementation, the then Associate Minister of Transport agreed to the Crown providing financial assurance to towage and storage operators (OC230138 refers) in March 2023.
- 3 Waka Kotahi was then directed by the Minister of Transport (OC230436 refers) to undertake the required payment function to provide this financial assurance. At the time, Waka Kotahi noted that this was contingent on funding being provided.
- 4 Advice has been provided to your Office on the various funding sources that have been considered, and not progressed (OC230704 refers). Following receipt of final advice, your Office has indicated that given the funding options considered are not viable, that you wish to progress removing financial assurance for six-month impoundment and progress an option to:
 - 4.1 remove Waka Kotahi involvement from the six-month impoundment regime, and
 - 4.2 enable vehicles to be considered 'abandoned' and transferred to the towage and storage operator after 38 days if the registered owner or hirer has not:
 - 4.2.1 paid for the six-month impoundment in full; or
 - 4.2.2 entered into a payment arrangement with the towage and storage operator.
- 5 The Land Transport (Road Safety) Amendment Bill (Road Safety Bill) is expected to progress through final House stages the week of 21 August 2023. This means that final policy decisions to support a Supplementary Order Paper (SOP) are required by 10am, Wednesday 16 August 2023, to ensure that these can changes be reflected.

The proposal applies many elements of the current 28-day impoundment system to 6-month impoundments

- 6 Under this approach, when Police impound a motor vehicle for six months for a fleeing driver event, the registered person¹ of the motor vehicle would need to take

¹ A registered person is an individual who has a vehicle registered against their name in the Motor Vehicle Register.

action within thirty-eight days of the impoundment to reclaim their vehicle. They could either:

- 6.1 pay the regulated towage and storage fees for six months (at least \$2,250) to the towage and storage operator, or
 - 6.2 agree to pay the operator in instalments.
- 7 This has similarities to the current requirements for 28-day impoundments under the *Land Transport Act 1998* (LTA). Most Police districts have arrangements with local tow operators. When a vehicle is impounded, Police contact one of the approved tow operators to remove the vehicle to a storage facility. An impoundment notice, which sets out appeal rights and the process to reclaim the vehicle, is issued to the driver (if present), to the owner (if not the driver), and to the towage operator.
- 8 The vehicle is impounded for 28 days unless Police release the vehicle earlier, or the owner successfully appeals the impoundment. The registered person can appeal to the Commissioner of Police within fourteen days under section 110 of the LTA. If that appeal is unsuccessful, they can appeal to the District Court.
- 9 After the compulsory 28-day period, the owner of an impounded motor vehicle has ten days to claim the vehicle by paying the fees (at least \$360), or make arrangements to pay the fees to the towage and storage operator. There is no obligation to pay the towage and storage fees where an owner does not collect their impounded vehicle at the end of 38 days.
- 10 If the vehicle is not claimed at the end of this period, the storage provider can either:
- 10.1 become the registered person and sell the vehicle, or
 - 10.2 apply to the police for permission to dispose of the vehicle and claim a \$253 rebate from Waka Kotahi.
- 11 There will continue to be a financial shortfall between the towage and storage costs that are applicable, and the rebate that is paid by Waka Kotahi for disposing of a vehicle.

We have discussed the proposed change with Police and Justice and shared concerns have been raised

Requiring vehicle owners to pay within 38 days has significant challenges and risks

- 12 In providing advice on how this change could be implemented, Ministry officials have discussed this change with officials from Police and the Ministry of Justice. Both departments have raised concerns about the implementation of six-month impoundments, given the late stage of the Road Safety Bill.
- 13 Successful implementation of six-month impoundments requires towage and storage operators to be confident they are, or will be, paid the costs of six-month impoundments by the registered persons within 38 days of impoundment. This assumption is not without considerable risks based on our understanding of the

industry, the persons involved in fleeing driver events, and current challenges for Police to enforce 28-day impoundments.

Towage and storage providers may incur extra costs because of timing implications of charging and appeal process

- 14 The 38-day point has been chosen to provide early financial assurance to towage and storage operators, so that they will continue to hold the vehicle or otherwise have the opportunity to offset the fees by taking possession and selling the vehicle.
- 15 There is a requirement for operators to contact Police before disposing of the vehicle after 38 days. Crown Law advice below clarifies that Police should not be able to approve the disposal of the vehicle before ensuring that any avenue for early release has been closed.
- 16 However, the need for the operators to retain some vehicles for longer than 38 days while waiting for information (and incurring further costs) may increase resistance to taking these impounds.
- 17 There are two pathways for early release of a vehicle, either the appeal on the grounds available are successful (e.g., undue hardship, extreme hardship, enforcement officer did not have reasonable grounds to impound the vehicle etc), or that Police do not lay charges and no prosecution is sought (new section 96AAA(3)(a) of the Road Safety Bill).
- 18 Advice from Police frontline is that if an event is pursued until the end point, charges will be laid immediately, however if the driver abandons the vehicle at a scene (for example), it could take some time to investigate.
- 19 Currently, the LTA provides a 14-day time period for appeal, and the subsequent ability to appeal to the District Court under section 110 of the LTA. While this section does not specify a timeframe, section 111 of the LTA sets a general time period for any appeal to the District Court under the LTA of 28-days from the date of the decision. In this instance, the decision would be the act of impoundment.

Hardship appeals will be impacted

- 20 As mentioned above, the Road Safety Bill enables appeals to be made if there are cases of extreme or undue hardship under the new section 102A. It had originally been intended that the costs incurred by these vehicles would be paid by Waka Kotahi.
- 21 However, with the removal of Waka Kotahi from the regime, this means that the intended regime will not have a department that can pay for these costs, which will create a financial deficit for operators.
- 22 If it was intended that these costs were to be funded, rather than being written off by operators (as would likely apply in the regime with the decision to remove Waka Kotahi), this would again raise the issue of funding requirements to not only pay for these appeals, which are estimated to cost around \$500,000 a year, but also additional staff to carry out the necessary financial processes.

- 23 Under the current 28-day regime, Police currently pay for the towage and storage costs of vehicles in instances where successful appeals are made in relation to section 102(1)(b) in relation to insufficient reasonable grounds, or not complying with impoundment notice requirements.
- 24 The new six month regime includes a provision where Police pay for the impound costs if they decide not to charge, given that the timeframe has been extended from 28 days to 6 months (hereby substantially increasing the impoundment costs).
- 25 Police will continue to pay costs in relation to the instances above.
- 26 In removing Police from this portion of the appeal regime, there is a clear delineation between the decision maker and the department that would pick up the related financial liability.
- 27 In doing so, this would reduce the risk of appeals to decisions made by Police in granting a hardship appeal, as it could be seen that there is a small financial benefit to Police if there are less successful appeals.
- 28 The Ministry of Justice have noted that there is no role for them in funding, or otherwise contributing to, the cost of towage and storage fees where appeals are successful and the vehicle is released, as impoundment is a matter for Police and the only Justice involvement is the option of appealing the impoundment decision to the court.

Instalment plans are not working reliably for vehicle owners and operators

- 29 We have little information about the nature of payment arrangements between operators and registered persons. Anecdotally, it appears that some towage and storage operators are unwilling to enter into payment arrangements for 28-day impoundments. Reasons include defaults and delayed repayments which have exacerbated their financial stress.
- 30 There is an ongoing concern with the current ability to enter into payment arrangements (provided through the LTA, with late payment penalties enabled through the *Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999*) has been ineffective in providing for flexible payment arrangements.
- 31 As noted in the Motor Trade Association's submission to the Justice Committee, there are instances where someone has defaulted on the payment arrangement, but then through the Courts this has been reinstated with very small minimum payments (sometimes as little as \$5 per week). This ongoing cycle is then repeated and vehicles may be on storage lots for several years until payments have been made in full.
- 32 We also do not know if the payment arrangements are fair and reasonable for the registered person. Given the demographic of persons involved in fleeing driver events, their relatively weak bargaining power combined with the significant impoundment costs involved could result in the proposed approach functioning like forfeiture.

- 33 Removing Waka Kotahi from the process reduces government oversight of towage and storage providers who, through the Bill, will become responsible for entering into financial arrangements for large sums of money or encouraging registered owners to abandon their vehicles. The potential for inequitable approaches across the country or potentially corrupt behaviour could lead to reputational risk for Police.

New Zealand Police and Justice have also raised operational and reputational risks

- 34 As previously advised (OC230138 refers), six-month impoundments will put significant strain on an already stressed towage and storage industry. There is a known risk that given the financial pressure some operators are facing, that it is unlikely that Police-ordered impoundments will be picked up.
- 35 Police and Justice have raised concerns in relation to the practicalities of how this can be implemented, given the late stage of the Road Safety Bill.

Police may not impound vehicles at all if operators are unwilling to collect vehicles

36 s 9(2)(g)(i)

37



- 38 Police advise that if operators refuse to impound these vehicles, the following issues are likely to arise:

38.1 Exacerbating the current unwillingness for all Police impoundments. This would also impact the new 28-day impoundments recently introduced by the *Criminal Activity Intervention 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, e.g., insurance work rather than Police.

38.2 If operators are unwilling to impound these vehicles, this will effectively mean Police is unable to impound vehicles for failing to stop offences. The ability to impound vehicles for 28 days for failing to stop is to be repealed by the Road Safety Bill.

39 Police are likely to be left in the position of having seized vehicles at the side of the road that they cannot get towed or impounded. Police is responsible for the vehicles until they are collected. This could result in vehicles being damaged or stolen if they cannot be removed and Police may be financially liable. If a vehicle was stolen and used for another offence, e.g., a ram raid, there would be reputational risk for Police.

39.1 If it is too difficult to organise towage and storage, Police may be reluctant to use impoundment as an enforcement tool. Noting that impoundment for failing to stop is discretionary.

39.2 It has already been acknowledged that six-month impoundments will disproportionately affect lower socio-economic groups. Police could face further reputational risk if it appears that only lower socio-economic groups are having to abandon their vehicles.

39.3 The changes will have resourcing implications for Police, in particular enforcement officers trying to organise towage and storage, the increased number of Police appeals, and the increased demand on Police Prosecution time for District Court appeals.

Increased appeals can be expected to create additional pressure on the court system

40 The Ministry of Justice note that given the short period in which relevant persons are able to indicate their intent, it is likely that this will have significant impacts on the Court system in terms of capacity for appeal processes.

41 Justice were already expecting to see increased appeals (to Police and then the District Court) due to the significant increase in the impoundment period and the new hardship appeal grounds.

42 Justice agree with Police that under this change, it is likely there would be a further increase in appeals to Police and the Court on hardship grounds. 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 fees for operators would continue to build up over this period.

Crown Law have provided initial advice on the proposal

43

s 9(2)(h)



44

s 9(2)(h)

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47

48

s 9(2)(h)

48.2

48.3

48.4

48.5

s 9(2)(h)

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Implementing any potential mitigations

50 Given the extremely short period of time remaining to amend the Road Safety Bill, we consider that some elements of the system can be improved through operational approaches. For example:

50.1 ensuring that Police do not approve the release of a vehicle until any avenues for early release are closed

50.2 ensuring Police Officers are trained effectively to provide clear advice to offenders about their option and rights.

51 Other concerns, like the need to cover the costs of vehicles removed under hardship grounds, and the interactions between operators and offenders, could be supported by retaining the role of Waka Kotahi in the system. However, this would come with some costs – an estimated \$1-1.5m administration costs and \$0.5m hardship costs.

Next steps

52 Should you wish to progress with the proposal and remove Waka Kotahi involvement in the six-month impoundment regime, you will need to rescind the Ministerial Direction issued on 6 June 2023.

53 We will also draft a letter to the Chair of the Waka Kotahi Board informing him of your decision to rescind the Direction.

54 Waka Kotahi had planned to publicise its role in providing financial assurance for six-month impoundments to facilitate successful implementation of the regime. As the enforcement authority, Police need to take over. However, Police have signalled that this currently is not a planned activity and this could hinder the proposed 13 October date that the Road Safety Bill comes into force.

55 Decisions will need to be made by 10am Wednesday 16 August 2023 in order to allow sufficient time for a SOP to be drafted prior to the Road Safety Bill progressing through the final House stages the week of 21 August 2023.



21 August 2023

OC230686

Hon Damien O'Connor

Action required by:

Associate Minister of Transport

Monday, 21 August 2023

SUPPORTING MATERIAL FOR THE COMMITTEE OF THE WHOLE HOUSE AND THIRD READING OF THE LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL 2023

Purpose

To provide you with the relevant information and documents to support the progression of the Land Transport (Road Safety) Amendment Bill 2023 (the Road Safety Bill) through the remaining Parliamentary stages (Committee of the whole House and third reading).

To inform you about the proposed Supplementary Order Paper (SOP) needed to ensure the Road Safety Bill achieves its intended outcomes.

Key points

- The Land Transport (Road Safety) Amendment Bill (Road Safety Bill) is an omnibus bill that provides enforcement agencies with effective tools and powers to maintain and ensure road safety by enabling enforcement activities to be carried out in a timely manner.
- The Road Safety Bill began its second reading on 2 August 2023. This was interrupted after the seventh speech. The Bill is expected to progress through final House stages the week of 21 August, before the House rises.
- We have attached the relevant materials to support your attendance at Committee of the whole House and third reading. Officials have meetings scheduled with you on 22 and 23 August 2023 to prepare for Committee of the whole House.
- The Road Safety Bill requires a Supplementary Order Paper (SOP) to ensure the Bill progresses as intended. The SOP includes several minor amendments to the Bill, as reported back by the Justice Committee on 20 July [OC230627 refers]. These changes will assure technical accuracy, as time constraints meant we were unable to fully complete quality control checks of the version of the Bill reported back to the House.
- The SOP also includes more substantial change to the six-month impoundment regime. You are seeking Cabinet approval on Monday 21 August 2023 to remove financial assurance for six-month impoundment and enable vehicles to be deemed abandoned after 38 days [OC230730 refers]. Providing Cabinet approves, the SOP will be tabled at Committee of the whole House.

- The following appendices are attached:
 - **Appendix one** – Table listing all the documents that will be included in the Committee of the whole House folder
 - **Appendix two** – Committee of the whole House speaking notes
 - **Appendix three** – FAQs/ talking points for Committee of the whole House
 - **Appendix four** – Third Reading speech
 - **Appendix five** – Third Reading legislative statement

Recommendations

We recommend you:

- | | | |
|---|--|----------|
| 1 | agree to put forward the SOP for consideration at Committee of the whole House stage. | Yes / No |
| 2 | agree to table the legislative statement to support third reading (scheduled for the last sitting block in August, prior to the House rising.). | Yes / No |
| 3 | review the documents provided to support the final Parliamentary stages. | Yes / No |



Megan Moffet
Manager, Regulatory Policy
 21 / 08 / 2023

Hon Damien O'Connor
Associate Minister of Transport
 / /

- Minister's office to complete:**
- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Seen by Minister | <input type="checkbox"/> Not seen by Minister |
| <input type="checkbox"/> Overtaken by events | |

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive, Systems & Regulatory Design | s 9(2)(a) | ✓ |
| Megan Moffet, Manager, Regulatory Policy | | |

PROGRESSING THE LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL THROUGH THE REMAINING PARLIAMENTARY PROCESS

The Road Safety Bill is expected to progress through its final stages prior to the Election

- 1 The Road Safety Bill began its second reading on 2 August 2023. This was interrupted after the seventh speech. The Bill is expected to progress through final House stages the week of 21 August, before the House rises.
- 2 The Road Safety Bill will amend the Land Transport Act 1998 (LTA) and the Sentencing Act 2002. Consequential amendments will be made to the Privacy Act 2020 and relevant Land Transport Rules and Regulations.
- 3 The Road Safety Bill introduces new legislative tools in response to unsafe behaviour exhibited by fleeing drivers. These tools will allow Police to respond to and deter fleeing drivers. Together with a revised Police pursuit policy, these changes aim to both reduce failure to stop events and to increase the number of fleeing drivers being identified and held to account.
- 4 To address further unsafe behaviour, and ensure speed of enforcement, the Bill will enable enforcement agencies to make use of emerging technologies, including point-to-point average speed cameras.

This briefing provides you with documents to support your attendance at Parliament during the final stages

- 5 A range of views were shared by opposition parties during the first part of the Land Transport (Road Safety) Bill's (Road Safety Bill) second reading. These views have informed preparation of supporting documentation for Committee stage.
- 6 We have also amended these documents in response to the last-minute policy decision to be introduced through the Supplementary Order Paper (discussed below), which will enable the removal of the financial assurance regime from the Road Safety Bill.
- 7 Committee of the whole House and third reading are scheduled for the last sitting block in August, prior to the House rising.
- 8 To support you in this, officials will meet with you on Tuesday 22 August and Wednesday 23 August (if needed).
- 9 You will find a table listing the documents we have included for the Committee of the whole House and third reading folder attached as **appendix one**.

A Supplementary Order Paper (SOP) is required to progress the Bill through its final stages.

- 10 Time constraints meant we were unable to fully complete our quality control checks on the version of the Road Safety Bill reported back to the House on 20 July 2023.

- 11 An SOP is needed to introduce minor technical changes at Committee of the whole House stage. These changes include:
- renaming a section to refer to *failure to stop offence* as opposed to fleeing driver offence
 - clarifying under what section a vehicle can be impounded for 28-days for failure to give information about a failure to stop offence
 - clarifying that a vehicle used for transport services (e.g. a taxi) that is seized and impounded, must be stored where the enforcement officer directs
 - amending an infringement notice to clarify that it is the registered persons details that are being collected
 - clarifying the expanded offences that apply to the Land Transport (Storage and Towing Fees for Impounded Vehicles) Regulations 1999.

A more substantial change to the six-month impoundment regime is also included in the SOP

- 12 The previous Associate Minister of Transport agreed in March to the Crown providing financial assurance for towage and storage operators to support implementation of the regime [OC230138 refers]. This provision was designed to address the risk that with anticipated high rates of vehicle abandonment, operators will refuse to undertake six-month impoundments.
- 13 Advice has been provided to your Office on the various funding sources that have been considered, and not progressed [OC230704 refers]. Following receipt of final advice, your Office has indicated that given the funding options considered are not viable, that you wish to progress removing financial assurance for six-month impoundment and progress an option to:
- remove Waka Kotahi involvement from the six-month impoundment regime, and
 - enable vehicles to be considered 'abandoned' and transferred to the towage and storage operator after 38 days if the registered owner or hirer has not:
 - paid for the six-month impoundment in full; or
 - entered into a payment arrangement with the towage and storage operator.
- 14 You are seeking Cabinet approval for this policy change on Monday 21 August 2023 [OC230730 refers]. Providing Cabinet approves, the SOP will amend the Road Safety Bill to require that 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.
- 15 They could either pay the regulated towage and storage fees for six-months (at least \$2,250) 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 \$253 Waka Kotahi rebate.

- 16 The regime in the Bill at present allows for the registered person to 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). This would continue.

**APPENDIX ONE: COMMITTEE OF THE WHOLE HOUSE FOLDER:
DOCUMENT LIST**

Land Transport (Road Safety) Amendment Bill

Committee of the whole House Folder: document list

| <u>Document</u> | <u>Tab</u> |
|--|-------------------|
| Key documents | |
| Opening remarks for Committee of the whole House | 1 |
| Q&As for Committee of the whole House | 2 |
| Supplementary Order Paper (SOP) | 4 |
| Third Reading Documents | 5 |
| Departmental Disclosure Statement | 6 |
| Clause-by-clause analysis of the Bill | 7 |
| Bill as Reported Back | 8 |
| Select Committee documents | |
| Report of the Justice Committee on the Land Transport (Road Safety) Amendment Bill | 9 |
| Departmental Report | 11 |
| Legislative Scrutiny Memo | 12 |
| Departmental Initial Briefing | 13 |
| First and Second Reading documents | |
| Second Reading documents | 14 |
| First Reading documents | 15 |
| Background documents | |
| Regulatory Impact Statement - Legislative proposals to identify and hold fleeing drivers to account | 16 |
| Cabinet paper (policy approval) – Responding to fleeing drivers, gang convoys and excessive noise | 17 |
| Cabinet paper (introduction approval) – Approval to Introduce – Land Transport (Road Safety) Amendment Bill | 18 |
| Cabinet paper (Supplementary Order Paper) –Land Transport (Road Safety) Amendment Bill – Policy change to remove financial assurance | 19 |

Land Transport (Road Safety) Amendment Bill

Committee of the whole House – Part one speaking notes

I am very pleased to speak in the debate on Part one in the Committee stage of the Land Transport (Road Safety) Amendment Bill.

The Government made road safety a priority with the 2020-2030 Road to Zero strategy. Our Road to Zero vision is for a New Zealand where no one is killed or seriously injured in road crashes. We set a bold target through this strategy of a 40 per cent reduction in deaths and serious injuries by 2030. I am confident this is achievable however we do need legislative change to support Waka Kotahi and Police in their work to make our roads a safe place to commute on and live by.

There is no silver bullet for improving road safety, which is why this Bill is designed to reduce risks to our road transport network in several ways. Key amongst which are a series of legislative tools to tackle fleeing drivers, along with enabling the use of point-to-point average speed cameras for use on high-risk roads.

Before I move on to a brief overview of Part 1 for the Committee, a mention of the commencement date. You'll see that clause 2 has been amended so that the Bill will come into force 6 weeks after it receives Royal assent.

Extending the commencement date was necessary to allow sufficient time for the changes introduced by the Bill to be implemented by Police and Waka Kotahi. We also want to ensure changes can be effectively communicated to the public to maximise their deterrent effect.

Part one is the most substantial within this Bill and amends the Land Transport Act 1998 (the LTA).

I draw your attention to clauses 7 and 10 which create three new legislative tools to assist Police in responding to unsafe behaviours exhibited by fleeing drivers.

- Firstly, the period for which an enforcement officer may seize and impound a vehicle, if the driver has failed to stop or remain stopped when required, is increased from 28 days to six months.
- Secondly, Police are enabled to seize and impound a vehicle for 28 days if a driver, registered person or hirer of the vehicle fails to give information about a fleeing driver offence, and impounding the vehicle is necessary to prevent a threat to road safety, and
- Thirdly, the Bill increases the licence disqualification period after a second conviction for a failing-to-stop offence, from one year to between one to two years.

These new tools won't be applied in a rigid way. Enforcement officers and the Courts will use their discretion when deciding when to use them. Clause 10 also includes several other safeguards to ensure a balanced and proportional response to fleeing driver offences.

We are providing financial assurance for towage and storage operators through an abandonment provision introduced by the Supplementary Order Paper.

Towage and storage operators have told us that there has been an increase in the number of vehicles abandoned under the current 28-day impoundment regime, with abandonment rates now averaging around 50 per cent. We expect abandonment rates could be higher for six-month impoundment. Abandonment is particularly likely in cases where the overall cost of reclaiming a vehicle is greater than the vehicle's value.

We do not want the costs of the new impoundment regime to land with towage and storage providers, nor with taxpayers through funding of Waka Kotahi.

The Bill, as it was considered by Select Committee, made Waka Kotahi responsible for providing financial assurance for the six-month impoundment regime. Changes made through a Supplementary Order Paper mean this responsibility will no longer sit with Waka Kotahi. We have introduced an abandonment provision within Clause 13 which enables vehicles to be considered abandoned if, within 38 days of seizure and impoundment, the owner or registered person has not

- paid the fees in full to the towage and storage operator or
- set up an agreed payment arrangement with the operator.

If neither of these conditions are met, the vehicle will be deemed abandoned and can be sold by the operator to recoup costs and free up impoundment lot space.

This new abandonment clause provides assurance for both towage and storage operators and taxpayers by removing the risk, and associated costs, of having a vehicle impounded for six months before its inevitable abandonment.

The Supplementary Order Paper also clarifies the requirement for Police to provide the registered person whose vehicle is impounded for six months with a clear notice of the consequences as part of the impoundment notice, including the 38-day abandonment provision, as well as information about their right to appeal the impoundment to Police and how to do so.

Further, if the vehicle is released to the registered person because the Police decide not to prosecute or an appeal to the Police or District Court is successful, any fees paid to the storage provider are to be returned to the registered person; and

Part one of the Bill also allows enforcement agencies to make use of emerging technologies by:

- Enabling notices to be served electronically
- Enabling point-to-point safety camera systems for enforcement of speeding offences, and
- Providing for some types of infringement notices to be issued automatically.

These provisions are crucial to allow enforcement officers to effectively target other unsafe behaviours on our roads, and ensure speed of enforcement, Clause 26 gives Waka Kotahi, as the enforcement officer, the discretion to serve notices electronically or through traditional means of service. To help achieve this, the Bill updates the existing requirement for people to provide personal information in specified circumstances, to include electronic addresses if they have one.

Clause 28 enables the use of point-to-point safety cameras for detecting speeding offences, and for that information to be used as evidence in proceedings should charges be laid. It's been proven overseas that point-to-point speed cameras can save lives. The evidence shows that drivers reduce their speed for longer than they would if they were on a road with either a fixed camera or no camera.

The Justice Committee recommended a change to clause 28, to require that point-to-point speed cameras are well signposted. The road controlling authority will be required to install and maintain signage telling motorists that they're on a road with a point-to-point camera system. But, if one of those signs was obscured, defaced, damaged, or removed by any person, it wouldn't affect the validity of proceedings for average speed offences.

The other clause which the Justice Committee were not unanimous on was 31A, which clarifies that the Agency (Waka Kotahi in this instance) is an enforcement officer when the infringement is verified by an automated infringement system. I'm satisfied that the Bill requires robust quality assurance of the automated infringement system. The system will have to be approved by the Minister of Transport, who will have oversight of its running and

auditing. The Minister is also required to be satisfied that the enforcement agency will undertake an annual assurance process that considers both the capability and processes of the system, including how it protects privacy. Referring to clause 27, while it would be up to the Minister to approve a system for use, it would be the responsibility of the enforcement agency to ensure that the system was working in the manner set out in clause 26 and had passed the required quality checks.

I would like to again thank those who submitted on this Bill along with the Justice Committee for their thorough consideration. I note that the Justice Committee recommended all amendments unanimously except for those in clauses 28 and 31A, which were recommended by majority. I expect, and welcome, further questions on these, along with any other clauses.

As I said, Part one of this Bill is substantial. Many of the changes made since its introduction have been minor or technical. I've highlighted some of the key amendments introduced by Part one and I'm very happy to now take questions from the Committee.

Committee of the whole House – Part two speaking notes

Part two of the Bill amends the Sentencing Act 2002, the Summary Proceedings Act 1957, and the Privacy Act 2020.

Subpart one, clauses 37 through 40, amends the Sentencing Act. The most notable amendment is the introduction of vehicle forfeiture as a sentencing option upon conviction for a fleeing driver offence.

The current discretionary sentencing option within the Sentencing Act to confiscate a vehicle upon conviction for failing to stop is amended by clause 40 and replaced with a discretionary option for the Court to order forfeiture.

Clause 40 provides that, for a second fleeing offence under the Sentencing Act, the Court must either hand down the existing mandatory confiscation sentence, or it can choose to apply discretionary forfeiture if the Court believes this is necessary to prevent a threat to road safety.

Confiscation is currently used sparingly by the Courts (six cases in total during 2018-2021), and we expect forfeiture orders will be relatively rare as well. However, confiscation complements the measures introduced in Part one designed to deter and reduce opportunities to flee from Police and will be an important tool for the Court in the right cases.

The Summary Proceedings Act is amended by subpart two, clauses 42 through 45G.

These changes are consequential, including an amendment to the definition of informant to cover automated infringement notice systems.

Subpart three, clauses 45H and 45I introduce another consequential amendment. The resulting change here is an amendment to schedule 4 of the Privacy Act to ensure that current enforcement information-sharing systems are maintained when the safety camera network is moved from NZ Police to Waka Kotahi.

I now invite questions on Part two.

Committee of the whole House – Part three speaking notes

Part three of the Bill amends secondary legislation to ensure alignment with an updated Land Transport Act 2023. This includes:

- the Land Transport (Offences and Penalties) Regulations 1999
- the Land Transport (Requirements for Storage and Towage of Impounded Vehicles) Regulations 1999
- the Land Transport (Infringement and Reminder Notices) Regulations 2012, and
- the Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999.

I welcome any questions on Part three.

DRAFT

**Land Transport (Road Safety) Amendment Bill
Committee of the Whole House
Talking Points**

Contents

General questions in relation to fleeing driver events/road safety 3

Fleeing drivers are primarily young males, a group which has difficulty weighing consequences during period of stress. How will the Bill deter this group from fleeing? 3

What is the purpose of Police’s revised fleeing driver policy? 3

Why can’t the fleeing driver issue be solved through the Police pursuit policy alone?..... 3

Drivers under the influence of alcohol or drugs is a leading contributor to fatal and injury-causing crashes. What is Police doing to address this? 3

Why wasn’t oral fluid testing rolled out on 11 March 2023? 4

Why did it take so long to get to this point? 4

Will these new enforcement tools assist with ram raids? 4

Six-month impoundment regime 5

How will a six-month impoundment period make the roads safer? 5

Definition of conversion – what is the difference between this and stolen? 5

How do Police apply these two definitions? 6

How would Police apply the new hardship and extreme hardship appeal grounds? 6

Does enabling hardship appeals undermine the Government’s ‘tough on crime’ stance? 6

How will six-month impoundment work in practice? 7

How will payment arrangements be structured? 7

How will you ensure that the vehicle can be ‘abandoned’ after 38-days? 7

Will the 38-day period be sufficient time to hear appeals or for Police to make charging decisions? 7

Who pays towage and storage providers if a vehicle is released from impoundment because no charges are laid by Police or there is a successful appeal? 8

What is the rationale for removing the requirement for Waka Kotahi to pay operators for six-month impoundments? 8

Towing industry has told the Select Committee they are already losing money on 28-day Police impounds. Why would they take on six-month impoundments without Waka Kotahi involvement? 8

What will happen when there are no operators to pick up impounded vehicles? 8

How does a finance company become the registered owner of an impounded vehicle? 8

What is the purpose of impounding a vehicle not owned or registered to the fleeing driver? 9

Registered person vs. owner 10

What’s the difference between registered person and owner? 10

| | |
|--|-----------|
| Will people be deprived access to certain parts of the regime? Have we amended fundamental property rights? | 10 |
| Sentencing Act changes – forfeiture and licence disqualification..... | 11 |
| Forfeiture - how will this be applied for second and third offences? | 11 |
| Can a vehicle be forfeited when it is not owned by the fleeing driver? | 11 |
| Will hardship be considered when ordering a vehicle be forfeited?..... | 11 |
| Why bar an offender from purchasing a new vehicle for 12 months after their vehicle has been forfeited? | 11 |
| How is increasing the disqualification period for second offences different to the failed three strikes regime – could a minor second failure to stop offence result in a disproportionate two-year disqualification?..... | 11 |
| Failure to provide information | 13 |
| What is the purpose of a 28-day impoundment for failing to provide Police with information on a fleeing driver?..... | 13 |
| What if the registered owner does not know who was driving their vehicle?..... | 13 |
| Automated infringements | 15 |
| How will the system be approved? | 15 |
| How the system works/what is different to the manual regime?..... | 15 |
| How can we be assured to the accuracy both now and ongoing?..... | 15 |
| Average speed point-to-point cameras..... | 16 |
| How will this work in practice? | 16 |
| Will offences and penalties remain the same? | 16 |
| Will there still be a tolerance like there is for fixed cameras? | 16 |
| Why are we only legislating point-to-point camera signs and not fixed camera signs?..... | 16 |
| What roads will point-to-point cameras be installed on? | 16 |
| If a driver stops for a break within a point-to-point camera corridor, how will the system detect a speeding offence? | 16 |
| Are point-to-point cameras a revenue gathering scheme?..... | 17 |
| Why is the Government focusing on addressing speeding when speed is listed as the leading factor is less than 10 per cent of accidents?..... | 17 |
| Electronic service of regulatory notices | 18 |
| How will this work? | 18 |
| Where will you get email addresses from? | 18 |
| What happens if I still want a physical notice?..... | 18 |
| What happens if I don't check my emails and don't see the notice? | 18 |
| How will Waka Kotahi safeguard against scams? | 18 |
| How will my information be protected? | 18 |
| Privacy Act changes | 19 |

| | |
|--|----|
| What information will Police have access to? | 19 |
| Can Police access data for wider law enforcement purposes? | 19 |

General questions in relation to fleeing driver events/road safety

Why are we pushing through camera/technology related proposals?

- These proposals were included within this Bill to support the transfer of the camera network from NZ Police to Waka Kotahi. The Bill was seen as an appropriate vehicle to ensure that these legislative changes could be made in order to support the expansion of the camera network and to provide a more resilient, effective regulatory regime.

Fleeing drivers are primarily young males, a group which has difficulty weighing consequences during period of stress. How will the Bill deter this group from fleeing?

- The Bill increases penalties for failing to stop and provides Police with additional tools to ensure rapid enforcement to help keep our roads safe.
- While six-month impoundment may have a deterrent effect, it is not intended to be purely punitive. Impoundment improves road safety by immediately removing vehicles reducing the opportunity for re-offending.

What is the purpose of Police's revised fleeing driver policy?

- The revised policy introduces a framework for enforcement officers to use in assessing the risk and making decisions around the appropriate response when a fleeing driver event occurs.
- It provides clarity for officers on when a pursuit may be justified, including the weight given to the threat of further harm if the offender is not apprehended. An enforcement officer's response to drivers who choose to flee must be based on the level of risk they pose while achieving the safest possible outcome.
- Police expects that this policy will see the balance shift towards law enforcement, while still prioritising the safety of the public and staff.

Why can't the fleeing driver issue be solved through the Police pursuit policy alone?

- Police' revised operational pursuit policy provides enforcement officers with more clarity on when a pursuit may be justified.
- Police expects that this policy will see the balance shift towards law enforcement. However, officers will still not pursue drivers when it is deemed unsafe to do so.
- This means that legislative tools that enable Police to identify drivers after the event are particularly crucial so that offenders are held to account.

Drivers under the influence of alcohol or drugs is a leading contributor to fatal and injury-causing crashes. What is Police doing to address this?

- Police's road safety prevention and enforcement activities are undertaken with the aim of achieving a general deterrence effect. General deterrence is achieved when

drivers are motivated to comply, not because they are caught, but because they believe the chances of being apprehended are high.

- The evidence shows that random breath testing is effective in reducing drink driving and associated crashes. In addition to breath testing drivers during traffic stops, Police operates high intensity, randomised breath testing checkpoints to deter drivers from driving while impaired by alcohol. In the 12 months to 30 June 2023, Police undertook over 2.6 million breath tests across New Zealand.
- For other drugs, the evidence shows that securing a conviction appears to be most effective for preventing re-offending. An officer may require a person to undergo a Compulsory Impairment Test (CIT) if they have good cause to suspect that the person has consumed drugs.
- The CIT is designed to test the driver's ability to concentrate on and carry out two or more tasks at the same time. If the driver fails, they may be forbidden to drive and required to have a blood test. An officer will also request drug analysis for blood taken from drivers involved in fatal and serious injury crashes.

Why wasn't oral fluid testing rolled out on 11 March 2023?

- The aim of the roadside drug testing is to create an efficient method of detecting and detecting drivers who have taken qualifying drugs from the road.
- The legislation includes a set of criteria that must be considered before the Minister of Police can approve an oral fluid testing device for use.
- Following a robust procurement and testing process, NZ Police have been unable to identify a device that meets the criteria and able to recommend to the Minister of Police for approval.

Why did it take so long to get to this point?

- Late in 2022 it was becoming clear that a suitable device for roadside oral fluid testing wasn't able to be procured.
- Officials from the Ministry of Transport and NZ Police worked hard to try and find a resolution to the procurement issue. Ultimately a decision was made that a device was not able to be sourced that met the legislative approval criteria.
- Since then, officials have worked through various options to allow roadside fluid screening. Government has received advice and will make announcements shortly on our approach to implement roadside oral fluid screening.

Will these new enforcement tools assist with ram raids?

- The provisions in the Bill are not specifically aimed at ramraids. However, where there is a failing to stop offence committed following a ramraid the new enforcement tools could apply. Note that stolen or severely damaged vehicles are not impounded.

Six-month impoundment regime

How will a six-month impoundment period make the roads safer?

- The power to impound vehicles for 28 days was introduced in 1999. It has been an effective deterrent for those driving while disqualified or unlicensed and has had positive road safety outcomes. Since it was introduced, there has been a 29 per cent reduction in the proportion of crashes involving disqualified or unlicensed drivers, and a 34 per cent reduction in the number of driving while disqualified offences.
- Drivers who flee police officers often engage in other offences such as speeding and dangerous driving, which pose serious safety risks to other roads users.
- We consider that the extended period of impoundment is proportionate to the significant harm this type of offending causes.

Is allowing Police to impound vehicles for six months an excessive power?

- The ability to impound vehicles for six-months has been drafted with safeguards in place to ensure that there is a balanced and proportional response to fleeing driver offences.
- Impoundment of vehicles will be at Police's discretion (96AAA(1) states that an officer *may* seize) and will be used in the interests of preventing a serious threat to road safety.
- Police officers use discretion daily when dealing with a wide range of matters. Police discretion empowers an individual officer to act according to their own skills, knowledge, and experience in particular circumstances. The use of discretion is central to promoting just outcomes as it allows a Police officer to take into consideration all the circumstances of the offence when deciding what action to take.
- Police officers use an operational assessment tool called TENR (Threat, Exposure, Necessity, Response) to support their decision making, including to decide on an appropriate response. Police have operational guidance, in the form of Police Instructions, on the use of TENR.
- In using six-month impoundment, the officer must believe on reasonable grounds that the vehicle has been used by a driver who has failed to stop. If an officer has reasonable grounds to believe that vehicle is not stolen, severely damaged, a write off, or converted – if any of these circumstances apply, a vehicle cannot be seized and impounded.
- The Bill contains hardship provisions in section 102(1)(gb) which protect both the registered person and others, including family members who may rely on the vehicle. An appeal can be lodged where impoundment could cause either extreme hardship to the registered person, or undue hardship to a person other than the registered person (whether in relation to employment or otherwise). The new hardship appeal provisions are additional to other existing grounds on which individuals may choose to challenge impoundment under section 102A.

Definition of conversion – what is the difference between this and stolen?

- The Crimes Act 1961 defines theft and conversion.

- Vehicle theft is when the vehicle is dishonestly taken to permanently deprive the owner of that vehicle. Vehicle conversion is when the vehicle is dishonestly taken for another person's use.

How do Police apply these two definitions?

- An enforcement officer uses the evidence gathered at the time of the offence or as part of the investigation to determine whether the vehicle was stolen or converted.
- This would include checking the National Intelligence Application (NIA) for information about the vehicle and making enquires with the person the vehicle is registered to.

How would Police apply the new hardship and extreme hardship appeal grounds?

- The Bill will enable the registered person to appeal the impoundment of their vehicle on the grounds of extreme hardship to the registered person or undue hardship to a person other than the registered person.
- The registered person will need to make their appeal on an appeal form provided by Police. The appeal will need to state the grounds of the appeal and provide supporting information.
- The appeal form must also be witnessed by someone entitled to take statutory declarations (e.g., a Justice of the Peace or other person authorised to take a statutory declaration).
- When determining the appeal Police will consider:
 - Whether there is sufficient evidence that impoundment would result in extreme hardship, for example the registered person losing their job, business, or livelihood. This could be where the registered person is required to drive to work and there are no alternative transport options.
 - For undue hardship to family members this could arise from where the registered person is the sole designated caregiver and would otherwise not have access to a vehicle to care for dependent or disabled family members.
 - Whether releasing the vehicle would have an impact on road safety. This could be if Police has reason to believe that the vehicle may again be involved in behaviour that would cause road safety concerns. For example, another failing to stop offence.

Does enabling hardship appeals undermine the Government's 'tough on crime' stance?

- The new appeal grounds will be a difficult test to meet. The new appeal grounds of extreme hardship (to the offender) and undue hardship (to any other person) are both high thresholds, with extreme hardship being a very high standard to meet. The person will be expected to show evidence about their circumstances to satisfy the hardship ground. It provides an appropriate safeguard to for cases where the forfeiture of the vehicle would have a very disproportionate impact on the offender or another person.

- For this appeal ground, the Bill also requires that the release of the vehicle is not contrary to the interests of road safety. This provides further protections for public safety and makes the test even stricter.

How will six-month impoundment work in practice?

- A registered person will have 38 days from the time of impoundment to either:
 - pay in full for the regulated fees (of at least \$2250) to the operator; or
 - enter into a payment arrangement with the operator

How much will impoundment cost?

- A majority of vehicles will be considered 'light' (3,500kg or less) which means that the average impoundment rate will be \$2,250. However, this will increase if:
 - the vehicle is towed during the weekend or between 6pm-7am (fee increases from \$53.67 to \$71.56), or
 - the vehicle is more than 10 kilometres from the storage lot (\$3.07 per kilometre)
- 'Heavy' vehicles that weight over 3,500kg (likely to be utes with a number of accessories and trucks) will have an average impoundment rate of \$5,255.87. However, this will increase if:
 - the vehicle is towed during the weekend or between 6pm-7am (fee increases from \$132.89 to \$204.44), or
 - the vehicle is more than 10 kilometres from the storage lot (\$3.07 per kilometre)

How will payment arrangements be structured?

- This will be a decision for the operator to make in relation to the length of the arrangement and whether they are willing to accept arrangements at all. The Bill stays silent on this, and only continues the existing ability for operators to enter into payment arrangements.

How will you ensure that the vehicle can be 'abandoned' after 38-days?

- The Bill will require Police to confirm that a vehicle is able to be released to the storage provider, through either confirming that all appeals have concluded or that there has been a decision to charge the offender. If neither has occurred, the vehicle would not yet be eligible to be signed over to the provider.

Will the 38-day period be sufficient time to hear appeals or for Police to make charging decisions?

- In relation to appeals - Under section 02 this is 14 days, but there is also the option of appealing to the District Court outside that time frame under section 110, if police agree that exceptional circumstances prevented the person from filing their appeal to police within the 14 days. Section 111 sets a general time period for any appeal to the District Court under the Act of 28 days from the date of the decision.
- Charging – Police best practice is to make charging decisions as soon as possible and I understand that this is generally the case as in these events this type of impoundment is likely to occur if a vehicle has been caught at the end of an event (or soon after) at which stage it is very clear that the vehicle was used in an event.

- There may be some cases where 38 days is not sufficient to consider an appeal or make a charging decision. In these cases, Police will not approve the disposal of the vehicle in question until the situation is resolved.

Who pays towage and storage providers if a vehicle is released from impoundment because no charges are laid by Police or there is a successful appeal?

- Police will only cover costs if insufficient belief has been able to be established, or if correct procedures relating to impoundment notices has not be followed. In other circumstances, the operators will need to write off these costs.

What is the rationale for removing the requirement for Waka Kotahi to pay operators for six-month impoundments?

- Crown funding through Waka Kotahi was intended to assist with the successful implementation of six-month impoundments by giving financial certainty to operators.
- The absence of viable funding sources coupled with the wider issues facing the towage and storage industry mean that a broader review of the towage and storage system would better ensure its successful implementation in the long-term.

Towing industry has told the Select Committee they are already losing money on 28-day Police impounds. Why would they take on six-month impoundments without Waka Kotahi involvement?

- Although they will not be paid upfront, operators will likely not be worse off than the situation with 28-day impounds.
- They will either be paid (or enter into a payment arrangement with the registered person to pay) the full amount of the six-month impoundment within 38 days (which includes costs to store the vehicle until the end of the impoundment period) or if are not paid, they can apply to Police to either transfer the vehicle to their ownership and scrap it, or dispose of the vehicle and claim the \$253 rebate from Waka Kotahi. This will ensure that there is an early, clear decision made by the registered person and enables vehicles to be removed as soon as possible from storage lots.

What will happen if there are no operators to pick up impounded vehicles?

- Police hold contracts for towage and storage operators across the country. It will be part of their ongoing monitoring to consider where there may be gaps in the ability to impound these vehicles.
- The Ministry will be progressing a review into the Towage and Storage system which will consider wider system concerns such as the regulated fee and availability of service.

How does a finance company become the registered owner of an impounded vehicle?

- If the debtor defaults on payments while the vehicle is impounded, breaching their contract with the finance company, the vehicle can be repossessed through either the Credit Contracts and Consumer Finance Act 2003 or the Personal Property Securities Act 1990. It is explicit in the Bill that the creditor is not to be liable for any fees upon taking over ownership of the vehicle.

What is the purpose of impounding a vehicle not owned or registered to the fleeing driver?

- The purpose is to improve road safety. This is obviously a vehicle which a fleeing driver has access to. Police officers will use their discretion to remove that vehicle from the road if they believe not doing so would be a serious threat to road safety.
- If the driver has stolen the vehicle it will not be impounded for six months. There are many provisions for the owner or registered person to appeal for the vehicles release including for hardship caused by its impoundment.

Registered person vs. owner

What's the difference between registered person and owner?

- Both terms are defined in the Land Transport Act 1998.
- An **owner** (of a motor vehicle) is someone who is legally entitled to possession of the vehicle. There is however no database where one can look up the owner of a motor vehicle.
- A **registered person** is someone who is entitled to possession of the vehicle. That person's name for a motor vehicle is recorded in the motor vehicle register (MVR) which Waka Kotahi is required to maintain.
- A registered person is also responsible for making sure their vehicle is licensed at all times while using the road, for the vehicle including keeping it in safe condition, and paying the licensing fees and any traffic or parking infringements.
- Sellers and buyers are required to notify Waka Kotahi when a motor vehicle is they sell or buy a vehicle. When someone buys a vehicle and notifies Waka Kotahi, they will be recorded as the registered person for that vehicle in the MVR. The buyer is therefore often also the owner of the vehicle.
- While an application for registration is required to be made by or on behalf of the owner, the MVR is not a register of legal ownership.

Will people be deprived access to certain parts of the regime? Have we amended fundamental property rights?

- No. The MVR is not a register of legal ownership. A motor vehicle's legal owner can still assert their rights through the courts.
- An example of how people are not deprived of appropriate access to the regime is around preservation of appeal rights. A legal owner whose unregistered vehicle is impounded can still appeal to Police against the impoundment (clause 17).

Sentencing Act changes – forfeiture and licence disqualification

Forfeiture - how will this be applied for second and third offences?

- The Bill will create a new sentencing option for the courts to order that a vehicle be forfeited on conviction for failing to stop or to remain stopped.
- For second or third offences, the Court will have the option of either ordering forfeiture or using the existing confiscation power. The difference between the two is that where a vehicle is confiscated, the proceeds from the sale of the vehicle are returned to the previous owner. Whereas when a vehicle is forfeited, the proceeds from the sale are kept by the Crown.

Can a vehicle be forfeited when it is not owned by the fleeing driver?

- The Court must be satisfied that, at the time of the conviction, the offender [or a substitute for the offender] owns or has an interest in the motor vehicle that was used in the fleeing offence.
- A 'substitute for an offender' applies when a notice has been served under section 129B to a registered person for a vehicle which is consistently used in offending by others. In enabling this, this sends a strong signal that registered persons need to actively consider who has access to the vehicle and how they will be using it.

Will hardship be considered when ordering a vehicle be forfeited?

- Yes. The Bill sets out the factors which the Court must have regard to when considering discretionary vehicle forfeiture including undue hardship both to the registered person and other people who would have the use or benefit of the motor vehicle on a regular basis. This could be in relation to their employment or any other considerations that the Court thinks fit.

Why bar an offender from purchasing a new vehicle for 12 months after their vehicle has been forfeited?

- The Sentencing Act currently states that if a Court has ordered confiscation of an offender's vehicle, that person cannot acquire any interest in a different motor vehicle within 12 months of the order.
- The Bill ensures that if a vehicle is forfeited, the same restrictions on acquiring a new vehicle apply. It would undermine the strength of both the existing confiscation powers and the new forfeiture powers if the offender was permitted to purchase a new vehicle after they have been convicted and the Court has determined that their vehicle should be removed in the interest of road safety.

How is increasing the disqualification period for second offences different to the failed three strikes regime – could a minor second failure to stop offence result in a disproportionate two-year disqualification?

- The increase in the penalty reflects the serious concerns about fleeing driver events and the risks these incidents pose. The proposal will introduce a range, starting from the current period of one year, rather than a new higher set period.
- Providing a range gives the Court the flexibility to impose the appropriate penalty, taking all the circumstances into account. The circumstances may include factors

such as the seriousness of the offence, the length of time since the previous offence and the requirement to reapply for a licence where a period of more than a year is imposed.

Failure to provide information

What is the purpose of a 28-day impoundment for failing to provide Police with information on a fleeing driver?

- Between December 2020 and July 2022, Police identified just 34 per cent of all fleeing drivers.
- Police find it difficult to identify and apprehend fleeing drivers when it is determined a pursuit is unsafe or a pursuit is abandoned. In these circumstances, follow-up investigation is needed to identify the vehicle registration plate or driver (e.g., CCTV footage/witnesses). Where the vehicle registration plate is known, Police make inquiries with the registered person as soon as possible.
- Targeted sanctions, such as the ability to impound a vehicle for 28 days when a registered person refuses to provide information, will help identify offenders as part of post-event investigations and may incentivise owners to be more responsible with their vehicles, including to know who has access to their vehicle.

What if the registered owner does not know who was driving their vehicle?

- When deciding whether the registered person does not know, or does not wish to disclose who was driving at the time of the failing to stop offence, the enforcement officer would use standard questions to establish the facts. For example, “who has access to the vehicle?”, “do you know where the vehicle was?”, “where are the keys to the vehicle kept?”
- The information provided by the registered person, together with the manner of the response, would be considered to determine whether the registered person is complying with the request.
- If the enforcement officer considers the registered person does not know who was driving the vehicle, no further action would be taken.

Does this section infringe on a person’s right to silence?

- Whether this section imposed upon a person’s right to silence and the right against self-incrimination was not something that the Crown Law Bill of Rights vetting advice identified. We also note that the Committee received supplementary submission that confirmed that neither the right to silence nor self-incrimination privilege would be engaged by this section from the New Zealand Law Society.
- Section 96AAB provides for an enforcement officer to impound a vehicle for 28 days in two different situations (providing the other criteria in s 96AAB are also met):
 - If the driver of a vehicle involved in a failure to stop offence fails or refuses to provide (or provides false) information, specifically their personal details (e.g., full name and date of birth), and if they are not the registered person for the vehicle, the details of the registered person; and
 - If the registered person of a vehicle involved in a failure to stop offence without reasonable excuse, fails or refuses to provide (or provides false) information, specifically all information in his or her possession or obtainable which may lead to the identification and apprehension of the driver.

- The underlying requirement to provide information in both situations already exists in the LTA (in sections 114(3) and 118(4)), and a failure to provide this information is already an offence (in sections 52A and 52(6)). The proposal in the Bill does not alter the offence or increase the penalty, instead, it separately provides a new power for Police to impound a vehicle for 28 days before conviction, if the officer reasonably believes it is necessary to remove that vehicle to prevent a serious threat to road safety.
- The type of information that is requested under sections 114(3) and 118(4) – being the information request provisions that underpin the offences of failing to give information – is limited to identifying particulars of the driver (name, address etc). The request is made before any charges are laid, and Police are not empowered to compel the person to be a witness or confess guilt in the determination of a charge against that person, section 25(d) of the Bill of Rights Act is not engaged.

Automated infringements

How will the system be approved?

- Clause 26 will introduce new section 139AAB, which will enable the Minister of Transport to approve an automated infringement system, if the system is capable of:
 - Verifying the commission of an infringement offence through the use of one or more electronic images (or sequences of), the registration of the vehicle involved and the registered person of the vehicle (this comes from the register of motor vehicles); and
 - Collecting, holding, using and disclosing personal information in accordance with the Privacy Act 2020.
- The system will also be required to undergo an annual quality assurance process.

How the system works/what is different to the manual regime?

- The system will replace the need to have a person make a determination that an offence has occurred.

How can we be assured to the accuracy both now and ongoing?

- Waka Kotahi, in running an automated infringement system, will be required under section 139AAC to undergo an annual quality assurance process to ensure the ongoing capability of the system in order to carry out the verification of matters relating to offences and that the personal information collected is being used in accordance with the Privacy Act 2020.
- Waka Kotahi will carry out comprehensive testing before operating an automated system and will be carrying out regular audits to ensure accuracy and consistency. A manual verification process will remain in place to process any offences that the automated system is unable to process.

Average speed point-to-point cameras

How will this work in practice?

- Point-to-point speed cameras rely on two images, each with a time stamp, and a formula for calculating speed travelled over the distance between the two points, typically at least two kilometres apart.

Will offences and penalties remain the same?

- Yes, there will be no changes to the current speeding offences and penalties. The only change made through this Bill is to enable average speed offences and to amend the infringement notices to accommodate.

Will there still be a tolerance like there is for fixed cameras?

- Cameras will be operated in line with current NZ Police practice. There is no tolerance for speeding on New Zealand roads.

Why are we only legislating point-to-point camera signs and not fixed camera signs?

- The intent of these cameras is to encourage road users to consider their speeds over a distance. The change to ensure that these cameras are signposted will ensure that road users are well aware of this new technology, this is an appropriate balance between encouraging a reduction in travel speeds, but also to ensure that the public have sufficient time to ensure compliance as they adjust to the presence of this technology on roads.
- This also reflects a Cabinet decision in 2019 to signpost point-to-point cameras in a 'highly visible-no surprise' approach as part of the Tackling Unsafe Speeds programme.

What roads will point-to-point cameras be installed on?

- Waka Kotahi will be identifying locations for these new cameras based on a range of factors including average speeds, the function of the road, the volumes on the road and crash trends. Average speed cameras will be utilised on roads that are identified as being high-risk. There is no intention to install point-to-point cameras on low-speed urban streets.

If a driver stops for a break within a point-to-point camera corridor, how will the system detect a speeding offence?

- Point-to-point speed cameras rely on two images, each with a time stamp, and a formula for calculating speed travelled over the distance between the two points, typically at least two kilometres apart.
- The cameras will be installed on roads which drivers would not usually stop on such as expressways and motorways – they won't be on a stretch of road with a café in the middle.
- If a driver were to stop while going through a point-to-point camera corridor it would obviously reduce their average speed as calculated by the system and they would be less likely to receive an infringement.

- We do not expect drivers will deliberately go to these lengths to avoid a ticket. It is contraindicative that someone speeding to get to their destination faster will stop for a break just to allow themselves to continue speeding through a point-to-point camera corridor.

Are point-to-point cameras a revenue gathering scheme?

- No. Point-to-point cameras have a proven record overseas for reducing road deaths and serious injuries and will result in improved road safety outcomes on New Zealand's roads.
- Revenue from speed infringement fines is paid to the Crown's consolidated fund.

Why is the Government focusing on addressing speeding when speed is listed as the leading factor is less than 10 per cent of accidents?

- The role and impact of speed in serious crashes is often underestimated. Speed is a major determiner of both crash severity and occurrence. The influence of speed on risk of death is dramatic - each one percent increase in speed results in a 3.5 to four per cent increase in deaths¹. Compared with fixed cameras, point-to-point speed cameras are proven to result in drivers reducing their speed for a longer period. When we implement these cameras on high-risk road corridors, they will play a major part in reducing crashes which result in death or serious injuries.

¹ <https://documents1.worldbank.org/curated/en/298381607502750479/pdf/Road-Crash-Trauma-Climate-Change-Pollution-and-the-Total-Costs-of-Speed-Six-graphs-that-tell-the-story.pdf>

Electronic service of regulatory notices

How will this work?

- Waka Kotahi will be enabled to issue regulatory notices, such as demerit suspension notices, to an electronic address (email) as recorded on either the register of motor vehicles (for fixed camera offences) or any other register administered by Waka Kotahi, such as the driver licence register.
- In the act of sending this notice electronically, it will be treated as having been served and in proving that a notice has been sent, this will be sufficient proof that the notice has been addressed and sent.

Where will you get email addresses from?

- Email addresses will be collected through transactions with road users that enable the collection of email addresses e.g. renewal of motor vehicle registration or driver licences. The provision of emails is optional.
- In undertaking these transactions, people will be provided the opportunity to provide their email addresses for the purposes of receiving regulatory notices.
- The Bill will enable Police officers to also require a driver to stop and give their electronic address. This is consistent with the current ability to compel physical addresses.

What happens if I still want a physical notice?

- The Bill will enable the collection of email addresses during transactions and Waka Kotahi will be updating forms to show that the provision of this information is optional. In sending electronic notices, Waka Kotahi will use their discretion as to the appropriateness of sending an electronic notice.

What happens if I don't check my emails and don't see the notice?

- A notice will be considered as having been sent once it leaves Waka Kotahi. Similar to the service of postal notices, the onus is on the public to ensure that they are regularly checking inboxes, both physical and electronic, for any notices.

How will Waka Kotahi safeguard against scams?

- Waka Kotahi has a public facing page that notes current scams on the front page of the website.

How will my information be protected?

- Waka Kotahi will issue notices in password protected PDFs. The implementation of this system is being worked through with the Office of the Privacy Commissioner to ensure compliance with the Privacy Act 2020.

Privacy Act changes

What information will Police have access to?

- The Privacy Act changes are consistent with how the current camera system works. The intent of this change is to better reflect that the camera system will be transferred to Waka Kotahi from Police and there is a need for Police to continue to have access to information for the purposes such as;
 - conducting road policing activities and enforcing the Land Transport Act (including any rules and regulations)
 - preventing or lessening a serious threat to public safety or health where a motor vehicle is likely or is likely to be involved
 - helping to locate vehicles that were involved, or were likely to be involved, in the commission of offences.

Can Police access data for wider law enforcement purposes?

- To assist with law enforcement, Police can access information that Waka Kotahi has collected and retained on a case-by-case basis under the existing provisions in the Privacy Act (for example, s 22 – IPP11).
- Waka Kotahi's lawful purposes allow it to collect and retain camera data only if a driving infringement or offence is detected, or to conduct routine screening for specified transport offences to monitor compliance. Waka Kotahi will only collect or retain non-offence data until they can be screened for an offence, at which point non-offence data will be automatically deleted (although anonymised and aggregate data may be collected and retained for purposes related to the Agency's functions, such as establishing traffic volumes). Deletion of non-offence data is expected to occur within 24 hours of their collection.



House of Representatives: Third reading speech for the Land Transport (Road Safety) Amendment Bill

Third reading speech

Paper Title: Land Transport (Road Safety) Amendment Bill

Portfolio: Transport

Introduction

I present a legislative statement on the Land Transport (Road Safety) Amendment Bill.

[That legislative statement is published under the authority of the House and can be found on the Parliament website.]

I move, that the Land Transport (Road Safety) Amendment Bill be now read a third time.

I am proud to be standing here today for the third reading of this Bill, which is part of an ongoing commitment from this Government to save lives and prevent injuries on Aotearoa New Zealand's roads. This Bill aims to reduce unsafe behaviour by providing new legislative tools to respond to dangerous fleeing driver events, and by addressing other safety matters within the land transport system.

When it comes to road deaths, New Zealand stacks up poorly against comparable countries. Last year, 377 people were tragically killed on our roads – that's 7.3 deaths per 100,000 people. For comparison, Australia's average across all states is 4.6 deaths, while the best performing countries in Europe reported a significantly lower two deaths per 100,000 people.

We are using all tools in the toolbox to drastically reduce this figure.

The Government's 2020-2030 Road to Zero strategy has set an ambitious yet achievable target of reducing annual deaths and serious injuries on our roads by 40 per cent by 2030.

The Road Safety Bill enable point-to-point average speed systems as an enforcement tool for speeding offences.

Setting and maintaining safe speeds across the road network is a key focus of the Road to Zero strategy and the changes introduced by this Bill will be absolutely integral to meeting its life-saving targets.

Point-to-point cameras have been used overseas for many years and have led to dramatic improvements in driver behaviour, with drivers reducing their speed for longer than they do when they're near a fixed camera. As we all know, the chance of dying in a motor vehicle accident is directly related to the speed involved. To quote one of our country's more memorable road safety campaigns – the faster you go, the bigger the mess.

Average speed cameras will play an important part in reducing deaths and serious injuries on high-risk roads. Waka Kotahi will be identifying locations for these new cameras based on a range of factors including average speeds, the function of the road, the volumes on the road and crash trends. There is no intention to install point-to-point cameras on low-speed urban streets.

All point-to-point cameras on the network will be signposted so drivers know that an average speed system is in use. This no surprises approach will give drivers the opportunity to check their speed and slow down if they need to. The focus on a consistent breaking of the speed limit rather than one moment in time means average

speed cameras tend to result in a lower ticketing rate than a fixed camera. As I've said before, the point of speed cameras is to save lives, not gather revenue.

As part of our engagement with Māori in developing this Bill, it was agreed that iwi will be involved in deciding where point-to-point cameras will be placed. Iwi will bring an important cultural perspective to these decisions. In some areas, they may request a site near a marae or kura, where the deterrent effect of a speed camera will keep people, including tamariki, safe. In other cases, there may be cultural significance of proposed sites or locations that needs to be considered.

Māori have considerably higher road death and serious injury rates than non-Māori. Ongoing collaboration with iwi is vital to ensure the Bill achieves its goal of improving road safety outcomes, and so that groups with the worst outcomes see considerable improvements.

The Bill also injects some much-needed modernisation to our transport regulatory system through better use of technology.

The Bill allows for the automated issuing of certain infringement notices, such as those from a point-to-point average speed system, or the revoking of a licence for medical reasons. There will of course be human oversight to ensure the system is accurate and always working as intended.

The Bill also enables electronic service of notices. We are giving New Zealand's registered drivers the option to provide an email address as a means of receiving infringement and certain other notices. Increasingly people's email addresses and phone numbers remain unchanged for longer than physical home addresses. Recent Statistics New Zealand research showed that 40 percent of people renting from private landlords had been at their address for less than a year. This change will help improve

equity by ensuring all people, particularly those with insecure housing, receive notices in a timely manner and don't risk a traffic fine escalating into debt collection simply because of an out of date postal address.

Now on to another unsafe behaviour which is becoming all too common on our streets - drivers fleeing from Police.

A fleeing driver is a driver who has been signalled to stop by Police but fails to stop or to remain stopped until the officer has completed their duties.

We have been working quickly to pass this Bill to accompany a refreshed Police fleeing driver policy, which came into effect in May this year. This policy is designed to ensure that Police can hold offenders to account for their actions while managing fleeing driver events as safely as possible.

Together with Police's fleeing driver policy, the Bill responds to a steady increase in fleeing driver events since 2010 - a figure which reached an all time high of 9,765 last year. While the number of fleeing driver events has been growing, I am pleased to say that the number of resulting deaths has decreased substantially. This is thanks, in part, to the previous iteration of Police's fleeing driver policy, which came into effect in December 2020, and saw more emphasis on post-event investigations rather than in-the-moment pursuits.

However, a major difficulty for Police over the past two and a half years has been identifying fleeing drivers so they can be held to account. An already low identification rate of 52 per cent has dropped further to around 34 per cent since the December 2020 policy change.

So, while it's critical we maintain those road safety gains, we will not sit back and allow lawbreakers who flee Police to get off scot-free.

That's why we are introducing a new power for Police to seize and impound a vehicle for 28 days if the vehicle's owner or registered person fails to provide information or misleads Police about a fleeing driver. This will help Police to identify the driver and may incentivise owners to be more responsible with their vehicles, including knowing who has access to the keys.

The Bill also enables Police to seize and impound a vehicle involved in a fleeing driver event for up to six months – an increase on the current 28-days. Six-month impoundment will be discretionary where the officer believes, on reasonable grounds, that the person driving the vehicle has failed to stop or remain stopped.

Police officers use discretion daily when dealing with a wide range of matters and will apply it when considering six-month impoundment to prevent a serious threat to road safety.

Fleeing drivers often exhibit other unsafe behaviours such as reckless driving or excessive speed. They could be fleeing from a checkpoint because they are over the alcohol limit, or evading Police because they have been involved in a crime. These situations are high risk for all those involved. The extended period of impoundment in this Bill is proportional to the significant harm this type of offending can cause.

There is already a high number of vehicles abandoned under the current 28-day impoundment regime, and we expect this figure will rise for six-month impoundments.

This is why we have introduced a 38-day abandonment provision to provide early financial assurance to towage and storage operators. The Bill provides that, within 38 days of seizure and impoundment, a vehicle's owner or registered person must either

- pay the fees in full to the towage and storage operator, or
- enter a payment arrangement with the operator.

If neither of these conditions are met, the vehicle will be deemed abandoned and can be sold by the operator to recoup costs.

The registered person whose vehicle is impounded for six months will be given clear notice of the consequences as part of the impoundment notice, including the requirements they must meet within the first 38 days to avoid the loss of their vehicle, along with clear information about their right to appeal the impoundment to Police and how to do so.

The Bill also increases the period of driver licence disqualification after a second conviction for a failing to stop offence, from one year, to a range of between one to two years – a sentence which will be handed out at the Courts' discretion. Again, this increased period is proportional to the seriousness of the offence – a person who has fled from Police not once, but twice, should face serious consequences before being allowed back behind the wheel.

And lastly, to tackle the problem of fleeing drivers, a new sentencing option has been created, enabling the Courts discretionary power to order that a vehicle be forfeited either on first or second conviction for a failing to stop offence. In these cases, not only will the offender lose their car, but they'll also lose out on the proceeds from its sale.

Confiscation is currently used sparingly by the Courts, and we expect forfeiture orders will be relatively rare as well. However, it will be an important back pocket tool for the Courts to improve road safety.

This package of legislative changes will both deter people from fleeing Police and reduce opportunities for reoffending.

The Government is sending a strong and clear warning to fleeing drivers and others who obstruct Police's work – this behaviour will not be tolerated, and there will be tougher consequences.

Conclusion

We have covered a lot of ground in this Bill, but the purpose behind all the changes is clear - to reduce unsafe behaviour on New Zealand's roads.

Thank you once again to the Justice Committee for the large amount of time and consideration they put into getting this Bill to where it is today. Their recommendations have strengthened the legislation while supporting its intent. Thank you also to the 33 organisations and individuals who submitted on this Bill for your valuable input.

And finally, thank you to my colleagues here today for your support of this Bill, and your contributions to Committee of the Whole House.

Today brings us another step closer to a road network that is safe for all New Zealanders – another step closer to Zero.

To that point, I commend the bill to the House.

When the Ministry of Transport provided this document to the Office, the dates for completion of second reading (22 August 2023) and Committee of the whole House (29 August 2023) were not yet confirmed.

J.17

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL: THIRD READING LEGISLATIVE STATEMENT

Presented to the House in accordance with Standing Order 272

Introduction

1. This legislative statement supports the third reading of the Land Transport (Road Safety) Amendment Bill (the Bill).
2. The Bill is an omnibus bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.
3. The single broad policy of the Bill is to reduce unsafe behaviour on New Zealand's roads by increasing the speed and severity of enforcement.
4. The Bill introduces new legislative tools to respond to unsafe behaviour exhibited by fleeing drivers. These tools will allow Police to respond to and deter fleeing drivers. Together with a revised Police pursuit policy, these changes aim to both reduce fleeing driver events and to increase the number of fleeing drivers being identified and held to account.
5. To further address unsafe behaviour, and ensure speed of enforcement, the Bill will enable enforcement agencies to make use of emerging technologies. These include:
 - enabling the electronic service of notices;
 - enabling point-to-point safety camera systems as an enforcement tool for speeding offences, and
 - providing for the automated issuance of certain infringement notices.
6. The Bill will amend the Land Transport Act 1998 (LTA) and the Sentencing Act 2002. It makes consequential amendments to the Summary Proceedings Act 1957, the Privacy Act 2020 and relevant Land Transport Regulations.
7. The Bill was introduced to the House on 16 May 2023, had its First Reading on 18 May 2023 and was then referred to the Justice Committee (the Committee). The Committee received 33 submissions, heard oral evidence from eight submitters and reported back to the House on 20 July 2023. The Bill's second reading took place over two sessions (2 August and [date]), followed by Committee of the whole House ([date])

8. A Supplementary Order Paper (SOP) tabled at Committee of the whole House made a series of minor technical changes along with more substantial amendments relating to the six-month impoundment regime – detailed below.
9. The Bill is set to come into force on 13 October 2023, to allow enforcement agencies time to undertake the necessary implementation activities.

Key provisions in the Land Transport (Road Safety) Amendment Bill

Six-month vehicle impoundment for fleeing Police

10. The Road Safety Bill extends the period that an enforcement officer may seize and impound a vehicle, from the current 28 days to six months, if the enforcement officer believes on reasonable grounds that the person driving the vehicle has failed to stop or remain stopped.
11. As noted above, an SOP tabled at Committee of the whole House introduced substantial change to the Bill by removing the financial assurance regime for six-month impoundment requiring the necessary fees and charges to be paid to the storage provider instead.
12. To provide a clear oversight of the most substantial changes, the table below provides a comparison of the current version of the Bill (as reported back by the Justice Committee on 20 July 2023), along with the corresponding change being introduced by the SOP.

| | Road Safety Bill – current version | Amendment introduced by SOP |
|-----|---|--|
| 13. | <p>Clause 10 of the Bill inserts new section 96AAA into the LTA to extend the period that an enforcement officer may seize and impound a vehicle for from the current 28 days to six months.</p> <p>An enforcement officer may use their discretion to impound a vehicle for six months when they believe, on reasonable grounds, that:</p> <ul style="list-style-type: none"> • the person driving the vehicle has failed to stop or remain stopped, and • impoundment will prevent a serious threat to road safety. | <p>Minor editorial changes to rename fleeing driver offence as offence of failing to stop.</p> |
| 14. | <p>Clause 17A widens the existing appeal provisions in the LTA. It allows, in the instances of six-month impoundment only, a vehicle to be released if impoundment will cause:</p> <ul style="list-style-type: none"> • extreme hardship (on the relevant person) or • undue hardship (on another person aside from the relevant person). | <p>The SOP removes clause 17A and moves the provision to appeal six-month impoundment on hardship grounds to Clause 17(5A).</p> <p>The grounds for appeal stay the same.</p> |

| Road Safety Bill – current version | Amendment introduced by SOP |
|--|---|
| <p>This may be in relation to employment or otherwise. A vehicle would not be released if the Court considered it to be contrary to the interests of road safety.</p> | |
| <p>15. A mechanism within clause 13 enables Waka Kotahi to administer the system for the new six-month impoundment regime, including designing payment arrangements that are both fair and reasonable for the registered person and administratively efficient. These clauses have been modelled on existing provisions in the Road User Charges Act 2012.</p> | <p>The SOP removes the financial assurance regime from the Bill. The mechanism within clause 13 for Waka Kotahi to administer the system is removed, along with any financial responsibility that sat with Waka Kotahi relating to the six-month impoundment regime.</p> <p>The SOP removes all references to fees and charges for six-month impoundment being payable to Waka Kotahi and instead provides for the fees to be directly payable to the storage provider.</p> |
| <p>16. No such provision in as-reported Bill.</p> | <p>The SOP introduces an abandonment provision in clause 12 which asserts that the registered person for a motor vehicle impounded for six months for a failing to stop event must either</p> <p>(a) pay the towage and storage operator for the six-month impoundment in full, or</p> <p>(b) enter into an arrangement with the storage provider relating to the payment of those fees and charges (for example, an arrangement for payment by instalments).</p> <p>If they don't do either, the vehicle is considered abandoned, and the operator may dispose of it to recover costs.</p> |
| <p>17. No such provision in as-reported Bill.</p> | <p>An addition to clause 12 states that if an authorised officer directs an impounded vehicle be released because the registered person has successfully appealed the impoundment under section 102, the vehicle recovery service operator or storage provider can recover fees and charges from the Commissioner of Police.</p> <p>Further, the operator or provider must repay any fee and charges they had received from the registered person for the same impoundment.</p> |

| Road Safety Bill – current version | Amendment introduced by SOP |
|---|--|
| 18. Clause 13 allows for a vehicle repossessed by a secured creditor, either under the Credit Contracts and Consumer Finance Act 2003 or the Personal Property Securities Act 1990, to be released and that the creditor not be liable for any towage and storage fees. | Provision remains, moved to clause 12. |

Other legislative tools to address unsafe behaviour by fleeing drivers

19. Clause 10 inserts new section 96AAB into the LTA creating a power for an enforcement officer to seize and impound a vehicle involved in a fleeing driver event for 28 days if:
- the driver or registered person of the vehicle involved fails to provide certain information about the fleeing driver when requested by a Police officer, and
 - impounding the vehicle is necessary to prevent a serious threat to road safety.
20. Clause 7 increases the period of licence disqualification after a second failing to stop conviction under existing section 52A of the LTA. The period is increased from the current one-year mandatory disqualification to a period of not less than one year, and not more than two years. Schedule 1 of Bill clarifies that this only applies to a second offence, where the first offence is committed on or after the day on which the Bill comes into force.
21. The current discretionary sentencing option within the Sentencing Act 2002 to confiscate a vehicle upon conviction for failing to stop is amended by clause 40 with a discretionary option for the Court to order forfeiture (i.e., the proceeds from sale of the vehicle are kept by the Court rather than returned to the registered person or owner).
22. Clause 40 provides that, for a second offence under the Sentencing Act, the Court would be able to apply either discretionary forfeiture under section new 142AAB, or the existing mandatory confiscation under section 129.

Point-to-point average speed system

23. The Bill enables the use of point-to-point safety cameras as a means of detecting speeding offences, and for that information to be used as evidence in proceedings relating to speeding offences.
24. Point-to-point speed cameras rely on two images, each with a time stamp, and a formula for calculating average speed travelled over the distance between the two points, typically at least two kilometres apart.
25. New sections 146A to 146D inserted into the LTA through clause 28 set out conditions for the operation of a point-to-point average speed system including:
- its definition
 - the formula by which the system calculates a vehicle's average speed at the relevant location

- evidence provisions that support the use of the system in proceedings for speeding offences.
26. The validity of proceedings to which section 146A or 146B applies is not affected if a sign that has been installed under subsection (1) is defaced, damaged, or removed by any person. The SOP adds to this 'or any other cause (for example, foliage growth or a weather event)'.

Automated infringement notice system

27. The Bill provides for an automated infringement system to issue an electronic infringement notice to the registered person of the vehicle involved. The Bill also amends the definition of infringement notice in the Summary Proceedings Act 1957 to include an automated infringement notice system under the LTA.
28. New clause 31A clarifies the role of the Agency as an enforcement officer for certain infringement offences. Per clause 26, the automated infringement notice system may, on behalf of the Agency as enforcement officer, issue an infringement notice for the infringement offence verified by the point-to-point average speed system.
29. Clause 26 gives Waka Kotahi, as the enforcement officer, the discretion to serve notices through electronic service as well as through traditional means of service. The Bill updates the existing requirement for people to provide personal information in specified circumstances, to include electronic addresses if they have one. A reference to an electronic address is also included as part of the Agency's requirement to maintain registers of driver licences and transport service licences.
30. Clause 26 sets out that the Minister of Transport will be responsible for approving the automated infringement notice system. The SOP further clarifies that the Minister must consult the Privacy Commissioner before approving an automated infringement system. It will be the enforcement authority operating the system that is responsible for ensuring that the system is working (in a way described in 139AAB(1)(c)). The Agency is required to put an independent quality assurance process in place for auditing the capability and capacity of the system and ensuring that the system is capable of collecting, holding, using, and disclosing personal information in accordance with the Privacy Act 2020.

Other amendments

31. A consequential amendment to Schedule 4 of the Privacy Act ensures that current enforcement information-sharing systems are maintained when the safety camera network is moved from NZ Police to Waka Kotahi.
32. To ensure alignment with an updated Land Transport Act 2023, consequential amendments will be made to:
- the Land Transport (Offences and Penalties) Regulations 1999
 - the Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999
 - the Land Transport (Requirements for Storage and Towage of Impounded Vehicles) Regulations 1999

- the Land Transport (Infringement and Reminder Notices) Regulations 2012.

Conclusion

33. The amendments in the Bill will improve road safety outcomes by deterring people from fleeing Police, as well as by introducing tougher consequences for those who fail to stop and remain stopped. Amendments to address other safety matters, including speeding, will make use of emerging technologies, and give enforcement agencies the necessary tools to enforce the law swiftly and effectively.

Hon Damien O'Connor
Associate Minister of Transport

DRAFT

23 August 2023

OC230747
BR/23/80GA



**NEW ZEALAND
POLICE**
Ngā Pirihimana o Aotearoa

Hon David Parker

Minister of Transport

Hon Damien O'Connor

Associate Minister of Transport

Hon Ginny Andersen

Minister of Police

Action required by:

Wednesday, 23 August 2023

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL - OPTIONS FOR COMMENCEMENT DATE

Purpose

Provide you with advice on options for a revised commencement date for the Land Transport (Road Safety) Amendment Bill (the Bill) and requests your decision by 1pm, 23 August 2023.

Key points

- On Monday, 21 August 2023, Cabinet agreed to progress amendments to the Land Transport (Road Safety) Amendment Bill (the Bill) to remove the financial assurance regime and require the necessary fees and charges to be paid to the storage provider instead.
- In addition, officials understand that the Ministers of Transport and Police were delegated decision making powers on the commencement date of the Bill. This was in response to significant concerns raised about the ability to implement six-month impoundment within the current six-week delayed commencement period, in particular the limited amount of time to engage with the towage and storage industry about the removal of the financial assurance regime and for them to set up new administrative systems and processes.
- We currently expect the Road Safety Bill to progress through the final parliamentary stages under urgency this week.
- Therefore, given the limited time for Parliamentary Counsel Office (PCO) to make changes to the Supplementary Order Paper, we require your decision on the commencement date by 1pm today, Wednesday, 23 August 2023.
- Advice from PCO is that splitting the Bill to allow for different commencement dates for six-month impoundment and the remainder of the Bill would be complex and there is not sufficient time remaining for this process before the SOP needs to be tabled. Therefore, we have identified three options for a commencement date for the whole Bill:

- 1 March 2024 (recommended), which would provide time for implementation activities to support implementation of six-month impoundment; OR
- 1 December 2023; which would provide limited time for some implementation activities; OR
- 13 October 2023 (status quo); which would not provide enough time to undertake new implementation activities required from the SOP.

Recommendations

We recommend you:

| | | |
|-----------------------------|--------------------------------|-------------------------------|
| Hon David Parker | Hon Damien O'Connor | Hon Ginny Andersen |
|-----------------------------|--------------------------------|-------------------------------|

1 **agree**, by 1pm, 23 August 2023, that the commencement date for the Land Transport (Road Safety) Amendment Bill be either:

- | | | | |
|--|----------|----------|----------|
| a) 1 March 2024 (recommended); OR | Yes / No | Yes / No | Yes / No |
| b) 1 December 2023 (not supported by Police); OR | Yes / No | Yes / No | Yes / No |
| c) 13 October 2023 (status quo) (not supported by Police); | Yes / No | Yes / No | Yes / No |

Megan Moffet
Manager, Regulatory Policy
Ministry of Transport
 23 / 08 / 2023

Hon David Parker
Minister of Transport
 / /

Hon Damien O'Connor
Associate Minister of Transport
 / /

Tanya Roth
Director Policy
New Zealand Police

..... / /

Hon Ginny Andersen
Minister of Police

..... / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|--|-----------|---------------|
| Bronwyn Turley, Deputy Chief Executive, Systems and Regulatory Design, Ministry of Transport | s 9(2)(a) | ✓ |
| Tanya Roth, Director Policy, NZ Police | | |
| Megan Moffet, Manager, Regulatory Policy, Ministry of Transport | | |

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL - OPTIONS FOR COMMENCEMENT DATE

Cabinet has delegated the commencement date of the Road Safety Bill to the Ministers of Transport and Police

- 1 On Monday, 21 August 2023, Cabinet agreed to progress amendments to the Land Transport (Road Safety) Amendment Bill (the Road Safety Bill) to remove the financial assurance regime and require the necessary fees and charges to be paid to the storage provider instead.
- 2 In addition, officials understand that the Ministers of Transport and Police were delegated decision making powers on the commencement date of the Bill. This was in response to significant concerns raised about the ability to implement six-month impoundment within the current six-week delayed commencement period, in particular the limited amount of time to engage with the towage and storage industry about the removal of the financial assurance regime and for them to set up new administrative systems and processes (e.g. payment instalment processes).
- 3 As the Road Safety Bill is currently awaiting the conclusion of its second reading, these changes, along with other technical amendments already agreed, will be made by Supplementary Order Paper (SOP). We currently expect the Road Safety Bill to progress through the final parliamentary stages under urgency this week.
- 4 Therefore, given the limited time for Parliamentary Counsel Office (PCO) to make changes to the SOP, we require your decision on the commencement date by 1pm today, Wednesday, 23 August 2023.

We have considered three commencement date options, but are limited by an inability to split the Bill

- 5 Initially officials considered the best approach to addressing the concerns would be to retain the current commencement date for the majority of the Road Safety Bill and extend the commencement date for clauses relating to six-month impoundment only. However, advice from PCO is that splitting the Bill at this advanced stage would be complex and there is not sufficient time remaining for this process before the SOP needs to be tabled.
- 6 Therefore, we have identified three options for a commencement date for the whole Bill.

Option one: 1 March 2024 commencement date (Recommended)

- 7 The preferred option would be to amend the current SOP to enable a 1 March 2024 commencement date. This would allow more time for implementation activities to set up the six-month impoundment regime in the absence of a financial assurance framework. Extending the commencement date will not alleviate Police's concerns that towage and storage providers will be unwilling to pick up Police-ordered impoundments due to the associated financial risk. The extended implementation

timeframe, will, however, provide officials more time to work with industry to identify operational improvements within the current regulatory framework.

- 8 Early feedback from the Motor Trade Association, following Select Committee, was that operators were preparing to support the regime that had been reported back. Given that the change to regime would be otherwise unknown, sufficient time must be given to enable operators to adapt. Towage and storage providers, who are willing to take in six-month impoundments, will need to establish new administrative systems and processes, including arranging for registered people to enter into instalment payment arrangements, charging interest on late payments, new processes for establishing that a vehicle can be deemed abandoned after 38 days, and new processes for releasing a vehicle at the completion of the impoundment period.
- 9 A 1 March 2024 commencement date will also mean that work on the towage and storage review will be well under way as discussed below. This will mean that towage and storage operators are likely to have a level of assurance that their businesses will remain viable and will be less likely to reject Police-impoundment requests.
- 10 Further to this, finance providers will also need time to update contracts for future lending and provide communications to customers, because under the SOP they will have a remedy to have their vehicle released from impound if the contract is in default (for six-month impoundments only). This was one of the comments made in the report back from the Justice Select Committee.
- 11 Feedback from Police and Justice is that given the significant level of change that have been made in a relatively short timeframe, further time is also required to implement other aspects of the six-month impoundment regime, such as:
 - developing operational guidance for the new six-month impoundment regime, in particular guidance for frontline staff on what action to take where an impoundment has been refused to be picked up
 - developing a new appeal process for six-month impoundments, in particular administering the new extreme and undue hardship grounds
 - preparing Courts to receive additional appeals for six-month impoundments and for any civil debt process increases
 - developing, printing and sending out physical impoundment notices to all 12 Police Districts, particularly ensuring all frontline staff have access to the new six-month impoundment forms
 - improvement of data collection processes.
- 12 Given the processes outlined above generally require direct engagement with operators, and holiday periods are within the proposed extension period, we consider that 1 March 2024 is an appropriate commencement date.
- 13 Waka Kotahi NZ Transport Agency (Waka Kotahi) have advised that 1 March 2024 will not impact the transfer and expansion of the camera network (point-to-point proposals) and supporting proposals (electronic service and automated infringement). However, there is a low-level risk from a delay in electronic service provisions if there were issues that prevented physical postal service e.g. weather events. Officials

accept this risk but do not see that this delays the wider benefits in delaying the commencement date to 1 March 2024.

Option two: 1 December 2023 commencement date

- 14 Officials have considered a reduced commencement date of 1 December 2023, which would acknowledge that these changes are required to support the revised operational pursuit policy. However, given the significant concerns raised by Police in advising on the removal of the financial assurance regime and the impact this could have on the viability of Police-ordered impoundments, this is seen as an insufficient delay to enable supporting activities. This provides an additional seven weeks; however, it is likely to be insufficient for towage and storage operators to establish systems and process related to six-month impoundments.
- 15 As above, this date would not impact the provisions relating to, and supporting, the transfer and expansion of the camera network.

Option three: Status quo – 13 October 2023 commencement date

- 16 Officials have also considered the impact of retaining the current commencement date. This would allow enforcement agencies to take advantage of the improvements in the Bill as quickly as possible. However, as outlined above, much of the activities intended to support successful implementation of six-month impoundment would not be able to take place.
- 17 Police has undertaken some planning work based on an understanding of the six-month impoundment regime as outlined in the Bill reported back from Select Committee. However, the significant and late changes to the Road Safety Bill mean that substantial additional organisational preparation work will be required as Waka Kotahi will no longer be leading the interface with the towage and storage industry. This leaves a considerable gap in the process.
- 18 Police consider that it would not be possible to undertake essential activities like developing operational guidance for staff and printing and sending out physical impoundment notices to the Police districts, within this time. We do not recommend progressing with the status quo commencement date.

We have also considered later commencement dates to align with the planned review of the towage and storage system but these would impact on the roll out of the safety camera network

- 19 As part of the decision to remove the financial assurance regime, we understand Cabinet noted that the Associate Minister of Transport would report back to Cabinet Economic Development Committee in 2024 on progressing a review of the wider regulated towage and storage system including payments.
- 20 This review is intended to address the significant and acknowledged system wide issues for both Police and Council-ordered impoundments, rather than the narrow issue that the financial assurance regime was intended to address.
- 21 Ideally, the review and subsequent changes would take place prior to adding additional pressure to the towage and storage sector via the introduction of six-month impoundment.

- 22 However, advice from Waka Kotahi is that a commencement date later than 1 March 2024 is likely to prevent or negatively impact the planned transfer and expansion of the camera network (point-to-point proposals) and supporting proposals (electronic service and automated infringement). Therefore, later dates are not considered to be a viable option due to the impact on other Government priorities like the achievement of Road to Zero.



29 August 2023

OC230724

Hon David Parker

Action required by:

Minister of Transport

Thursday, 31 August 2023

CC Hon Damien O'Connor

Associate Minister of Transport

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL 2023 IMPLEMENTATION - NOTICES TO APPROVE NEW VEHICLE SURVEILLANCE EQUIPMENT AND THE POINT-TO-POINT AVERAGE SPEED SYSTEM

Purpose

- To provide you with the below notices for your signature following Royal assent of the Land Transport (Road Safety) Amendment Bill 2023 (the Road Safety Bill).
 - The *Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023* (the 2023 AVSE Notice).
 - The *Land Transport (Point-to-point Average Speed System) Notice 2023* (the Average Speed System Notice).

Key points

- Road to Zero, the Government's road safety strategy, provides for the expansion of the speed and safety camera network through the introduction of new technology, including the point-to-point average speed system, and the transfer of the existing vehicle surveillance equipment network from New Zealand Police (NZ Police) to Waka Kotahi New Zealand Transport Agency (Waka Kotahi).
- The Road Safety Bill will amend the *Land Transport Act 1998* (LTA) to enable point-to-point average speed systems. The Bill also amends s145 of the LTA (evidence of approved vehicle surveillance equipment) to remove reference to an image produced by means of an exposure, with data (including electronic images or a sequence of electronic images) produced by approved vehicle surveillance equipment (AVSE). This will allow for newer technology to be approved and used as AVSE.
- The Bill's commencement date will be extended by a Supplementary Order Paper (SOP) at Committee of the whole House. The Bill is now due to come into effect on 1 March 2024, except for amendments to section 145 of the LTA and schedule 4 of the

Privacy Act which will come into effect on 1 November 2023. This is to allow Waka Kotahi to transfer the existing speed camera system and to use the Redflex Halo¹ to detect spot speed and red-light offences from late 2023, as planned.

- Section 2(1) of the LTA enables the Minister of Transport or the Minister of Police to approve vehicle surveillance equipment (such as a speed and safety camera) before it can be used on New Zealand's roads, through an AVSE notice. The Road Safety Bill amends section 2(1) of the LTA to allow the Minister of Transport to approve a point-to-point average speed system by way of notice. Neither of these notices requires Cabinet agreement.
- On 29 June 2023 you agreed to a series of additions, amendments and revocations of approved vehicle surveillance equipment [OC230564 refers]. You also agreed to Te Manatū Waka Ministry of Transport (the Ministry) instructing the Parliamentary Counsel Office (PCO) to draft AVSE notices to give effect to these changes.
- When we provided you with briefing OC230564, the Road Safety Bill did not contain the amendment to 2(1) requiring the Minister of Transport to approve a point-to-point average speed system. Therefore, the briefing didn't mention or seek your approval of a notice to approve the point-to-point average speed system. This requirement was added following the Select Committee process to provide additional assurance of the system's reliability.
- Both the 2023 AVSE Notice and the Average Speed System Notice depend on the Road Safety Bill passing and do not become operative until the Bill receives its Royal Assent. We expect Royal Assent to occur within seven days from the Bill's third reading. The notices then need to be presented to the House prior to its dissolution on 8 September.
- The notices attached to this briefing are progress drafts. You will be supplied with the certified signature copies for signing once the Road Safety Bill receives Royal assent. The progress draft notices are still subject to PCO's editor proofreading and drafter peer review processes which may result in minor amendments. As you won't be in Wellington next week, we recommend you delegate responsibility for signing and presenting the notices to the House to one of your colleagues.
- Waka Kotahi, with the support of NZ Police, has tested the Redflex Halo for use as a red light and speed camera system and as a speed and average speed camera system. Waka Kotahi has determined the Redflex Halo is sufficiently reliable and accurate for your approval. The final testing report is attached at **annex one**.
- Once you or your delegate sign the attached Notices, they will be published in the *New Zealand Gazette*. The ASVE Notice will come into force on 1 November 2023, with an amendment to follow on 1 March 2024 to allow the Redflex Halo to be configured as a speed and average speed camera. The Average Speed System

¹ Redflex Halo means the HALO Speed Management System manufactured by Redflex Traffic Systems Pty Ltd.

Notice will come into force on 1 March 2024 (at the same time as the Land Transport (Road Safety) Amendment Act 2023).

- The Legislation Act 2019 requires the notices (as secondary legislation) to be presented to the House of Representatives in accordance with the House's rules and practice. PCO will work with your Office, or the Office of the Minister to whom you have delegated responsibility, to have this done prior to the dissolution of Parliament on 8 September 2023.

Recommendations

We recommend you:

- | | | |
|---|--|----------|
| 1 | note that results of testing of Redflex Halo, configured as both a speed and red-light camera and a speed and average speed camera, shows it is sufficiently reliable for your approval. The full testing report is attached at annex one . | Noted |
| 2 | sign the following notices, or delegate responsibility for signing the notices to one of your colleagues, once the Land Transport (Road Safety) Amendment Bill 2023 receives its Royal assent, and PCO has supplied certified signature copies.. | Yes / No |
| | <ul style="list-style-type: none"> • Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023 (annex two). • Land Transport (Point-to-point Average Speed System) Notice 2023 (annex three). | |
| 3 | agree to present, or delegate responsibility for one of your colleagues to present, the notices to the House of Representatives in accordance with the House's rules and practice. PCO will work with your Office, or the Office of the Minister to whom you have delegated responsibility, to have this done prior to the dissolution of Parliament on 8 September 2023. | Yes/No |
| 4 | note that once you sign the Notices, they will be published in the <i>New Zealand Gazette</i> . The ASVE Notice will come into force on 1 November 2023, and the Average Speed System Notice will come into force on 1 March 2024. | Noted |
| 5 | note that this briefing has been copied to Hon Minister O'Connor in his responsibility for the Road Safety Bill. | Noted |
| 6 | forward a copy of this briefing to Minister of Police Hon Ginny Andersen for her information. | Yes/No |

- 7 **forward** a copy of this briefing to the Minister whom you have delegated responsibility for the signing and presenting to the House of these notices (if it is neither Minister O'Connor nor Minister Andersen). Yes/No

Megan Moffet
Manager, Regulatory Policy
 29 / 08 / 2023

Hon David Parker
Minister of Transport
 / /

- Minister's office to complete:**
- Approved Declined
- Seen by Minister Not seen by Minister
- Overtaken by events

Comments

Contacts

| Name | Telephone | First contact |
|---|-----------|-----------------------|
| Megan Moffet, Manager, Regulatory Policy | s 9(2)(a) | ✓ |
| Amber McGovern-Wilson, Principal Adviser, Regulatory Policy | | |
| Andrew Challis, Senior Solicitor | | For any legal queries |

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL 2023 IMPLEMENTATION - NOTICES TO APPROVE NEW VEHICLE SURVEILLANCE EQUIPMENT AND THE POINT-TO-POINT AVERAGE SPEED SYSTEM

The Road Safety Bill allows for new vehicle surveillance equipment and a point-to-point average speed system

- 1 The second reading of the *Land Transport (Road Safety) Amendment Bill 2023* (Road Safety Bill) was completed on 22 August 2023 (debate resumed from 2 August). Committee of the whole House and third reading stages are expected to be carried out this week (week of 28 August 2023), the final sitting block before the House rises.
- 2 We expect Royal assent to occur within seven days from the Bill's third reading.
- 3 The Bill's commencement date will be extended through a Supplementary Order Paper (SOP) at Committee of the whole House. The Bill is now due to come into effect on 1 March 2024, except for amendments to section 145 of the LTA and schedule 4 of the Privacy Act which will come into effect on 1 November 2023. This is to allow Waka Kotahi NZ Transport Agency (Waka Kotahi) to transfer the existing speed camera system and allow the use of the Redflex Halo cameras to detect spot speed and red light offences from late 2023, as planned.
- 4 The Road Safety Bill amends the *Land Transport Act 1998* (LTA) to allow for new vehicle surveillance equipment to be used, both as part of the existing speed and safety camera network and in a point-to-point average speed system.
- 5 Further, the Road Safety Bill amends the LTA to allow for the incorporation of an average speed offence together with evidentiary requirements to support the current safety camera network. It does this by creating new provisions in the LTA to clarify the enforcement of average speed offences.
- 6 These provisions complement those for speed offences captured by fixed vehicle surveillance equipment, but focus on the new issues raised by the introduction of an average speed safety system. In particular, the Road Safety Bill does the following.
 - 6.1 Amends section 145(1) of the LTA to clarify, for the purposes of a moving vehicle offence, data (including electronic images or a sequence of electronic images) will be used to enforce average speed offences, and for the way the evidence is collected, to cater for how the new cameras will operate.
 - 6.2 Introduces a clear definition of 'average speed' as it pertains to a corridor with a single or multiple speed limits.
 - 6.3 Clarifies that, in proceedings against a person for a speeding offence, the average speed of the relevant vehicle between two detection points on a road calculated by a point-to-point average speed system must, in the absence of

proof to the contrary, be treated as being the speed at which the vehicle was actually travelling between those two detection points.

- 7 Members of the public will have the same options available to them to raise complaints or challenge offences detected by average speed cameras as they do for fixed safety cameras currently, including submitting information for the enforcement authority to consider, challenging the offence in Court or making written submissions to the judge. However, the enforcement authority will be Waka Kotahi, rather than NZ Police (Police).
- 8 In addition to you approving the point-to-point average speed system, the Road Safety Bill requires the Director of Transport to publish the elements of the system; and the method by which a surveyed distance (and intermediate surveyed distances) is to be measured for the purpose of its operation. The Director must publish those matters by notice both in the Gazette and on the Agency's website. The intent behind this is to be transparent with the New Zealand public around the components and operation of the new average speed system. While separate from Ministerial approval, the content of each notice should align, and we will work with Waka Kotahi to support this.
- 9 The Road Safety Bill also provides for the automated issuing of certain infringement notices and for the electronic servicing of notices. This automated infringement system (AIS) is not required for the expansion of the current vehicle surveillance network, nor for the introduction of a point-to-point camera system. Waka Kotahi will issue infringement notices using a manual process until the AIS is developed.
- 10 We will update you on progress to develop the AIS in 2024. If satisfied that the AIS will operate as intended, and following consultation with the Privacy Commissioner, the Minister of Transport may issue a certificate of approval allowing the AIS to be implemented.

Vehicle surveillance equipment is an integral part of New Zealand's road safety strategy

- 11 Vehicle surveillance equipment, namely speed and red-light safety cameras, have been in use in New Zealand for over 20 years. These have largely been operated by NZ Police, although safety cameras are in use by some local authorities, with infringements issued by NZ Police.
- 12 The Road to Zero strategy provides for the expansion of the speed and safety camera network through the introduction of new technology, including the point-to-point average speed system, and the transfer of the existing vehicle surveillance equipment network from Police to Waka Kotahi.
- 13 The point-to-point average speed system relies on:
 - 13.1 two items of AVSE, which collect data (as defined in s146A(3) of the Road Safety Bill) and

- 13.2 associated software which includes the ability to calculate speed travelled over the distance between two points, typically at least two kilometres apart.
- 14 This contrasts with traditional speed and red-light safety cameras, which record an offence occurring at a single location.
- 15 International evidence demonstrates that average speed cameras are one of the most effective and cost-efficient means of reducing speeds, in turn lowering the number of deaths and serious injuries resulting from accidents.
- 16 The 2023 AVSE Notice and the Average Speed System Notice are required for Waka Kotahi to begin using the Redflex Halo as AVSE, both in static form and as part of a point-to-point average speed system.
- 17 These notices will allow Waka Kotahi to start the transfer of existing NZ Police cameras from 1 November 2023 and begin implementation of point-to-point average speed systems from 1 March 2024.

The Redflex Halo has passed extensive testing...

- 18 With the support of Police, Waka Kotahi has conducted comprehensive field testing on the Redflex Halo to establish its reliability and accuracy prior to your approval via the *New Zealand Gazette* as AVSE. The Redflex Halo has been tested for use as a:
- red light and speed camera system
 - speed and average speed camera system².
- 19 The Gazette Testing Report, attached at **annex one**, includes results from testing of the Redflex Halo, carried out as a requirement for the Gazette approval process.
- 20 Our briefing on types of AVSE required for implementation of the Road Safety Bill [OC230564] did not include the full final testing report (**annex one**). In error, we only gave you the testing report for the NK7 supplementary camera. While the final Redflex Halo testing report was not attached, the information within briefing OC230564 was consistent with its content.
- 21 The attached Testing report refers to three different camera systems, as did briefing OC230564. There are not three different camera systems. The AVSE being approved by the 2023 AVSE Notice is the Redflex Halo, which has been tested for use as a) a red light and speed camera and b) a speed and average speed camera system. Halo 2 is an internal term used by Redflex, not the official branded name. The term 'distributed, used in OC230564 and the testing report, refers to how the average speed system is set up – i.e. gantry mounted rather than roadside. There is no difference in the equipment used, nor how it functions.

² Speed and average speed cameras can be either a pole-mounted system that operates from the roadside (providing both average (point-to-point) and spot speed configurations) or a multiple camera-based system mounted over lanes (i.e. gantry mounted) comprising multiple cameras and a single RADAR (radio detection and ranging device).

- 22 The testing programme included extensive functional, environmental and accuracy tests, to cover the proposed camera deployment situations. Hundreds of field tests were conducted on the Redflex Halo. During these tests the units operated correctly and did not produce any erroneous readings or exposures that did not relate to valid, actual or simulated offences.
- 23 The aim of the testing was to evaluate the reliability and accuracy of the camera systems. This included the Redflex Halo's ability to:
- accurately measure the speeds of passing vehicles,
 - successfully capture a range of vehicle types (including cars and large vehicles),
 - produce clear and accurate images of the target vehicle and surrounding road environment,
 - accurately capture vehicles crossing a predetermined limit or stop line against a red light,
 - disregard events where positive and reliable target vehicle identification is in any way compromised.
- 24 All of the above objectives were met or exceeded.
- 25 In addition, the independent verification organisation, the Measurement Standards Laboratory (MSL) reviewed the Gazette testing plan and also attended and observed the testing. MSL was satisfied that the process followed captured the necessary variables, providing reliable results to verify vehicle speeds delivered by the cameras.
- 26 Waka Kotahi is confident that the proposed camera systems operate correctly and provide reliable speed and red-light breach detection. On this basis, Waka Kotahi recommends that the Redflex Halo, along with the supplementary equipment required for its operation, be approved in the Gazette as AVSE. We endorse this recommendation.

Waka Kotahi is also working through privacy implications of the new AVSE

- 27 Because of how they function, the new generations of vehicle surveillance equipment, including Redflex Halo, require a wider privacy assessment than has previously been necessary. Current vehicle surveillance equipment uses radar to detect a speeding offence, and then capture an image of a vehicle as evidence of that offence. The Redflex Halo captures images of all vehicles passing and uses those images to determine whether an offence has occurred. These cameras also use automated number plate recognition, which has its own privacy implications and has been raised as a particular concern by privacy and civil liberties advocacy groups.
- 28 Waka Kotahi is working closely with the Office of the Privacy Commissioner to ensure its obligations under the Privacy Act 2020 are met.. Waka Kotahi will also consult with the Ministry of Justice, the Government Chief Digital Officer and the Ministry of Transport on privacy matters.
- 29 An initial Privacy Impact Assessment (PIA) was published in May 2022, and updated as the project developed. This PIA assessed privacy risks associated with the transfer

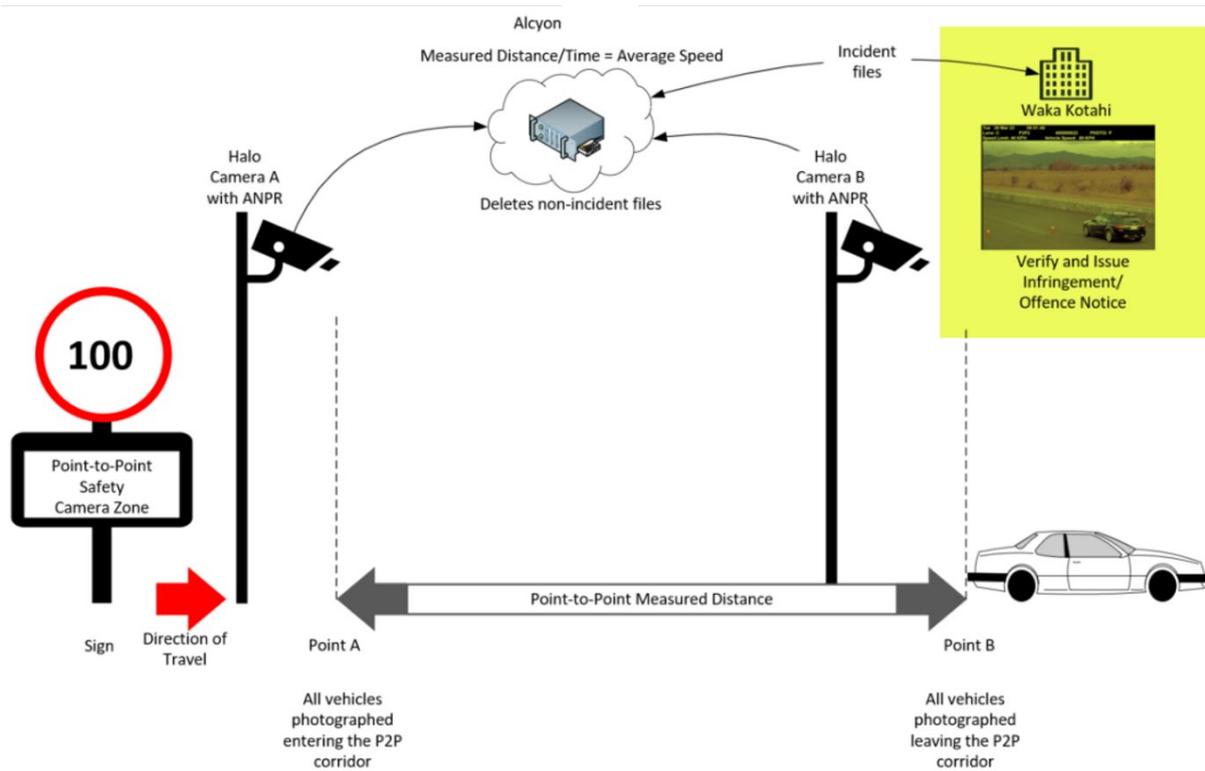
of the existing vehicle surveillance network from NZ Police to Waka Kotahi, and the expansion of the network to include new technologies.

- 30 The initial PIA highlighted potential risks that may apply to the deployment of vehicle surveillance equipment and a technical management system, and recommended ways to manage those risks.
- 31 The PIA for Stage Three is due to be completed around the end of October 2023; this will include the collection and retention of images of non-offending vehicles, as well as payment/refund processing. Waka Kotahi will imbed any recommendations from the PIA into the design of their operational systems.

...and is ready for use as part of a point-to-point average speed system

- 32 The point-to-point average speed system consists of 2 items of AVSE that operate in combination, supported by and with the associated software. **Image one** below shows the operation of a point-to-point average speed system.
- 33 Data is captured by the AVSE at two points a) when a vehicle enters the point-to-point corridor and b) as it leaves the corridor. Data collected may include any one or more of the following:
 - 33.1 the time of any event recorded (including the time a vehicle passed a detection point)
 - 33.2 the position of a vehicle on a road at any given time
 - 33.3 the direction in which a vehicle is moving
 - 33.4 the characters on a vehicle's registration plate
 - 33.5 the average speed of a vehicle between 2 detection points
 - 33.6 any speed limit or speed limits between 2 detection points
 - 33.7 any self-test, diagnostic, or other data about how the system is operating.
- 34 The software which supports the Redflex Halo is currently called Alcyon, as shown in the top of the **image one**. The software receives data from the AVSE at both ends of the point-to-point corridor and calculates the vehicles average speed. The software deletes non-incident files, while offences are communicated to Waka Kotahi to verify and issue an infringement notice where appropriate.
- 35 Waka Kotahi will solely use the software recommended by the manufacturer, Redflex Traffic Systems Pty Ltd. Any minor software updates will not require further Ministerial approval by way of amendment to the *Land Transport (Point-to-point Average Speed System) Notice 2023*.

Image 1: Point-to-point average speed system



Before they can be used, cameras must be approved through an AVSE notice...

- 36 Vehicle surveillance equipment must be approved for use by the Minister of Transport or the Minister of Police by notice in the *New Zealand Gazette*. It is authorised through the definition of approved vehicle surveillance equipment (AVSE) in section 2(1) of the LTA. The approval of new cameras is an operational function, not a significant policy issue, and does not need Cabinet agreement.³

Several existing cameras can only be used by NZ Police

- 37 The *Land Transport (Approved Vehicle Surveillance Equipment) Notice 2015* (the 2015 Notice), which authorises the use of the Redflex red-radar NK7 red light/speed camera, includes references which limit access to the data to NZ Police only. This means that only NZ Police can issue infringement notices. The *Land Transport (Approved Vehicle Surveillance Equipment) Notice 2021* (the 2021 Notice) which authorises the Redflex speed radar NK7 speed camera has the same issue.
- 38 These two notices have been amended by the 2023 AVSE Notice so that Waka Kotahi can also access the data produced by these cameras to issue infringement notices. This will be necessary after the transfer of the existing camera network from NZ Police to Waka Kotahi.

³ See Cabinet Manual paragraphs 5.11 – 5.13.

Waka Kotahi seeks the ability to use supplementary cameras with one existing camera type to improve effectiveness

- 39 In addition, Waka Kotahi seeks an amendment to the 2021 Notice that would allow for a supplementary camera to be used as an attachment to the NK7 camera, where required. This would improve the utility of the NK7 camera until they are replaced by the modern Redflex Halo cameras in the future.
- 40 The NK7 camera currently captures only the front of the vehicle, meaning that it can't identify motorcycles (which only have rear-facing registration plates). Adding a supplementary camera would allow for the capture of the rear of the vehicle, enabling enforcement action against motorcycles and trailers that exceed the speed limit.

... and these Notices are being prepared for your signature

- 41 On 29 June 2023 you agreed to a series of additions, amendments and revocations of approved vehicle surveillance equipment [OC230564 refers]. You also agreed to instruct the Parliamentary Counsel Office (PCO) to draft AVSE notices to give effect to these changes.
- 42 In addition to approving AVSE, the Road Safety Bill amends Section 2(1) of the LTA to allow the Minister of Transport to approve a point-to-point average speed system. As for AVSE, approval must be given by notice and gazetted, and does not require Cabinet approval.
- 43 When we briefed you earlier on notices [briefing OC230564 refers], the Road Safety Bill did not contain the above provision. Therefore, the briefing didn't mention, or ask you to approve, a notice to approve the point-to-point average speed system. This is a requirement of the Road Safety Bill, and the average speed system requires your approval before it can be implemented on New Zealand's roads.
- 44 PCO has drafted two notices to be compliant with the law (with legal input from Crown Law and Te Manatū Waka and legal and technical expertise from Waka Kotahi). We consider these notices are suitably drafted to meet Waka Kotahi's requirements and allow for implementation of the new cameras and the point-to-point average speed system.
- 45 You need to approve these notices to allow Waka Kotahi to operationalise changes introduced by the Road Safety Bill and to allow Waka Kotahi to take over the camera network from NZ Police as set out in Road to Zero.
- 46 The notices attached to this briefing are progress drafts. You will be supplied with the certified signature copies for signing once the Road Safety Bill receives Royal assent. The progress draft notices are still subject to PCO's editor proofreading and drafter peer review processes which may result in minor amendments.
- 47 As you won't be in Wellington next week, we recommend you delegate responsibility for signing and presenting the notices to the House to one of your colleagues. This will ensure the notices can be presented to the House prior to its dissolution on

8 September 2023 and come into force on 1 November 2023 (2023 AVSE notice) and 1 March 2024 (Average Speed System Notice).

- 48 There are currently seven AVSE notices for other types of camera systems in effect, some of which are out of date and need to be revoked (refer table in **appendix one**). After you sign the two 2023 notices, there will be five notices in effect, all of which will be necessary for the effective management of the new and existing camera network and for the operation of the point-to-point average speed system.

The Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023 (the 2023 AVSE Notice)

- 49 The 2023 AVSE Notice (**annex two**):

- allows for the Redflex Halo to be used a type of AVSE, and to be configured as
 - a red light and speed camera from 1 November 2023
 - both a red light and speed camera or a speed and average speed camera from 1 March 2024
- allows for the Redflex Halo to be used a type of AVSE,
 - with any 1 or more housing or mounting systems of any kind
 - with or without any 1 or more items of supplementary equipment of any kind: examples of supplementary equipment include applicable speed limit data equipment, camera equipment, camera flash equipment, computer network equipment, data storage equipment, data transmission equipment, software or power supply equipment (for the camera system, 1 or more other items of supplementary equipment, or both), radar equipment (for example, mapping radar equipment), and time-synchronising equipment
- amends two existing AVSE notices (2015 and 2021) to enable the handover of the existing camera network from NZ Police to Waka Kotahi
- amends the existing 2021 AVSE to allow for the addition of a supplementary camera which will allow for speed detection of vehicle with rear facing number plates e.g. motorcycles and trailers.

The Land Transport (Average Speed System) Notice 2023 (the Average Speed System Notice)

- 50 The Average Speed System Notice (**annex three**) gives ministerial approval for a point-to-point average speeds system using two of the approved cameras together with associated software working along a speed corridor. A point-to-point average speed system means a system that:

- consists of 2 items of approved vehicle surveillance equipment that operate in combination and with the support of associated software
- has the ability to:

- detect a speeding offence
- calculate the average speed of a motor vehicle between 2 detection points
- in the system being approved, each of the 2 items of AVSE is the Redflex Halo camera system and the associated software is the Redflex software product called Alcyon.

Next steps

- 51 Prior to departing Wellington, you will need to delegate responsibility for signing and presenting the *Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023* and the *Land Transport (Point-to-point Average Speed System) Notice 2023* to one of your colleagues.
- 52 Once your colleague signs the Notices, they will be published in the *New Zealand Gazette*. The 2023 AVSE Notice will come into effect on 1 November 2023, and the Average Speed System Notice on 1 March 2024 (at which time an amendment to the 2023 AVSE Notice will allow for the Redflex Halo to be configured as a speed and average speed camera).
- 53 Once signed, the Notices will need to be presented to the House of Representatives in accordance with the House's rules and practice. PCO will work with your Office, or the Office of the Minister to whom you have delegated responsibility, to have this done prior to the dissolution of Parliament on 8 September 2023.

APPENDIX 1: NOTICES RELATING TO VEHICLE SURVEILLANCE EQUIPMENT

The below table sets out the various notices, both in effect and awaiting your approval.

| | Notice | Comment |
|------------------|---|--|
| Being revoked | Transport (Approved Vehicle Surveillance Equipment) Notice 1994 | No longer in use – being revoked by the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023. |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice (No 2) 2008 | |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2008 | |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2013 | Replaced by the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2021. No longer in use – being revoked by the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023. |
| Existing and new | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2015 | Being amended by the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023. |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2021 | |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2017 | Will remain in force |
| | Land Transport (Point-to-point Average Speed System) Notice 2023 | To be approved by the Minister of Transport following Royal Assent of the Land Transport (Road Safety) Amendment Bill 2023 |
| | Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023 | |

ANNEX 1: GAZETTE TESTING REPORT

GAZETTE TESTING REPORT

REDFLEX HALO 2 RED LIGHT AND SPEED CAMERA SYSTEM

REDFLEX HALO 2 SPEED AND AVERAGE SPEED CAMERA SYSTEM

REDFLEX HALO DISTRIBUTED SPEED AND AVERAGE SPEED CAMERA SYSTEM



Endorsements and approvals

Endorsement

Document Version History

| Date | Version | Author | Comments |
|----------|---------|----------------|--------------------------------------|
| 01/02/23 | V.0.1 | Mark Stables | Initial draft |
| 02/2023 | V.0.1 | Kirsten Howard | Various Questions |
| 05/2023 | V1.0 | Mark Stables | Comments incorporated. Final version |
| | | | |

Document Sign-off

| Endorser | Date | Signature |
|---|------|-----------|
| Richard Stewart Programme Director, Safety Camera System | | |
| | | |

| Approved by | Date | Signature |
|--|------|-----------|
| Neil Cook Deputy Director of Land Transport and Deputy General Manager Regulatory Services | | |
| Kane Patena Director of Land Transport General Manager Regulatory Services | | |

CONTENTS

| | |
|---|--------|
| Executive Summary | 4 |
| 1. Introduction..... | 6 |
| 2. Purpose..... | 6 |
| 3. Equipment tested | 6 |
| 4. Objectives | 8 |
| 5. Evaluation Considerations..... | 8 |
| 6. Test Methodology | 8 |
| 7. People..... | 8 |
| 8. Test procedure | 9 |
| 9. Speed detection test results..... | 12 |
| 10. Supplementary Testing..... | 33 |
| 11. Conclusion | 33 |
| 12. Recommendation | 34 |
| Appendix (Gazette Testing Plan) | 35 |

Executive Summary

Introduction

This report describes tests and results relating to Redflex HALO 2 and HALO Distributed safety camera systems, a range of camera based traffic enforcement devices.

The Redflex HALO Safety Camera Systems are RADAR-based enforcement camera systems capable of detecting speeding offences, red-light running offences and average speed offences (it is these facets that have been tested).

The systems include a 4D RADAR detection (speed and positional tracking) system incorporating multiple digital cameras and a central processing unit. It is mounted in conjunction with a flash unit either on a roadside pole (in side-fire configuration) or on gantries above traffic lanes (in the HALO Distributed configuration). The devices track vehicles as they pass through a detection zone, determining vehicle speed, location, and direction.

Testing involved vehicles travelling at known speeds (30km/h to 150 km/h in 10km/h increments) through the camera system detection zone.

Average speed, spot speed and speed through red lights were tested as were scenarios known to create radar detection anomalies. This included multiple vehicles in the detection zone, overtaking situations, close following and radar reflectors placed in the detection zone.

Performance Criteria

New Zealand Police operate a variety of Speed Detection Equipment. The typical standard for that equipment is ± 2 km/. This standard has been applied as the success criteria for these camera tests. As was the case in previous testing I managed while employed by NZ Police (and current NZ Police operational requirements for calibration tests), 100% compliance from tests performed is the required standard.

Spot speeds

The spot speed tests were completed to ensure accuracy of the system as a single point speed detection device. All tests returned detected speeds within ± 1 km/h which is well within the required accuracy window of ± 2 km/h as compared to a traceable independent speedometer and therefore fully met requirements.

Interference tests

Interference tests were performed to examine the influence of multiple vehicles in the detection zone. Vehicles travelling side by side, ahead and behind in the same lane and ahead and behind in adjacent lane situations were tested. Radar reflectors were also placed in line with the Radar beam on the outside of the further most lane.

No anomalous readings were recorded by the camera system. While the camera system tracked every vehicle it "saw" within the RADAR beam, it did not produce offence files or images for any vehicle obscured (partially or fully), essentially creating a consistent "fail safe" operating ethos.

Despite being deployed towards a concrete fence and metal reflectors no reflection issues were observed at any stage.

Red-light tests

The red-light running detection returned accurate and reliable results for vehicles crossing a stop or limit line during a red-light phase. Other traffic signal phases were correctly ignored by the system. Multiple vehicles breaching the limit line were individually captured where both vehicles were visible to the system. Obscured vehicles or part vehicles were rejected by the system.

As the system tested detected both speed and red light offences, those occasions where a vehicle crossed the threshold at speed on green or amber signals resulted in the system capturing a speeding offence only. Vehicles crossing the threshold at speed against a red light resulted in both speed and red light offence data and images being captured.

Summary

The testing regime completed did not disclose any accuracy or reliability issues with the camera systems under test. It successfully tracked and measured the speed of the target vehicle(s) for 100% of tests, and correctly enforced all red-light breaches.

Based on the results of the testing performed I am satisfied that the camera system provides accurate and reliable measurements.

I have no hesitation in recommending the following Redflex HALO devices be tendered for Gazette approval as Approved Vehicle Surveillance Equipment in accordance with the New Zealand Land Transport Act 1998.

- Redflex Halo 2 red light and speed camera system
- Redflex Halo 2 speed and average speed camera system
- Redflex Halo Distributed speed and average speed camera system



Mark Stables

Safety Camera System Programme

Waka Kotahi

7 February 2023

1. Introduction

Camera based traffic enforcement has been widely used in New Zealand for the past 30 years. Recent developments have seen improvements in detection technology which has allowed a move from mechanical (under road sensors) to RADAR¹ and LASER² based detection mediums. LIDAR³ refers to the detection system used in LASER based speed detection systems.

Both RADAR and LIDAR have been used as speed detection methods by NZ Police for decades, with RADAR based Approved Vehicle Surveillance Equipment (AVSE) speed and red-light cameras widely used as traffic safety tools today.

This document describes the equipment tested, the process followed and the results of that testing. A recommendation regarding suitability for approval as Approved Vehicle Surveillance Equipment is included.

2. Purpose

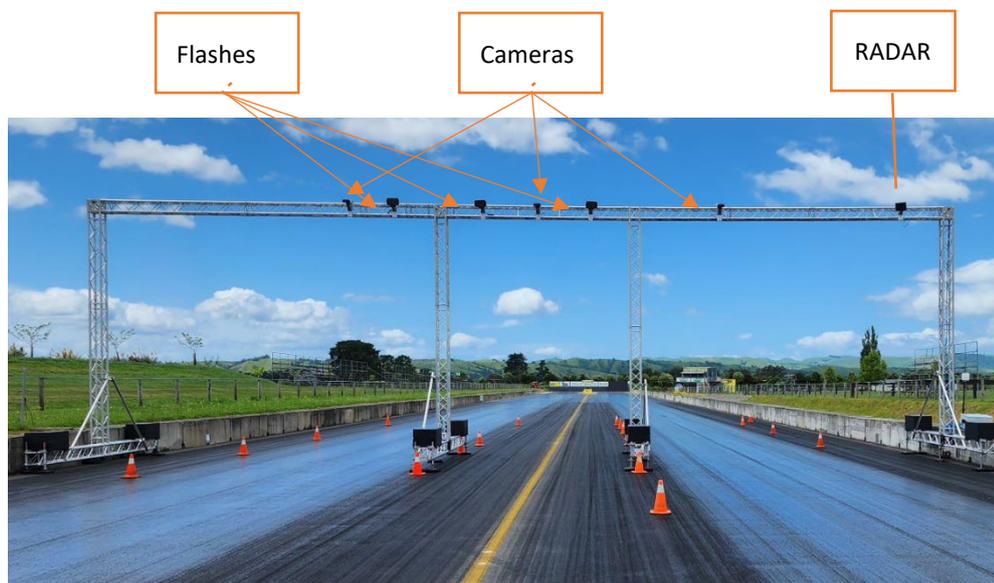
The purpose of this testing was to assess the suitability of the Redflex HALO camera systems in spot speed, average speed and red light enforcement configurations for operational deployment in New Zealand.

3. Equipment tested

The equipment being tested was the Redflex HALO system family of devices including.

Redflex Halo Distributed speed and average speed camera system

An over the lane (gantry mounted) multiple camera based system comprising multiple cameras and a single RADAR device (tested for both average or point to point and spot speed)



HALO Distributed Testing configuration

¹ RAdio Detection And Ranging

² Light Amplification by Stimulated Emission of Radiation

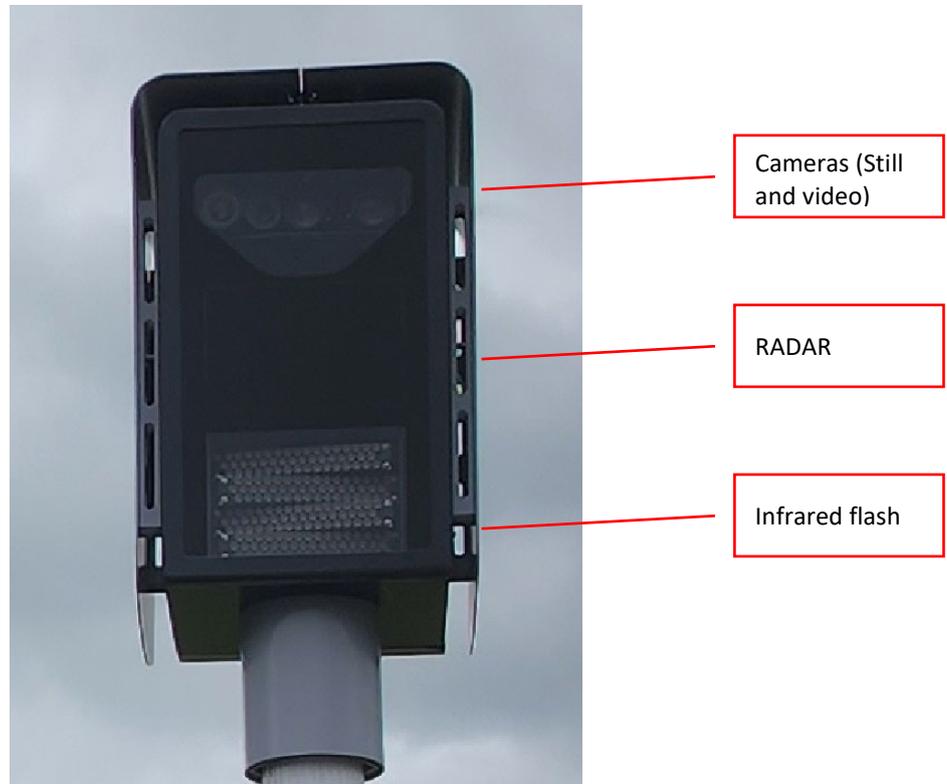
³ Light Detection And Ranging

Redflex Halo 2 speed and average speed camera system

A pole mounted system that operates from the roadside. This system provides both average (point to point) and spot speed configurations.

Redflex Halo 2 red light and speed camera system

A pole mounted system that provides both speed and red-light enforcement.



HALO Sidefire system as tested

- REDFLEXdualradar NK7. This is the existing safety camera currently deployed by New Zealand Police. This system was tested with an auxiliary camera fitted to allow capture of the rear of passing vehicles (allows both approaching and receding direction capture of motorcycle registration plates).

Note: This device is currently AVSE approved. The auxiliary camera testing is purely function testing to ensure correct image capture.

4. Objectives

The objectives of the testing were to evaluate the reliability and accuracy of the camera systems. This included the individual camera system ability to:

- accurately measure the speeds of passing vehicles,
- successfully capture a range of vehicle types (including cars and large vehicles),
- produce clear and accurate images of the target vehicle and surrounding road environment,
- accurately capture vehicles crossing a predetermined limit or stop line against a red-light,
- disregard events where positive and reliable target vehicle identification is in anyway compromised.

Bench tests completed included:

- *Base RADAR frequency verification.*
- *Vibration (camera system is subjected to 72 hours of low frequency oscillation) .*
- *Radio Frequency Interference (various Radio frequencies are transmitted near the device to ensure they do not generate spurious speed readings or anomalous results).*
- *Water tightness.*

5. Evaluation Considerations

As per the current New Zealand Police testing standard, test success criteria were a minimum 100% of all offences being detected recording vehicle speeds within 2km/h of the actual target vehicle speed.

6. Test Methodology

Two testing phases have been carried out including bench testing and controlled physical driving tests at the Masterton Motorplex raceway. The test plan document is appended.

7. People

Included in the test team were;

Police Calibration Services

Bruce Behrent, Wolfgang Haist

Waka Kotahi Safety Camera System Programme

Mark Stables, Timothy Drumm, Dave Ives

Redflex Traffic Systems

Paul McMillan, Steven Feaveyear, Mark Onisiforou, Lee Davey

Measurement Standards Laboratory of New Zealand

Adam Dunford, Cheng Yang

8. Test procedure

Bench testing was carried out at the New Zealand Police Calibration Services laboratory in Wellington.

All field testing was carried out at the Masterton Motorplex Dragway, a 900 metre long sealed raceway. Three four metre wide lanes were established the track, with gantries erected 500 metres apart (providing a point to point measurement zone).

Redflex Halo Distributed speed and average speed camera system

The HALO distributed system was installed on both gantries, providing entry and exit data capture for each end of the measurement zone. The 500 metre distance was verified with a certified theodolite at 499.87 metres long.



Gantry installation

This system included a single RADAR mounted to the side of the gantry which provided coverage of all three lanes. Individual cameras and supporting flashes were mounted above each lane.

The tests performed for the HALO distributed system comprised spot speed detection and point to point / average speed measurement across the 500 metre measurement zone. Vehicles equipped with certified speedometers and external speed display boards were used to provide a traceable true vehicle speed reference.

A series of over two hundred tests from 30 to 110 km/h were performed, with additional high speed tests with a non-certified speedometer motorcycle.

Redflex Halo 2 speed and average speed camera system

The HALO side-fire point to point systems were installed on 3.5 metre high poles (replicating real world installation height) near each gantry. The side-fire point to point measurement zone was set at 400 metres (399.79 metres as measured by theodolite).

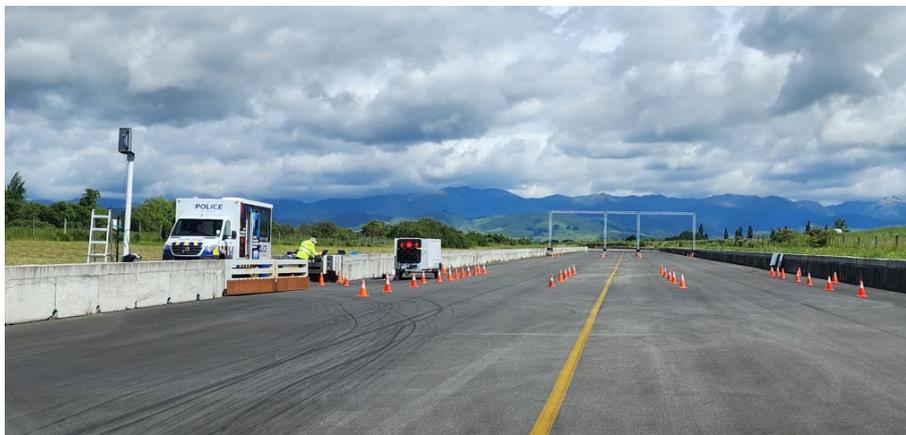
A further series of over two hundred drive through tests were performed at speeds between 30 and 150 km/h.



HALO side-fire installation.

Redflex Halo 2 red light and speed camera system

This system was deployed on a 3.5 metre tall pole on the southern side of the test track. A red, amber, green traffic signal board was installed at a point to ensure it was captured in the camera image. This traffic signal included left, right, and straight ahead signals, all of which were connected to the camera system as per real life deployment which ensured the camera system was aware of signal phases.



HALO Red-light /speed system set up

A series of drive through tests were performed including.

- Speed (through all signal phases),
- Deliberate red light breaches in all three lanes,
- Slow drive across the trigger threshold line,
- Multiple vehicles breaching simultaneously.

Interference tests were also carried out with this camera system. These included:

- Close following vehicles,
- Overtaking vehicles
- Radar reflectors in the radar beam
- Radio transmission near the camera system

An independent speedometer was fitted to the test vehicles allowing direct comparison of the vehicle speed as measured by a calibrated approved measurement device with the speed captured by the camera system.



Independent speedometer display

9. Speed detection test results

Redflex Halo Distributed speed and average speed camera system (Gantry mounted)

Spot speed capture

As vehicles enter and exit the average speed measurement zone their speed is captured, and a photograph taken. The following tables describe test results for the spot speed image taken at entry to the measurement zone.

| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 30 km/h | 1 | 30 | 30 |
| | 2 | 30 | 30 |
| | 3 | 30 | 29 |
| | 4 | 30 | 30 |
| | 5 | 30 | 29 |
| | 6 | 30 | 30 |
| | 7 | 30 | 29 |
| | 8 | 30 | 29 |
| | 9 | 30 | 30 |
| | 10 | 30 | 30 |
| Speed | Pass | Test Speed | Camera Speed |
| 40 km/h | 1 | 40 | 39 |
| | 2 | 40 | 39 |
| | 3 | 40 | 40 |
| | 4 | 40 | 40 |
| | 5 | 40 | 40 |
| | 6 | 40 | 40 |
| | 7 | 40 | 40 |
| | 8 | 41 | 41 |
| | 9 | 40 | 40 |
| | 10 | 40 | 40 |
| Speed | Pass | Test Speed | Camera Speed |
| 50 km/h | 1 | 51 | 51 |
| | 2 | 50 | 49 |
| | 3 | 50 | 50 |
| | 4 | 50 | 50 |
| | 5 | 50 | 50 |
| | 6 | 50 | 50 |
| | 7 | 49 | 49 |
| | 8 | 50 | 50 |
| | 9 | 51 | 51 |
| | 10 | 50 | 50 |

| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 60 km/h | 1 | 60 | 61 |
| | 2 | 60 | 60 |
| | 3 | 60 | 60 |
| | 4 | 60 | 61 |
| | 5 | 60 | 60 |
| | 6 | 60 | 60 |
| | 7 | 60 | 61 |
| | 8 | 60 | 61 |
| | 9 | 60 | 60 |
| | 10 | 60 | 61 |
| Speed | Pass | Test Speed | Camera Speed |
| 70 km/h | 1 | 71 | 71 |
| | 2 | 70 | 70 |
| | 3 | 70 | 70 |
| | 4 | 70 | 70 |
| | 5 | 70 | 71 |
| | 6 | 70 | 71 |
| | 7 | 70 | 70 |
| | 8 | 69 | 69 |
| | 9 | 70 | 70 |
| | 10 | 71 | 71 |
| Speed | Pass | Test Speed | Camera Speed |
| 80 km/h | 1 | 80 | 81 |
| | 2 | 80 | 80 |
| | 3 | 80 | 81 |
| | 4 | 80 | 80 |
| | 5 | 80 | 81 |
| | 6 | 81 | 81 |
| | 7 | 80 | 81 |
| | 8 | 80 | 80 |
| | 9 | 80 | 79 |
| | 10 | 80 | 80 |

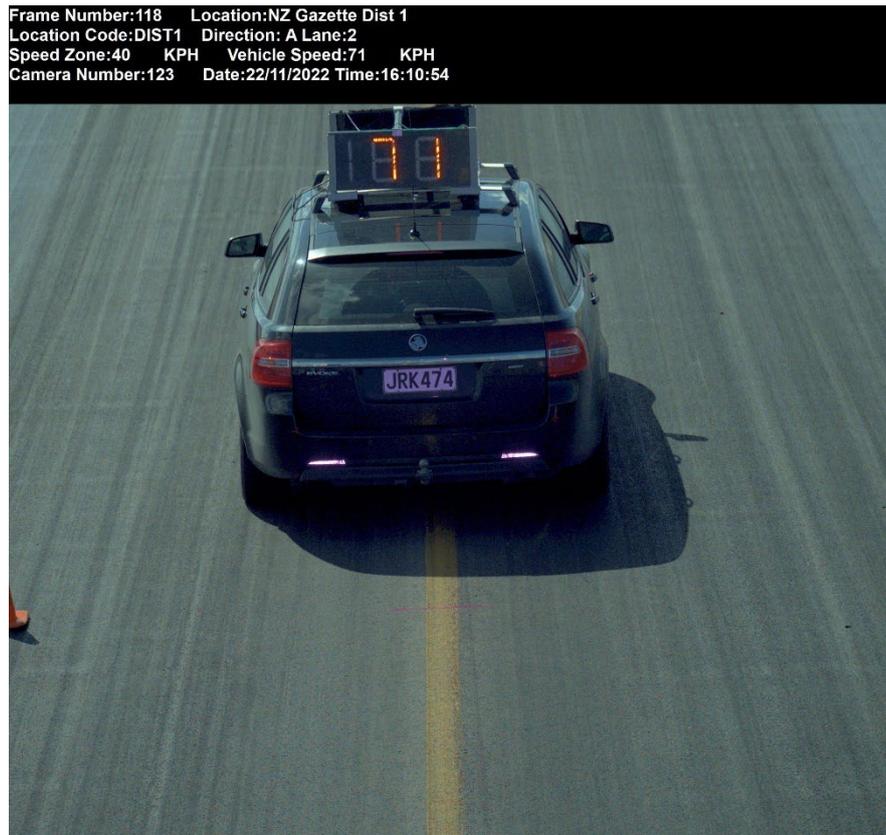
| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 90 km/h | 1 | 90 | 91 |
| | 2 | 90 | 91 |
| | 3 | 90 | 91 |
| | 4 | 90 | 91 |
| | 5 | 91 | 91 |
| | 6 | 90 | 89 |
| | 7 | 90 | 91 |
| | 8 | 90 | 91 |
| | 9 | 91 | 91 |
| | 10 | 90 | 90 |
| Speed | Pass | Test Speed | Camera Speed |
| 100 km/h | 1 | 100 | 101 |
| | 2 | 100 | 102 |
| | 3 | 100 | 101 |
| | 4 | 98 | 99 |
| | 5 | 100 | 100 |
| | 6 | 99 | 100 |
| | 7 | 100 | 101 |
| | 8 | 102 | 103 |
| | 9 | 101 | 102 |
| | 10 | 100 | 100 |

| Spot Speed Tests | | | |
|------------------|------------|--------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 110 km/h | 1 | 111 | 112 |
| | 2 | 111 | 112 |
| | 3 | 110 | 111 |
| | 4 | 110 | 111 |
| | 5 | 109 | 108 |
| | 6 | 111 | 112 |
| | 7 | 112 | 113 |
| | 8 | 108 | 109 |
| | 9 | 110 | 111 |
| | 10 | 109 | 110 |
| High Speeds | | | |
| Vehicle | Test Speed | Camera Speed | |
| Motorcycle* | | 160 | |
| Motorcycle* | | 161 | |
| Motorcycle* | | 154 | |
| Motorcycle* | | 164 | |
| Mustang* | | 133 | |
| NZ Police | 124 | 125 | |
| NZ Police | 123 | 123 | |
| Mustang* | | 137 | |
| Motorcycle* | | 166 | |
| Motorcycle* | | 162 | |

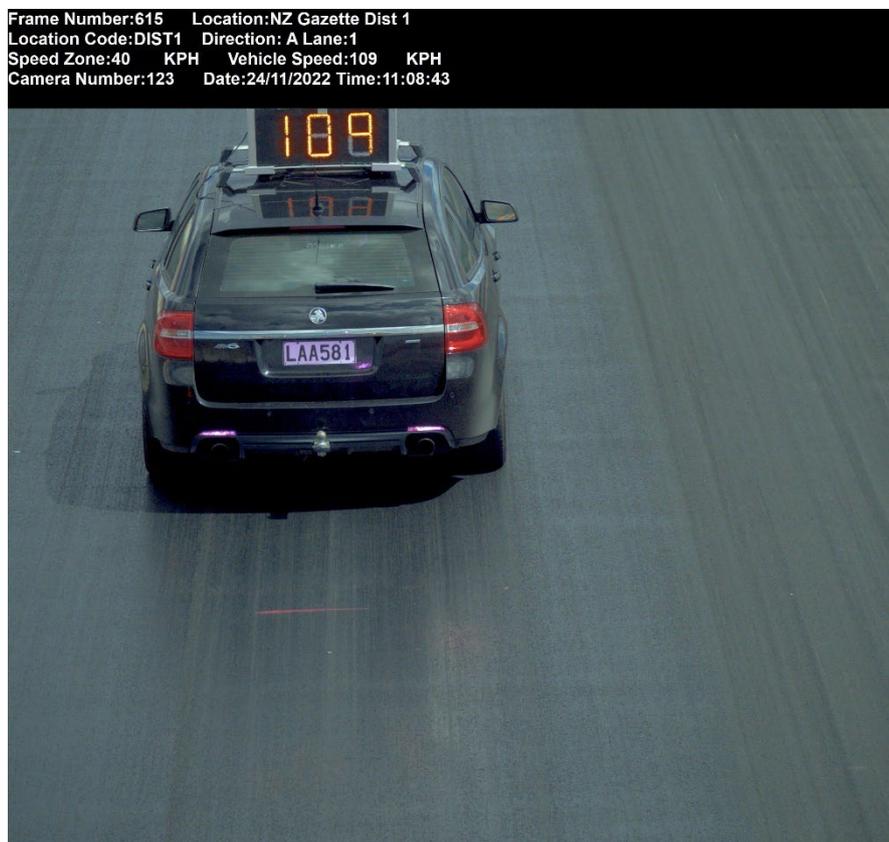
*The motorcycle and mustang did not have an independent speedometer fitted.

All speeds captured by the camera system were within ± 1 km/h of true vehicle speed.

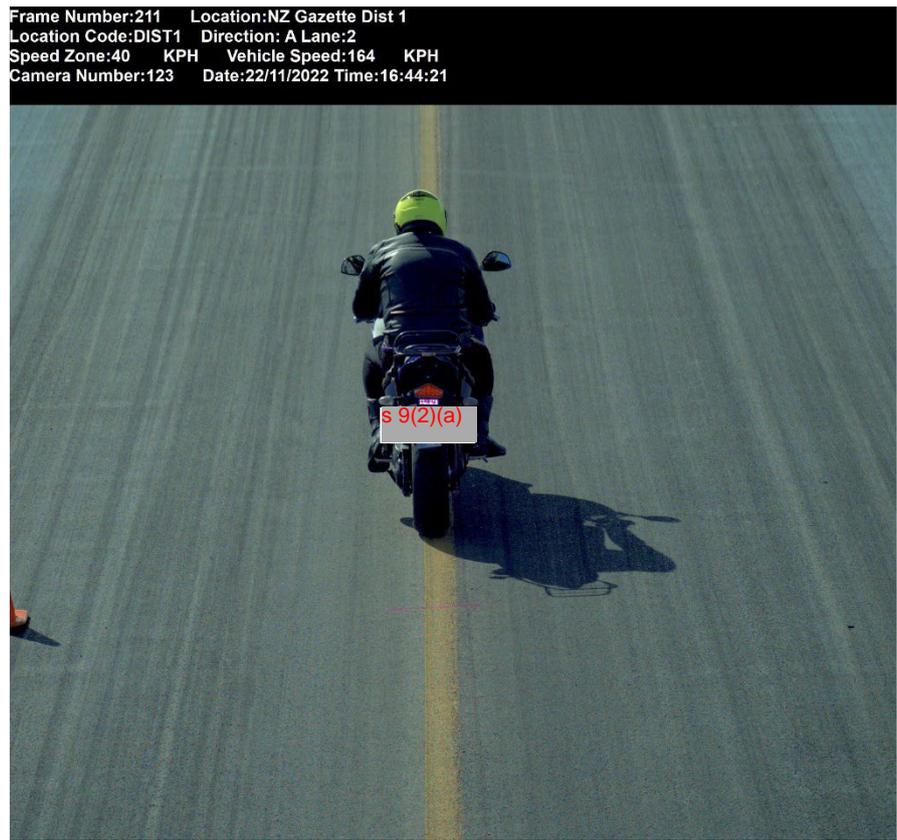
HALO Distributed sample spot speed images



Spot speed of test vehicle entering the measurement zone (71 km/h) in lane 2



Spot speed of test vehicle entering the measurement zone (109 km/h) in lane 1



Motorcycle entering the measurement zone (164 km/h) in lane 2

Average Speed Capture

Average or point to point speeds are determined by the time taken for a vehicle to traverse a known distance. For the HALO Distributed system, a distance of 499.87 metres (500 metres applied).

Test vehicles entered the zone at predetermined speeds, with the driver attempting to maintain a constant speed through out the trip through the measurement zone.

The average speed was calculated based on the time of the journey (time at entry and exit) and the 500 metre trip length.

The independent timer was used to verify the trip time captured by the camera systems. The camera systems time was sourced from GPS and synchronised between the two systems. The cameras capture time to three decimal places and provide a rounded whole seconds trip time.

| Speed | Pass | Entry Speed | Exit Speed | Average Speed | Trip time | Calculated speed |
|---------|------|-------------|------------|---------------|-----------|------------------|
| 50 km/h | 1 | 50 | 49 | 50 | 35.867 | 50.19 |
| | 2 | 50 | 49 | 50 | 35.926 | 50.10 |
| | 3 | 50 | 50 | 49 | 36.302 | 49.58 |
| | 4 | 50 | 50 | 49 | 36.225 | 49.69 |
| | 5 | 50 | 50 | 49 | 36.036 | 49.95 |
| | 6 | 50 | 49 | 50 | 35.889 | 50.15 |
| | 7 | 50 | 50 | 50 | 35.808 | 50.27 |
| | 8 | 50 | 50 | 50 | 35.693 | 50.43 |
| | 9 | 50 | 49 | 49 | 36.036 | 49.95 |
| | 10 | 50 | 50 | 50 | 35.802 | 50.28 |
| 60 km/h | 1 | 60 | 59 | 59 | 30.043 | 59.91 |
| | 2 | 61 | 60 | 59 | 30.040 | 59.92 |
| | 3 | 61 | 61 | 61 | 29.345 | 61.34 |
| | 4 | 60 | 60 | 59 | 30.019 | 59.96 |
| | 5 | 61 | 60 | 60 | 29.993 | 60.01 |
| | 6 | 60 | 60 | 60 | 29.901 | 60.20 |
| | 7 | 61 | 60 | 60 | 29.670 | 60.67 |
| | 8 | 60 | 60 | 59 | 30.037 | 59.93 |
| | 9 | 60 | 60 | 59 | 30.027 | 59.95 |
| | 10 | 60 | 61 | 60 | 29.729 | 60.55 |
| 70 km/h | 1 | 70 | 71 | 70 | 25.505 | 70.57 |
| | 2 | 70 | 70 | 70 | 25.679 | 70.10 |
| | 3 | 70 | 70 | 70 | 25.636 | 70.21 |
| | 4 | 70 | 71 | 70 | 25.481 | 70.64 |
| | 5 | 69 | 70 | 70 | 25.535 | 70.49 |
| | 6 | 69 | 70 | 70 | 25.679 | 70.10 |
| | 7 | 69 | 68 | 70 | 25.698 | 70.04 |
| | 8 | 70 | 69 | 69 | 25.727 | 69.97 |
| | 9 | 70 | 70 | 70 | 25.633 | 70.22 |
| | 10 | 70 | 70 | 70 | 25.517 | 70.54 |

| Speed | Pass | Entry Speed | Exit Speed | Average Speed | Trip time | Calculated speed |
|----------|------|-------------|------------|---------------|-----------|------------------|
| 80 km/h | 1 | 80 | 80 | 80 | 22.294 | 80.74 |
| | 2 | 80 | 80 | 80 | 22.288 | 80.76 |
| | 3 | 80 | 80 | 79 | 22.593 | 79.67 |
| | 4 | 81 | 81 | 80 | 22.264 | 80.85 |
| | 5 | 80 | 81 | 81 | 22.170 | 81.19 |
| | 6 | 79 | 80 | 79 | 22.516 | 79.94 |
| | 7 | 79 | 80 | 81 | 22.187 | 81.13 |
| | 8 | 80 | 81 | 80 | 22.267 | 80.84 |
| | 9 | 80 | 80 | 79 | 22.603 | 79.64 |
| | 10 | 80 | 80 | 80 | 22.498 | 80.01 |
| 90 km/h | 1 | 88 | 90 | 90 | 19.952 | 90.22 |
| | 2 | 90 | 85 | 89 | 20.139 | 89.38 |
| | 3 | 91 | 83 | 88 | 20.232 | 88.97 |
| | 4 | 89 | 90 | 90 | 19.796 | 90.93 |
| | 5 | 91 | 90 | 90 | 19.999 | 90.00 |
| | 6 | 90 | 90 | 90 | 19.910 | 90.41 |
| | 7 | 90 | 89 | 88 | 20.226 | 88.99 |
| | 8 | 89 | 90 | 89 | 20.061 | 89.73 |
| | 9 | 90 | 89 | 89 | 20.214 | 89.05 |
| | 10 | 89 | 88 | 90 | 19.942 | 90.26 |
| 100 km/h | 1 | 101 | 96 | 99 | 18.031 | 99.83 |
| | 2 | 101 | 93 | 100 | 17.989 | 100.06 |
| | 3 | 101 | 100 | 100 | 17.928 | 100.40 |
| | 4 | 100 | 97 | 100 | 17.895 | 100.59 |
| | 5 | 100 | 99 | 100 | 17.945 | 100.31 |
| | 6 | 99 | 100 | 100 | 17.898 | 100.57 |
| | 7 | 100 | 100 | 100 | 17.911 | 100.50 |
| | 8 | 100 | 100 | 100 | 17.888 | 100.63 |
| | 9 | 99 | 101 | 100 | 17.906 | 100.52 |
| | 10 | 99 | 100 | 100 | 17.992 | 100.04 |
| Variable | 1 | 100 | 52 | 67 | 26.851 | 67.04 |
| | 2 | 57 | 100 | 92 | 19.553 | 92.06 |
| | 3 | 98 | 42 | 81 | 22.135 | 81.32 |
| | 4 | 91 | 49 | 70 | 25.444 | 70.74 |
| | 5 | 92 | 27 | 53 | 33.610 | 53.56 |
| | 6 | 90 | 52 | 75 | 23.693 | 75.97 |
| | 7 | 85 | 99 | 108 | 16.663 | 108.02 |
| | 8 | 158 | 113 | 140 | 12.842 | 140.17 |
| | 9 | 118 | 132 | 140 | 12.841 | 140.18 |
| | 10 | 91 | 27 | 58 | 30.814 | 58.42 |

All speeds captured were accurate within 2 km/h.

Halo Distributed - Average Speed sample images

The following example images show the test vehicle(s) average speed across the 500 metre measurement zone. The images show spot speeds as the vehicle enters and exits the zone. The system captures time (GPS sourced and synchronised between both systems) and calculates average speed based on the travel time for the 500 metre distance, at a range of speeds.



Entry

Exit

In the above example the vehicle entered and exited the measurement zone at 50 km/h. The trip time was measured as 35.926 seconds by the system (36 seconds when rounded). The independent timer fitted gave a trip time of 35.86 seconds. The times provide a calculated speed of 50.1 km/h, 50.0 km/h and 50.2 km/h respectively.

The following example has the test vehicle entering the zone at 92 km/h, exiting at 27 km/h. The calculated average speed is 53 km/h. The average speed was calculated based on a camera system captured trip time of 33.610 seconds. The independent timer confirmed 34.63 seconds.



Entry

Exit

Redflex Halo 2 speed and average speed camera system (roadside pole mounted)

Spot speed capture

The HALO sidefire systems were installed at a separation of 400 metres (measured at 399.79 m with the theodolite), with the same three lane roadway configuration. The cameras were installed on 3.5 metre high poles on the southern side of the track, that height being the typical operational roadside installation height.

As for the HALO Distributed system, the side system captured spot speeds at both entry and exit to/from the measurement zone.

| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 30 km/h | 1 | 33 | 34 |
| | 2 | 32 | 32 |
| | 3 | 34 | 34 |
| | 4 | 35 | 35 |
| | 5 | 37 | 36 |
| | 6 | 32 | 31 |
| | 7 | 32 | 33 |
| | 8 | 33 | 33 |
| | 9 | 35 | 35 |
| | 10 | 37 | 36 |
| Speed | Pass | Test Speed | Camera Speed |
| 40 km/h | 1 | 41 | 40 |
| | 2 | 39 | 39 |
| | 3 | 39 | 39 |
| | 4 | 41 | 41 |
| | 5 | 37 | 38 |
| | 6 | 37 | 38 |
| | 7 | 42 | 42 |
| | 8 | 36 | 37 |
| | 9 | 40 | 40 |
| | 10 | 42 | 42 |
| Speed | Pass | Test Speed | Camera Speed |
| 50 km/h | 1 | 51 | 50 |
| | 2 | 52 | 53 |
| | 3 | 49 | 49 |
| | 4 | 51 | 51 |
| | 5 | 47 | 47 |
| | 6 | 48 | 47 |
| | 7 | 49 | 49 |
| | 8 | 50 | 50 |
| | 9 | 50 | 49 |
| | 10 | 49 | 48 |

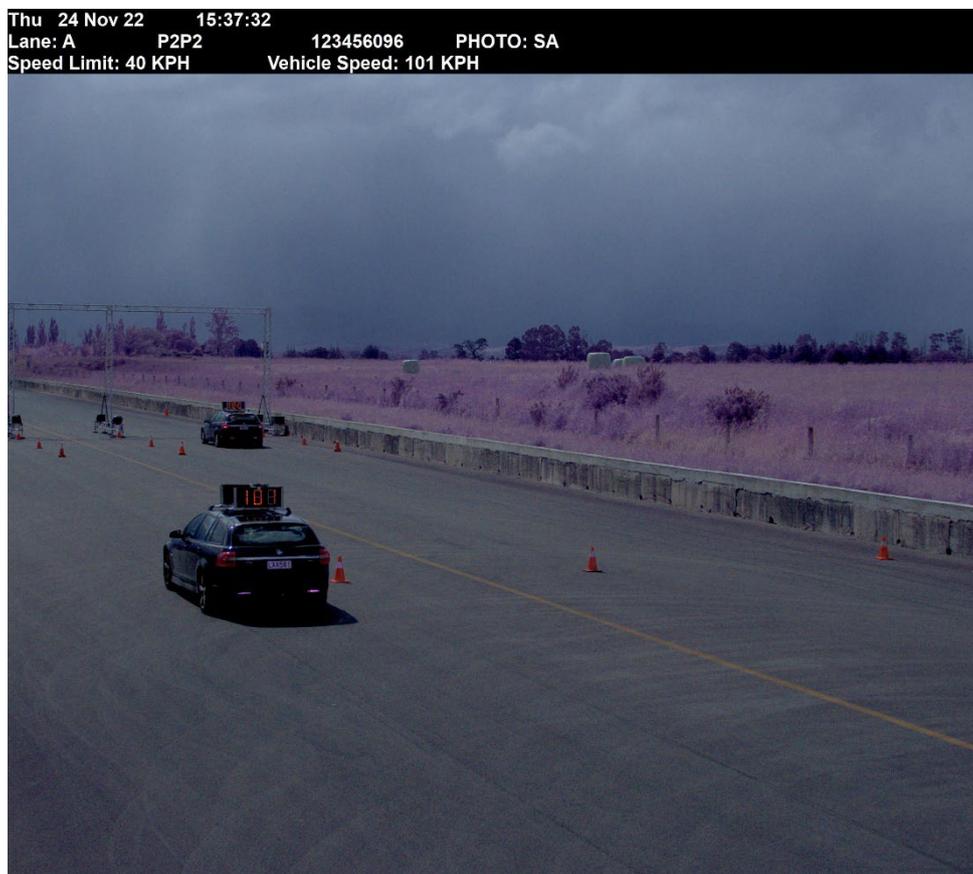
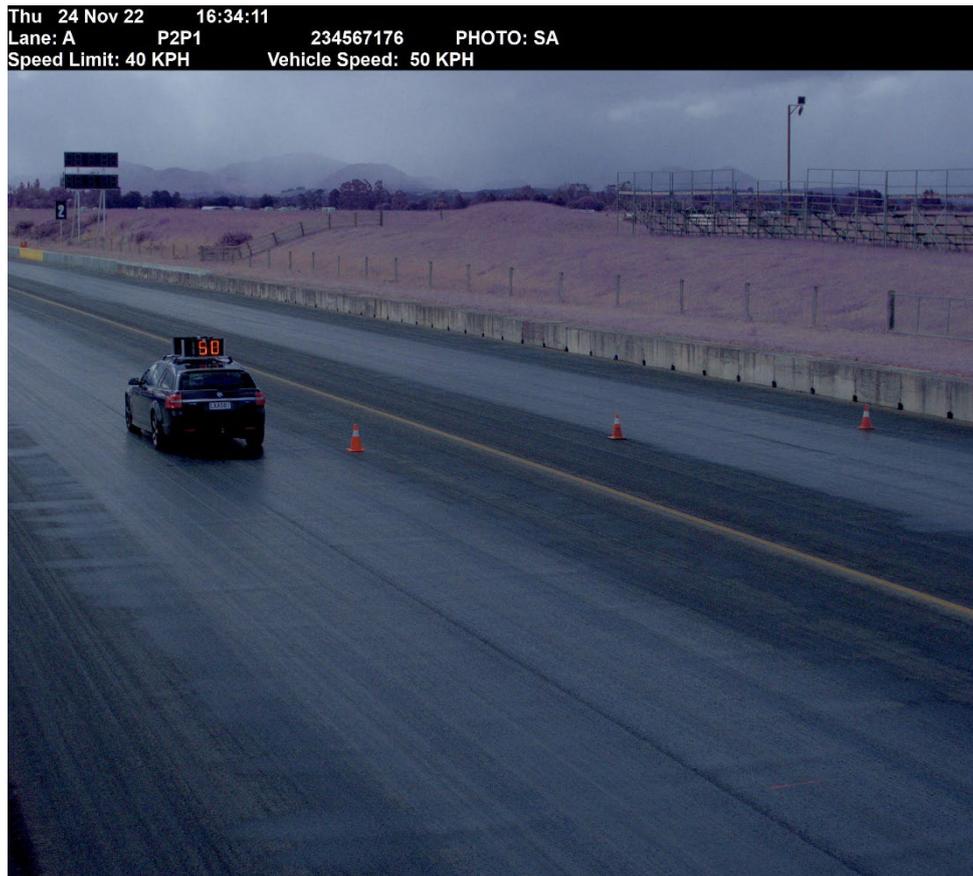
| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 60 km/h | 1 | 61 | 61 |
| | 2 | 60 | 60 |
| | 3 | 60 | 60 |
| | 4 | 60 | 60 |
| | 5 | 61 | 61 |
| | 6 | 60 | 60 |
| | 7 | 56 | 57 |
| | 8 | 65 | 65 |
| | 9 | 64 | 65 |
| | 10 | 60 | 61 |
| Speed | Pass | Test Speed | Camera Speed |
| 70 km/h | 1 | 72 | 73 |
| | 2 | 73 | 73 |
| | 3 | 74 | 74 |
| | 4 | 68 | 69 |
| | 5 | 72 | 73 |
| | 6 | 71 | 70 |
| | 7 | 66 | 67 |
| | 8 | 69 | 70 |
| | 9 | 67 | 67 |
| | 10 | 74 | 74 |
| Speed | Pass | Test Speed | Camera Speed |
| 80 km/h | 1 | 80 | 80 |
| | 2 | 80 | 79 |
| | 3 | 80 | 80 |
| | 4 | 80 | 79 |
| | 5 | 80 | 79 |
| | 6 | 81 | 80 |
| | 7 | 81 | 81 |
| | 8 | 80 | 80 |
| | 9 | 80 | 81 |
| | 10 | 80 | 80 |

| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 90 km/h | 1 | 87 | 87 |
| | 2 | 86 | 87 |
| | 3 | 87 | 87 |
| | 4 | 89 | 90 |
| | 5 | 91 | 91 |
| | 6 | 91 | 91 |
| | 7 | 90 | 90 |
| | 8 | 90 | 91 |
| | 9 | 91 | 91 |
| | 10 | 91 | 91 |
| Speed | Pass | Test Speed | Camera Speed |
| 100 km/h | 1 | 99 | 99 |
| | 2 | 100 | 99 |
| | 3 | 99 | 99 |
| | 4 | 106 | 106 |
| | 5 | 97 | 96 |
| | 6 | 98 | 98 |
| | 7 | 101 | 101 |
| | 8 | 100 | 101 |
| | 9 | 100 | 100 |
| | 10 | 100 | 101 |
| Speed | Pass | Test Speed | Camera Speed |
| 110 km/h | 1 | 109 | 109 |
| | 2 | 109 | 109 |
| | 3 | 111 | 111 |
| | 4 | 110 | 109 |
| | 5 | 111 | 111 |
| | 6 | 111 | 111 |
| | 7 | 111 | 110 |
| | 8 | 109 | 110 |
| | 9 | 111 | 111 |
| | 10 | 108 | 108 |

| Spot Speed Tests | | | |
|------------------|------|------------|--------------|
| Speed | Pass | Test Speed | Camera Speed |
| 120 km/h | 1 | 120 | 120 |
| | 2 | 121 | 121 |
| | 3 | 120 | 120 |
| | 4 | 120 | 120 |
| | 5 | 121 | 121 |
| | 6 | 119 | 119 |
| | 7 | 121 | 121 |
| | 8 | 121 | 120 |
| | 9 | 120 | 119 |
| | 10 | 119 | 119 |
| Speed | Pass | Test Speed | Camera Speed |
| 130 km/h | 1 | 133 | 134 |
| | 2 | 133 | 133 |
| | 3 | 133 | 133 |
| | 4 | 134 | 133 |
| | 5 | 133 | 132 |
| | 6 | 133 | 132 |
| | 7 | 133 | 132 |
| | 8 | 133 | 133 |
| | 9 | 133 | 134 |
| | 10 | 131 | 131 |
| Speed | Pass | Test Speed | Camera Speed |
| 140 - 150 km/h | 1 | 148 | 148 |
| | 2 | 146 | 146 |
| | 3 | 150 | 150 |
| | 4 | 147 | 146 |
| | 5 | 151 | 150 |
| | 6 | 148 | 149 |
| | 7 | 147 | 147 |
| | 8 | 149 | 150 |
| | 9 | 151 | 151 |
| | 10 | 150 | 150 |

| High Speeds | | | |
|-------------|--------------|------------|--------------|
| Test Speed | Camera Speed | Test Speed | Camera Speed |
| 148 | 148 | 149 | 148 |
| 146 | 146 | Motorcycle | 196 |
| 150 | 150 | Motorcycle | 195 |
| 147 | 146 | Motorcycle | 199 |
| 151 | 150 | Motorcycle | 192 |

Spot speed sample images



Average speed capture

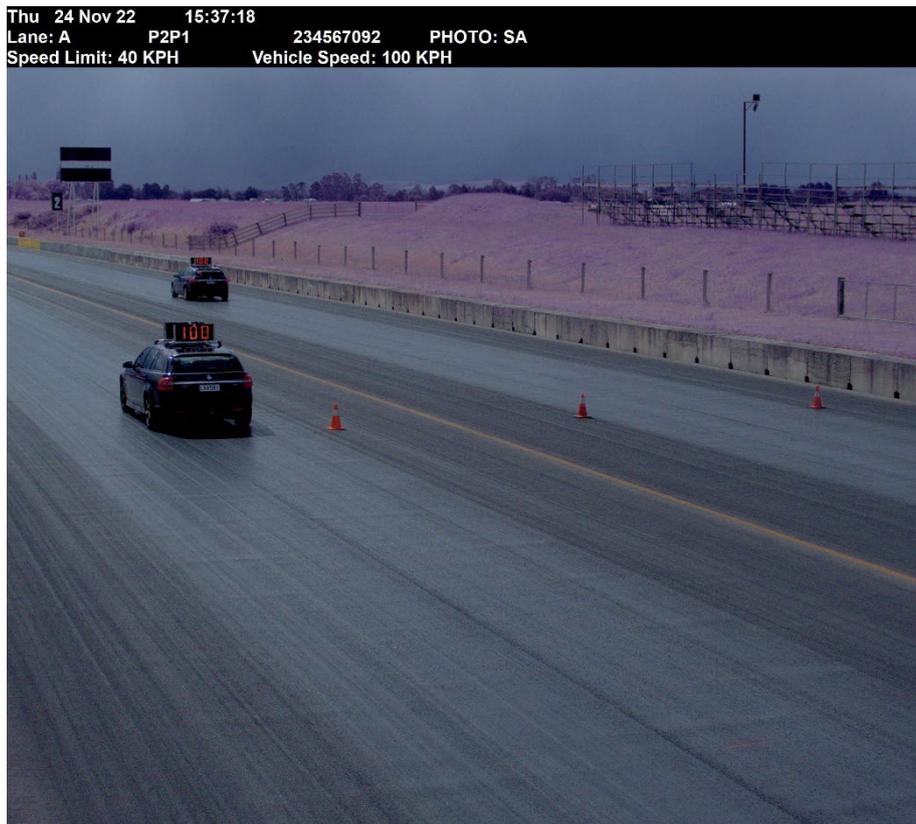
The HALO Sidewire average speed system captured average speeds over a 400 metre test distance. Time was synchronised to GPS time between both systems. The system returned speeds within +/- 2 km/h for all tests.

| Speed | Pass | Entry Speed | Exit Speed | Average Speed | Trip time | Calculated speed |
|--------------|------|-------------|------------|---------------|-----------|------------------|
| 50 km/h | 1 | 50 | 50 | 50 | 28.428 | 50.53 |
| | 2 | 50 | 50 | 50 | 28.308 | 50.74 |
| | 3 | 50 | 50 | 50 | 28.234 | 50.87 |
| | 4 | 50 | 50 | 50 | 28.257 | 50.83 |
| | 5 | 50 | 50 | 50 | 28.389 | 50.60 |
| | 6 | 50 | 50 | 50 | 28.270 | 50.81 |
| | 7 | 50 | 50 | 50 | 28.384 | 50.61 |
| | 8 | 50 | 50 | 50 | 28.399 | 50.58 |
| | 9 | 51 | 50 | 50 | 28.356 | 50.66 |
| | 10 | 50 | 50 | 50 | 28.391 | 50.59 |
| 60 km/h | 1 | 62 | 62 | 61 | 23.493 | 61.14 |
| | 2 | 61 | 61 | 61 | 23.441 | 61.28 |
| | 3 | 60 | 60 | 60 | 23.573 | 60.93 |
| | 4 | 60 | 60 | 60 | 23.649 | 60.74 |
| | 5 | 60 | 61 | 61 | 23.309 | 61.62 |
| | 6 | 61 | 61 | 61 | 23.295 | 61.66 |
| | 7 | 60 | 61 | 61 | 23.450 | 61.25 |
| | 8 | 61 | 60 | 61 | 23.458 | 61.23 |
| | 9 | 61 | 60 | 60 | 23.708 | 60.59 |
| | 10 | 61 | 61 | 61 | 23.393 | 61.40 |
| 80 - 90 km/h | 1 | 81 | 81 | 82 | 17.495 | 82.10 |
| | 2 | 80 | 80 | 81 | 17.676 | 81.26 |
| | 3 | 80 | 80 | 80 | 17.743 | 80.96 |
| | 4 | 80 | 80 | 81 | 17.604 | 81.60 |
| | 5 | 90 | 90 | 91 | 15.618 | 91.97 |
| | 6 | 91 | 91 | 92 | 15.537 | 92.45 |
| | 7 | 91 | 91 | 92 | 15.546 | 92.40 |
| | 8 | 90 | 90 | 91 | 15.620 | 91.96 |
| | 9 | 91 | 91 | 93 | 15.427 | 93.11 |
| | 10 | 93 | 90 | 92 | 15.604 | 92.05 |

| Speed | Pass | Entry Speed | Exit Speed | Average Speed | Trip time | Calculated speed |
|----------------|------|-------------|------------|---------------|-----------|------------------|
| 100 - 110 km/h | 1 | 111 | 110 | 112 | 12.746 | 112.69 |
| | 2 | 110 | 110 | 112 | 12.806 | 112.17 |
| | 3 | 112 | 110 | 111 | 12.852 | 111.76 |
| | 4 | 111 | 110 | 111 | 12.883 | 111.50 |
| | 5 | 111 | 110 | 112 | 12.768 | 112.50 |
| | 6 | 100 | 100 | 102 | 14.033 | 102.36 |
| | 7 | 101 | 101 | 103 | 13.923 | 103.17 |
| | 8 | 100 | 101 | 102 | 14.018 | 102.47 |
| | 9 | 102 | 101 | 103 | 13.886 | 103.44 |
| | 10 | 101 | 102 | 102 | 14.043 | 102.29 |
| High speeds | 1 | 129 | 160 | 153 | 9.353 | 153.58 |
| | 2 | 142 | 134 | 166 | 8.627 | 166.50 |
| | 3 | 122 | 143 | 149 | 9.590 | 149.78 |
| | 4 | 121 | 161 | 154 | 9.270 | 154.95 |
| | 5 | 129 | 160 | 153 | 9.353 | 153.58 |

The following images show various test images as captured by the camera systems.

Sample 1. Average speed reported as 102 km/h for the trip through the measurement zone.

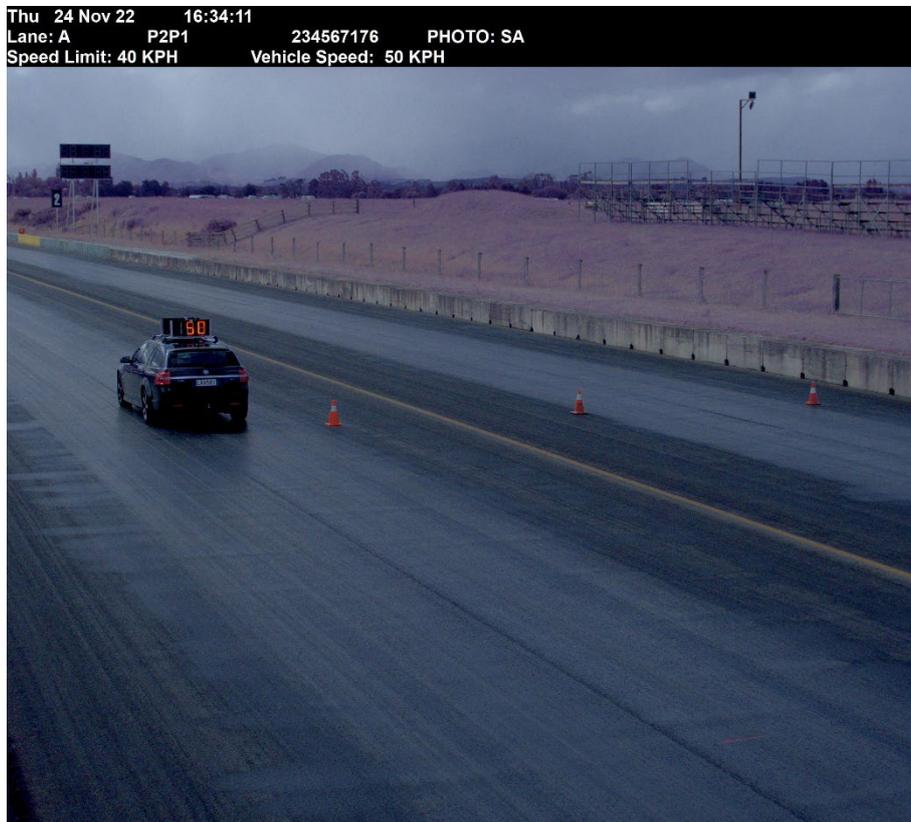


Vehicle entering the measurement zone at 100 km/h



The same vehicle leaving the measurement zone at 101 km/h.

50 km/h average speed capture



Test vehicle entering the measurement zone at 50 km/h



Test vehicle leaving the measurement zone at 50 km/h

Redflex Halo 2 red light and speed camera system (roadside pole mounted)

A HALO redlight/speed combined system was installed trackside, with the same three lane configuration. A traffic signal display was placed within camera shot, connected to the camera system in the usual operational roadside manner.

A virtual limit line was established, and the camera system set to enforce vehicles crossing that limit line. Tests completed included vehicles continuing across the limit line without stopping, braking hard and stopping at or over the limit line, one vehicle stopping and an adjacent vehicle failing to stop, slow creeping over the limit line. Tests were also performed with green and amber light phases. Various speeds were also tested.

The following images show various test images as captured by the camera system. Those that have “time after red” in the data header are red-light offences as well as speeding offences. Speed only offences do not describe ‘time after red’.

No false detections were observed. Offences were only generated for the red-light phase. Vehicles crossing the limit line during green and amber phases were ignored by the system.

Multiple vehicles breaching were also individually captured (including side by side vehicles crossing the limit line simultaneously).



Redlight and speed offence (failed to stop for red signal at 151 km/h)



Redlight breach at 49 km/h



Speed only breach – green signal for lane A (as occupied by vehicle)

Additional Tests

Note – these tests included vehicles not fitted with the independent speedometer.

The following images show various test scenario images as captured by the camera system. Those that have “time after red” in the data header are red-light breaches as well as speeding offences.



Motorcycle 199 km/h



Both vehicles created separate offences. The image above refers to vehicle 2 (lane C), the image below refers to vehicle 1 (lane B).



Interference tests

In order to establish the ability of the system to determine vehicle speeds accurately and reliably in an operational sense a series of tests involving multiple vehicles were carried out. These included vehicles travelling side by side, closely following each other, staggered formations, and overtaking scenarios.

No anomalous readings were observed during any of these tests. The system captured speeds for multiple vehicles when there was clear line of sight to the vehicle as it traversed the detection zone. Any circumstance where this was not the case was ignored or rejected by the system with no offence generated.

Overtaking vehicles were captured along with the vehicle being overtaken. Lane occupation was consistently captured correctly, with the associated metadata being correctly displayed in the image data line.

Sample Images from interference tests follow.



Close following vehicles 52 km/h

For the above situation a single offence was captured as there was no discernible gap between the two vehicles – i.e., the system saw this as a single long vehicle.

The following scenario has a larger gap between the two vehicles, allowing the system to capture separate incidents for both vehicles.



Following traffic. Both vehicles captured separately and identified.



One vehicle stops ,the second continues Lane B stopped, Lane C fails to stop

Low light and wet weather tests

Dusk and night-time tests were conducted to ensure photographs captured a vehicle on a roadway clearly. A number of options exists with the image extraction process that allow enhancement of images or parts of images (such as licence plate area). The sample images below are the primary unenhanced evidential image.



Dusk offence image sample



Night-time image sample

All photographs clearly showed a vehicle on a roadway, with the registration plate. Clearly visible. It should be noted that the track environment does not have typical road markings, so lane markings are not visible in the images.



Image captured during heavy rain

Camera system performance during a heavy rain episode still delivered usable images and data. Operational experience tells us that image quality is driven by wind direction which can cause rain to fall directly on to the protective screen in front of the camera ,thereby obscuring camera views. Very heavy rain can disrupt radar signals ;however, this was not observed during the rain episode present during testing.

10. Supplementary Testing

Vibration, waterproofing and Radio Frequency Interference (RFI) testing (including transmitting radio and cellular phones) was completed at the Police Calibration Services laboratory with additional RFI testing carried out during the field testing phase at Masterton. No interference issues were detected.

The system was exposed to sprayed water at the laboratory and rainfall on site. No issues with water ingress were observed.

11. Conclusion

The introduction of new equipment carries with it an amount of risk. Reliability and accuracy are critical to the reputation of the organisation operating the equipment along with the paramount necessity to ensure that any sanctions brought about by its use are above reproach. The Redflex HALO Camera Systems have undergone significant testing to ensure these parameters are met. This report has described that testing process and the results obtained.

The objectives of the testing were to evaluate the reliability and accuracy of the camera systems. This included the cameras ability to:

- accurately measure the speeds of passing vehicles,
- successfully capture a range of vehicle types (including cars and large vehicles),

- produce clear and accurate images of the target vehicle and surrounding road environment,
- accurately capture vehicles crossing a predetermined limit or stop line against a red-light,
- disregard events where positive and reliable target vehicle identification is in anyway compromised.

All objectives were met or exceeded

The camera system was subjected to two rounds of testing, one at a closed raceway, the other on a test course to determine red-light offence enforcement. Speed tests from 30 km/h to 150 km/h in 10 km/h increments were completed. Over 400 individual control speed tests were performed to test that the camera system returned speeds within ± 2 km/h.

The camera system performed within the required parameters for all speed tests delivering accurate results within ± 2 km/h of the control vehicle actual speed.

Additional interference tests were completed using multiple vehicles in varied formations and different vehicle types. No anomalies were disclosed during these tests, with the device ignoring all vehicles partially or fully obscured by other vehicles.

The red-light running offence capture was confined to red-light only offences. Multiple vehicle capture was achieved, with all breaches of the stop or limit line being successfully captured as an offence by the system where the offending vehicle was visible. Obscured vehicles were correctly ignored or rejected by the system.

12. Recommendation

Following a thorough analysis of the test results I am confident that the Redflex HALO range of safety camera systems operates correctly and provides reliable speed and red-light breach detection.

No anomalous readings were detected during any of the tests carried out and captured speeds recorded by the camera system(s) were within ± 2 km/h of the actual test vehicle speeds.

I am therefore satisfied that the Redflex HALO safety camera systems named below are suitable for approval in the Gazette as Approved Vehicle Surveillance Equipment (AVSE) pursuant to the Land Transport Act 1998 and recommend proceeding with that process.

Redflex Halo 2 red light and speed camera system
Redflex Halo 2 speed and average speed camera system
Redflex Halo Distributed speed and average speed camera system



Mark Stables

Safety Camera System Programme

Waka Kotahi

7 February 2023

Appendix (Gazette Testing Plan)

GAZETTE APPROVAL OF REDFLEX HALO AND DUALRADAR SAFETY CAMERA SYSTEMS

TESTING PLAN

MARK STABLES

1 NOVEMBER 2022

V 4.0

Contents

| | |
|--|----|
| <u>INTRODUCTION</u> | 3 |
| <u>PREAMBLE</u> | 3 |
| <u>OVERVIEW OF THE GAZETTE APPROVAL PROCESS IN NEW ZEALAND</u> | 3 |
| <u>THE NEW ZEALAND LEGISLATIVE ENVIRONMENT</u> | 4 |
| <u>TESTING APPROACH</u> | 6 |
| <u>EVALUATION CRITERIA</u> | 10 |
| <u>TESTING DATES</u> | 11 |
| <u>CONTINGENCY</u> | 12 |
| <u>FULL LOGISTICS</u> | 15 |
| <u>PEOPLE RESOURCES</u> | 16 |
| <u>DATA COLLECTION SHEETS</u> | 18 |
| <u>DOCUMENTATION</u> | 18 |

INTRODUCTION

This document describes the Gazette Approval testing process proposed to allow consideration of the Redflex HALO and REDFLEXspeedradar NK7 in all of their appropriate operational configurations for approval in the New Zealand Gazette, the latter (NK7) being focused on auxiliary camera performance.

The Redflex HALO safety camera system is a multifunctional camera system that utilises a single radar system capable of tracking multiple vehicles. It has enforcement configurations including speed, red-light and average speed detection.

The REDFLEXspeedradar NK7 is a dual radar camera system that is capable of speed and red-light compliance in both mobile and fixed deployment situations.

This document provides a full description of the Gazette Approval process being undertaken and complete work plan for the successful completion of testing and requisite documentation required for Gazette Approval as Approved Vehicle Surveillance Equipment (AVSE) by the Minister of Transport.

PREAMBLE

Automated enforcement is becoming more prevalent internationally. New Zealand is no exception to this trend with growing interest in the deployment of automated enforcement equipment. As automated enforcement devices are typically used for live enforcement of speed limits and traffic signal compliance it is a requirement that they are tested and gazetted as Approved Vehicle Surveillance Equipment in New Zealand. This approval offers the evidentiary privilege of owner liability and 'image as proof of offence' provided under the Land Transport Act 1998.

To provide Ministerial and organisational assurance of accuracy, reliability and repeatability, a number of controlled tests must be performed. Potential operational risks must be identified and mitigated as part of this testing. Gazette approval is based on the results of significant practical and control tests. Practical testing includes speed detection accuracy, susceptibility to external interference sources and the proximity of other traffic. Control tests include Radio Frequency Interference (RFI), voltage variation (high and low voltage power-supply issues) and water tightness.

OVERVIEW OF THE GAZETTE APPROVAL PROCESS IN NEW ZEALAND

In order to provide the level of assurance required by the Ministers responsible, an extensive testing regime is undertaken. This testing involves field testing where operational deployment situation and bench tests being completed. The testing includes adverse deployment and traffic conditions that test system reliability in circumstances known to induce potential radar errors.

At the completion of all testing the results are considered in detail, and a full test report is provided to support any subsequent application for approval by the Minister(s).

The process for Gazette Approval is as follows.

Testing phase

- Equipment nominated for testing

- Testing plan developed based on capability and specifications of proposed equipment
- Testing completed
- Results analysed and test result report completed

Approval phase

- Briefing report for the Minister of Transport prepared (including an information brief for the Minister of Police),
- Accompanying letter from Test provider / Manager for the Minister
- *May include a report from an independent oversight organisation*
- Draft Gazette Notice prepared,
- Documents forwarded to Director of Land Transport for internal approval (usual internal elevation process followed)
- Documents submitted to Parliamentary Writing Office and Minister.

THE NEW ZEALAND LEGISLATIVE ENVIRONMENT

Automated enforcement (by use of camera or some other such technology) is reliant on the appropriate Gazette Approval of the equipment as Approved Vehicle Surveillance Equipment (AVSE). The types of offences which may be enforced are defined in the Land Transport Act 1998 as follows,

moving vehicle offence means an offence detected by approved vehicle surveillance equipment that is—

13. a speeding offence, or
14. an offence in respect of the failure to comply with the directions given by a traffic signal or a traffic sign that is a variable traffic or lane control sign, or
15. any offence against regulations made under this Act or the Transport (Vehicle and Driver Registration and Licensing) Act 1986 that is declared by regulations under this Act to be a moving vehicle offence for the purposes of this definition, or
16. a toll offence

As automated enforcement capability is enhanced across New Zealand work is underway to expand the scope of defined *Moving Vehicle Offences*, thereby increasing the opportunity for automated enforcement of a greater range of trauma promoting offences. The additional offences under consideration are.

- **Speed**
 - Average Speed
- **Red light**
 - Speed through intersection for both red light breaches and green signal phases

Section 145. Evidence of approved vehicle surveillance equipment

- b) In proceedings for a moving vehicle offence, an image produced by means of an exposure taken by approved vehicle surveillance equipment and showing or recording a motor vehicle on a road, the speed of the vehicle, the location of the vehicle, the colour or form of a traffic control device, the fact that a toll has not been paid in respect of the vehicle, and the date and time when the image was taken, or showing or recording any of those things, is, in the absence of proof to the contrary, sufficient evidence of that fact or event.
- c) The production in proceedings for a moving vehicle offence of an image purporting to be an image referred to in subsection (1) is, in the absence of proof to the contrary, sufficient evidence that the image was produced by means of an exposure taken by approved vehicle surveillance equipment.

OBJECTIVES

The objectives of the tests are to evaluate the ability of the camera system to meet any or all of the following criteria:

- Accurately measure the speeds of passing vehicles in line with the testing criteria limits,
- Successfully capture a range of vehicle types (including cars, trucks, and motorcycles) which may be subject to differing speed limits,
- Correctly identify the lane occupied by the vehicle,
- Operate in a variety of lighting and weather conditions,
- Accurately identify speeding vehicles among traffic or ignore such circumstances,
- Produce clear and accurate images of the target vehicle and surrounding road environment,
- Accurately capture vehicles failing to stop for red light traffic signals,
- Correctly ignore green and amber traffic signal phases,
- Accurately capture vehicle average speed across a known distance,
- Capture clear images of vehicles entering and leaving the average speed measurement zone,
- Correctly read vehicle registration plates,
- Accurately record journey time for vehicles travelling through the average speed measurement zone in an average speed / point to point system,
- Correctly filter or ignore or in some other way 'tag' events where there is possible external interference such as radar reflection or radio frequency interference,

- Provide accurate and clear identification of the target vehicle when typical on-road situations are created (normal travel, overtaking, close following, mixed size vehicles side by side),

PRE-TEST WORK REQUIREMENTS

As Point to Point (Average Speed) speed enforcement has not been previously gazette tested or approved in New Zealand some guidance on process from the Measurement Standards Laboratory of New Zealand (MSLNZ) is desired.

MSL has been consulted and will be providing verbal guidance initially ,prior to presenting the verbal advice in formal written form (allows expediency) The advice sought relates to:

- The minimum measurement zone length,
- The methodology to confirm time to traverse the measurement zone,
- The accuracy of speed measurement based on the surveyed measurement zone length and timer/clock accuracy.

TESTING APPROACH

Due to the staggered gazette equipment delivery schedule, a two phase approach has been applied to the Gazette Testing process, with Phase one testing sidewire (roadside) systems and Phase two testing the over the lane (gantry mount) HALO Distributed system.

The testing required involves bench tests to examine the construction and durability of the equipment, and field testing to examine the reliability, accuracy, and repeatability of the equipment in regard to real life detection situations.

Bench Testing

Bench tests performed are,

- Vibration Tests – device is subjected to low frequency (10 Hz) oscillations.
- RADAR frequency tests – to ensure device transmits within the manufacturers described operating range.
- Power Supply fluctuation to ensure system ceases enforcement when voltage is outside of the manufacturer’s defined operating range (if device operates on external 12 volt supply).
- Water fastness test – simulated rain.
- General construction quality/robustness. Does the equipment cope with acceleration rates of -0.7 to 0.7 G (replicating freight movement)? This can be inferred from the delivery process if it involved extensive transport.

Field Testing

Provided the equipment passes the bench testing process, field testing may be undertaken.

Field testing is the practical testing of equipment under controlled conditions. The equipment under test is subjected to a series of tests to determine the accuracy, reliability, and repeatability of the system to capture vehicles.

Due to the need to test equipment at high speeds and with a variety of vehicle configurations a private roadway is required.

Previous testing has been performed at the Masterton Motorplex. This private track offers a safe and secure environment at which to conduct tests, however other privately owned options exist.



Aerial view of Masterton Motorplex

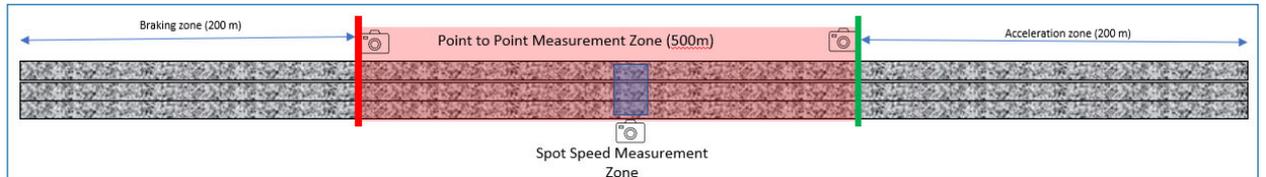


Track layout – Masterton Motorplex

The useable sealed track is 900 metres long by 20 metres wide. This allows three four metre wide lanes to be established in the test measurement area with a four metre wide safety zone on each side.

The proposed testing layout (as per the diagram below) allows sufficient distance to accelerate to the required test speeds prior to the measurement zones, maintain a constant speed through the zone and safely brake after the zone (based on spot speeds from 30 km/h to 130 km/h and Point to Point speeds from 50 km/h to 100 km/h).

Note: The length of the measurement zone may be changed to suit operational limitations at the testing venue or on advice from the Measurement Standards Laboratory of New



Zealand.

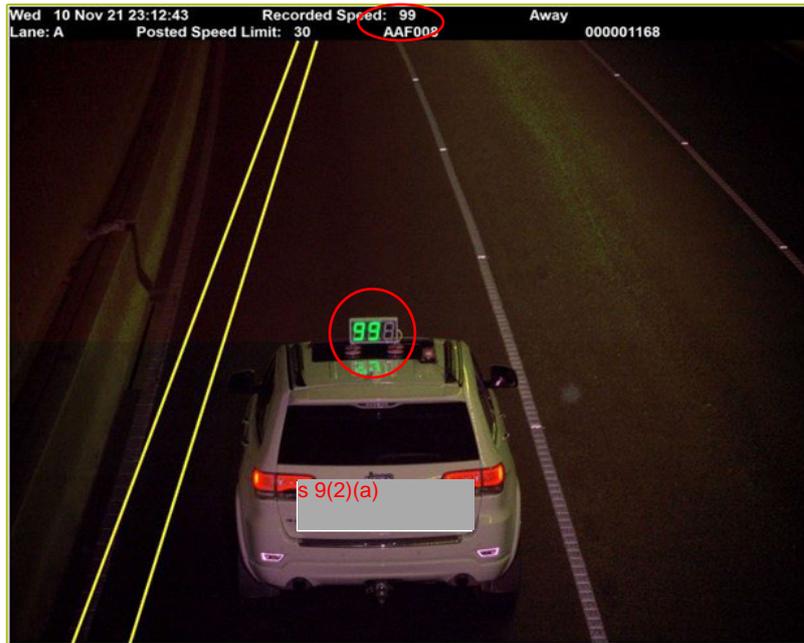
Potential camera layout for tests

Test vehicles are equipped with independent speedometers and external roof top displays (known colloquially as sighter boards) to show True Vehicle Speed for spot speed testing. Timer displays will be used for P2P tests.



Sighter board display on test vehicle

The recorded speed as displayed in the image header is compared to the TVS as displayed on the sighter board fitted to the vehicle using Redflex proprietary SmartView software.



SmartView sample image

Field Tests performed

Spot speed

The test vehicle will make multiple passes, both approaching and receding from the camera system(s). Test speeds from 30 km/h to 130 km/h in 10 km/h increments are conducted with ten tests in each direction at each speed.

Speeds captured by the camera system are compared with the speed displayed by the vehicle.

Should sufficient space exist on the test track additional higher speed tests will be performed. A motorcycle will be used for some tests. The vehicles used for this testing shall have certified speedometers and where able, TVS sighter boards fitted.

Interference Testing

This test involves multiple vehicles traversing the detection area of the system. It will include vehicles side by side, following closely, opposing directions, overtaking and potential reflectors beside the road (to test for radar bounce anomalies). Radio Frequency Interference tests will also be carried out.

A range of vehicles will also be tested including a motorcycle and truck.

Point to Point speed (Side-fire and OTL)

Point to Point testing comprises two camera systems (linked to a server if required) operating a known distance apart. The test vehicle is driven across that distance at a constant speed to establish an average speed.

An independent beam break timer shall be used to independently measure the time taken for the test vehicle to traverse the measurement zone.

Where there is sufficient room for the test vehicles to obtain a constant speed prior to entry to the Point to Point measurement zone the TVS display may be used for an initial confirmation of system accuracy, however, all average speed testing will be assessed on the camera system and independent timer equipment, using distance divided by time calculations where distance is cited in meters and time in seconds.

It is a requirement to have both detection systems time synchronised to validate reliable results. Ten tests at 30 - 100 in 10 km/h steps are performed.

Should the Masterton Motoplex be used for this testing the measurement zone will be limited to 550 m between entry and exit capture points, though as previously noted, that distance may be shortened on advice from MSLNZ or due to operational constraints.

A uniform Police patrol vehicle will be driven through the test zone with the emergency beacons activated for five runs to ensure the system captures at least one of the beacons activated in the captured image.

Red Light Camera

A 'limit' or 'stop line' will be established and 'controlled' by a traffic signal system. This will include both turn arrows and the typical round traffic lights.

The test vehicle will make repeated approaches to the limit line as described in the check-sheet. No false triggers or triggers on amber or green simulated phases are to occur. Detection of offences shall include turning traffic (directional arrows on signals) and vehicles overtaking through the intersection against red traffic signals.

Vehicle speed across the limit line in both red and green signal phase situations will be tested, including mixed phasing (such as a red arrow and green disc).

The camera signal detection process will also be tested with additional lighting and colours near the traffic signal head.

Night / low light testing

Tests will be completed during darkness to establish low light image quality and clarity.

Concurrent testing

Where able, devices that offer the same detection capability though have different operating layout (e.g. side fire and over the lane) may be tested concurrently where able. This will allow testing efficiency.

EVALUATION CRITERIA

The equipment will be evaluated on the following criteria.

Bench testing

Equipment must:

- Be waterproof .
- Retain construction integrity after vibration and acceleration testing.

- Generate a nominal RADAR frequency within manufacturers specified limits and within the range 22 to 26.625 Ghz (As per the NZ Radio Spectrum Management guidelines).
- The System must be able to operate over a voltage fluctuation of plus or minus 10 percent without introducing an error on the speed recorded. It must be able to mark or identify any erroneous readings (if applicable).

Field testing

Equipment must:

- Report speeds within ± 1 km/h of the displayed speed on the test vehicle for all tests completed (the accuracy range may be adjusted based on advice from MSLNZ).
- Correctly identify the offending vehicle.
- Correctly identify the lane occupied by the offending vehicle (spot speed).
- Non matched registration plates do not generate an offence.
- Red-Light systems only capture offences for vehicles entering an intersection (crossing as predetermined limit or stop line) when a red light is displayed by a traffic signal.
- Not generate false speeds or other anomalies when subjected to Radio Frequency Interference.

Manual results will be recorded for each test on supplied check-sheets daily. At the conclusion of each day all deployment data is to be retrieved from the camera(s) for review. The data shall be produced in a format to allow viewing/interrogation (use of vendor specific viewing software is suitable).

Data and image files relating to the deployment (as captured by the camera system) will be examined and evaluated daily. Checksheets confirm testing order for camera result interrogation. Manual checksheets provide a check that the tests were undertaken.

No unexplainable anomalies are to be captured as offences. The camera system must indicate an anomalous detection by identifying the incident as such through labelling on the image, identifying such in the data files, rejecting and ignoring the incident or some other robust method that ensures the event cannot generate an offence file.

TESTING DATES

To ensure full Gazette tests are able to be completed a two phase 20 day programme is required. Tests are broken down as per the testing outline below.

The following dates are provisionally planned for the Gazette Testing to be carried out.

Bench Testing Monday 21st September through Friday 25th September.

Field Testing Monday 21st November – Friday 2nd December

Bench testing may be carried out anytime between receipt of the equipment and the November field test date.

Contingency days are included (Wednesday 30th November to Friday 2nd December).

CONTINGENCY

Given that this testing will occur during winter and relies on off-shore technology the following contingencies are required.

| Risk | Contingency in place | Rationale |
|---|---|---|
| Equipment does not function due to transit damage | Require duplicate systems or technical expertise at venue to remedy issues. Spare parts are being shipped long with test equipment. | Will have vendor expertise / support on site and available to work through anomalies. |
| Inclement weather particularly strong wind | If testing deemed unsafe by the testing manager, tests to be deferred/delayed. Gantries will be adequately secured during installation. | Strong wind may cause camera mount insecurity. |
| Unavoidable reason for cancellation | Defer testing to contingency dates | Backup dates for testing 2023 |

Should testing be unable to be completed during the proposed primary dates contingency dates will be determined based on resource availability.

These dates will only apply should:

- Testing is not able to be safely completed during the primary dates,
- Equipment does not arrive on time,
- Equipment does not function due to transit damage and cannot be repaired using provided spares ahead of testing dates.
- Staff are unable to attend due to medical or exceptional personal reason.

PHASE ONE – Bench testing

PCS Laboratory Glover Street Ngauranga

| Week One | Mon 19 th Sep | Tues 20 th Sep | Weds 21 st Sep | Thurs 22 nd Sep | Fri 23 rd Sep |
|-----------|------------------------------------|---------------------------|---------------------------|----------------------------|--------------------------|
| 0900-1200 | Post-delivery assembly and testing | Bench Tests | Bench Tests | Bench Tests | Bench Tests |
| 1200-1300 | Lunch | | | | |
| 1300-1600 | Post-delivery assembly and testing | Bench Tests | Bench Tests | Bench Tests | |

PHASE TWO Pre-testing

Prior to travelling to the Masterton Motorplex Raceway it is prudent to fully test the camera systems to ensure correct operation. This testing does not include full gantry based set up, but rather a tripod mounted trial on Glover Street.

This pre-testing shall be carried out on Wednesday 16th November (Thursday 17th as a contingency day).

| Week Two | Mon 28 th Nov | Tue 29 th Nov | Wed 30 th Nov | Thu 1 st Dec | Fri 2 nd Dec |
|-----------|-----------------------------------|--------------------------------|--------------------------|-------------------------|-------------------------|
| 0900-1200 | Gantry removal + Redlight testing | Redlight testing (if required) | Reserve day | Reserve day | Reserve |
| 1200-1230 | Lunch | | | | |
| 1230-1700 | Gantry removal + Redlight testing | Pack up of equipment | Reserve day | Reserve | Reserve |

A sample gantry section is being provided from 3rd November to allow camera and flash mounting solutions to be finalised.

Redflex technicians will manage these two tasks.

PHASE TWO – Field Testing

Masterton Motorplex Raceway

| Week One | Mon 21 st Nov | Tue 22 nd Nov | Wed 23 rd Nov | Thu 24 th Nov | Fri 25 th Nov |
|-----------|---|---|---|-------------------------------------|--|
| 0900-1200 | Gantry construction | Configure Camera systems | HALO Distributed Point to Point Speed tests | Sidefire Point to Point Speed tests | Spot Speed tests |
| 1200-1230 | Lunch | | | | |
| 1230-1700 | Gantry construction + equipment set up. | Configure Camera systems. Start tests if able | HALO Distributed Point to Point Speed tests Night testing completed after 1800 hrs | Sidefire Point to Point tests | Spot Speed tests. Maximum configuration (wide offset for cameras) |

Week two may be avoided should the testing be completed during week one, however, the booking remains as a contingency.

FULL LOGISTICS

| Provider | Item | Number | Specific | Rationale |
|----------------------------|--------------------------------------|-----------------------|---|---|
| NZ Police / Waka Kotahi | Vehicles | 3 | Test vehicles | |
| | Special vehicles | 2 | Truck / Motorcycle | |
| | External Speedometer | 3 | Displays certified accurate vehicle speed | |
| | Driver | 3 (incl motorcyclist) | Conduct control test driving | Experience at maintaining constant speeds and close following, high speed situations. |
| | Comms device (modem) | TBC | WIFI via NZP ICT | Local area wifi for P2P system linking |
| | Tripods | 2 | | Camera mounting option |
| | Elevated Work Platforms (s) | 1 | For Over the Lane configuration set up | Booked 21-23 incl |
| | Mounting beam (OTL P2P) and supports | 2 | 2 x 20 metre gantry system for mounting Halo distributed system | Booked 21-28 incl. |
| | Power source | 2 | 12 Volt supply for all systems | 4 x 12 volt deep cycle batteries, generator + charger |
| | Traffic Signal set | 1 | | |
| | Traffic Cones | 36 minimum | | |
| | First Aid Kit | | | |
| | Mobile patrol base | 1 | For use as office and large test vehicle | Base for operations. |
| | Venue | 2 weeks | Sun-Friday booking | Done. |

| Provider | Item | Number | Specific | Rationale |
|----------|--------------------|-------------|---|-----------|
| Redflex | Camera System | 10 | 2 Halo sidefire P2P HALO sidefire SP/RL 1 REDFLEX speedradar + aux camera 2 Halo Distributed (3 lanes) | |
| | Flash unit | 5? | | |
| | Mounting system | 2 | Tripods + mounting plates for HALO and NK7 | |
| | Cabling | As required | Particularly for Point to Point testing to ensure systems are linked | |
| | On site technician | 2 | NZ + AU techs | |
| | GPS time source | 1 | | |

PEOPLE RESOURCES

Overall test programme people requirements.

| Role | NZ Police | Waka Kotahi | Redflex | Responsibility |
|--|-----------|-------------|---------|---|
| Driver/Technician | 3 | 1 | | 2 drivers required for speed testing 2 drivers required for interference testing. 1 motorcyclist capable of speeds up to 175 Km/h. |
| Test Lead David Martin(NZP) Mark Stables (WK) | 1 | 1 | | NZ Police designated Test Lead that provides oversight and co-ordination of required test process including resources, equipment, and facilities. Waka Kotahi Test Lead to enable understanding of process and alignment / integration into Waka Kotahi existing BAU test processes. |
| Legal Representative (Not required at testing venues) | 1 | 1 | | Legal review and enhancement of gazette approval documentation to ensure it can be submitted through the requisite internal and parliamentary processes. |

| Role | NZ Police | Waka Kotahi | Redflex | Responsibility |
|---|-----------|-------------|---------|--|
| Policy Representative (Not required at testing venues) | | 1 | | Waka Kotahi policy representation to enable understanding of process and alignment / integration into Waka Kotahi existing BAU policy process. |
| Transport Technology Design and Delivery Product Manager (Waka Kotahi Digital Group) | | Part-time | | Participation at different stages of test process to enable understanding of gazette testing process (expected to be part time). |
| SCS Programme representative | | Part-time | | Part time participation of SCS Programme representation to enable broader understanding of gazette testing process? |
| Local maintenance and support | | | 1 | Included as consideration of onsite support that may be required. May be required to provide additional assistance with set up and operation of equipment. One required on site to assure Minister the device was set up and operating within manufacturer settings and specifications. |
| Technical support (Australia based technician(s) on site) | | | 1 | Provide technical capability in system set up and configuration. Required on site to assure Minister the device was set up and operating within manufacturer settings and specifications. |
| Australia based remote support | 1 | | 1 | Required to provide assistance by voice and dial-in to devices to triage or resolve identified issues as required |
| Oversight (MSL) | 1 | | | Independent oversight of gazette test process and outputs. |

DATA COLLECTION SHEETS

Data sheets are to be completed during the bench and field testing. The data will be collected and collated throughout the testing period.

All camera data including images, text files and any related audit or log files are to be downloaded and provided daily. If no proprietary software is provided by the vendor, that data should be in an open format that does not require manufacturer proprietary software to access and analyse.

These sheets are the audit trail. Data checksheets for field testing are at the end of this document in appendix 6.

DOCUMENTATION

Following the physical testing, a complete document set is produced that includes:

- Test plan,
- Test results report,
- Independent audit report (MSL)
- Briefing note for the Director of Transport and Waka Kotahi Board,
- Ministerial briefing note,
- Draft Gazette Notice.

NOTES

Following the physical testing, a complete document set is produced that includes:

UNCLASSIFIED

**ANNEX 2: LAND TRANSPORT (APPROVED VEHICLE
SURVEILLANCE EQUIPMENT) NOTICE 2023**

UNCLASSIFIED

IN CONFIDENCE

Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023

This notice is made by the Minister of Transport under section 2(1) of the Land Transport Act 1998.

Contents

| | | Page |
|--|--|------|
| 1 | Title | 2 |
| 2 | Commencement | 2 |
| Part 1 | | |
| Approved vehicle surveillance equipment | | |
| <i>Approval commencing on 1 November 2023</i> | | |
| 3 | Approval of Redflex Halo camera system | 2 |
| <i>Amendment commencing on 1 March 2024</i> | | |
| 4 | Principal notice | 2 |
| 5 | Clause 3 amended (Redflex Halo camera system) | 3 |
| Part 2 | | |
| Amendment and revocation of other notices | | |
| Subpart 1—Amendment of Land Transport (Approved Vehicle Surveillance Equipment) Notice 2015 | | |
| 6 | Principal notice | 3 |
| 7 | Clause 3 amended (Approval of REDFLEXred-radar NK7 red light/speed camera system) | 3 |
| Subpart 2—Amendment of Land Transport (Approved Vehicle Surveillance Equipment) Notice 2021 | | |
| 8 | Principal notice | 3 |
| 9 | Clause 3 amended (Approval of REDFLEXspeed radar NK7 speed camera system) | 3 |
| Subpart 3—Revocations | | |
| 10 | Notices revoked | 4 |

Notice

1 Title

This notice is the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2023.

2 Commencement

- (1) This notice comes into force on 1 November 2023.
- (2) However, clauses 4 and 5 come into force on 1 March 2024.

Part 1

Approved vehicle surveillance equipment

Approval commencing on 1 November 2023

3 Approval of Redflex Halo camera system

- (1) The Redflex Halo camera system is, in accordance with this notice, approved as a kind of vehicle surveillance equipment for the purposes of the Land Transport Act 1998.
- (2) The camera system is approved as a kind of vehicle surveillance equipment for those purposes—
 - (a) with any 1 or more housing or mounting systems of any kind; and
 - (b) with or without any 1 or more items of supplementary equipment of any kind; and
 - (c) configured as a Redflex Halo red light and speed camera system; and
 - (d) however it is otherwise owned or operated as a kind of vehicle surveillance equipment for those purposes.
- (3) Examples of supplementary equipment (*see* subclause (2)(b)) include applicable speed limit data equipment, camera equipment, camera flash equipment, computer network equipment, data storage equipment, data transmission equipment, software or power supply equipment (for the camera system, 1 or more other items of supplementary equipment, or both), radar equipment (for example, mapping radar equipment), and time-synchronising equipment.
- (4) An example of how the camera system may be otherwise owned or operated as a kind of vehicle surveillance equipment for those purposes (*see* subclause (2)(d)) is the camera system operated in fixed or mobile application.

Amendment commencing on 1 March 2024

4 Principal notice

Clause 5 amends this notice as made.

5 Clause 3 amended (Redflex Halo camera system)

Replace clause 3(2)(c) with:

- (c) whether configured as—
 - (i) a Redflex Halo red light and speed camera system; or
 - (ii) a Redflex Halo speed and average speed camera system; and

Part 2

Amendment and revocation of other notices

**Subpart 1—Amendment of Land Transport (Approved Vehicle
Surveillance Equipment) Notice 2015**

6 Principal notice

This subpart amends the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2015.

7 Clause 3 amended (Approval of REDFLEXred-radar NK7 red light/speed camera system)

Replace clause 3(4)(a) with:

- (a) directly or indirectly to a computer system the purpose of which is, or includes, receiving data transmitted from vehicle surveillance equipment; and

**Subpart 2—Amendment of Land Transport (Approved Vehicle
Surveillance Equipment) Notice 2021**

8 Principal notice

This subpart amends the Land Transport (Approved Vehicle Surveillance Equipment) Notice 2021.

9 Clause 3 amended (Approval of REDFLEXspeed radar NK7 speed camera system)

(1) Replace clause 3(2)(a) with:

- (a) together with 1 or more housing or mounting systems of any kind; and

(2) In clause 3(2)(b), after “with or without”, insert “any 1 or more items of supplementary equipment of any kind, for example, with or without”.

(3) Before clause 3(2)(b)(i), insert:

- (iaa) any supplementary camera equipment:

(4) In clause 3(2)(b)(vi), replace “flash unit” with “1 or more other items of supplementary equipment”.

computer system is not maintained by or on behalf of the Police (for example, because it is maintained by or on behalf of the New Zealand Transport Agency); and

- ensures that a specified kind of vehicle surveillance equipment (namely, the REDFLEXspeed radar NK7 speed camera system) is approved—
 - together with 1 or more housing or mounting systems of any kind; and
 - with or without any 1 or more items of supplementary equipment of any kind (for example, with or without all or any of the following:
 - any supplementary camera equipment;
 - a power supply device for the camera system, 1 or more other items of supplementary equipment, or both); and
- revokes approval notices that are spent because they approve kinds of vehicle surveillance equipment that are no longer in use.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This notice is administered by the Ministry of Transport and New Zealand Police.

ANNEX 3: LAND TRANSPORT (POINT-TO-POINT AVERAGE SPEED SYSTEM) NOTICE 2023

IN CONFIDENCE

Land Transport (Point-to-point Average Speed Systems) Notice 2023

This notice is made by the Minister of Transport under section 2(1) of the Land Transport Act 1998.

Contents

| | | Page |
|---|--|------|
| 1 | Title | 1 |
| 2 | Commencement | 1 |
| 3 | Approval of point-to-point average speed systems | 1 |

Notice

1 Title

This notice is the Land Transport (Point-to-point Average Speed Systems) Notice 2023.

2 Commencement

This notice comes into force on 1 March 2024.

3 Approval of point-to-point average speed systems

- (1) Each system to which this clause applies is approved as a point-to-point average speed system for the purposes of the Land Transport Act 1998.
- (2) In this clause, a **system** means a system that—
 - (a) consists of 2 items of approved vehicle surveillance equipment that operate in combination and with the support of associated software; and
 - (b) has the ability to—
 - (i) detect a speeding offence; and
 - (ii) calculate the average speed of a motor vehicle between 2 detection points.
- (3) This clause applies to a system in which—

The Director of Land Transport must under section 146D of the Act (as inserted by the amendment Act) publish—

- the elements (as that term is defined in section 146A(3) of the Act, as so inserted) of a point-to-point average speed system; and
- the method by which surveyed distances and intermediate surveyed distances are to be measured for the purpose of the operation of any point-to-point average speed system.

The Director must publish those matters by notice—

- in the *Gazette*; and
- on an Internet site maintained by the New Zealand Transport Agency.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This notice is administered by the Ministry of Transport.



29 August 2023

OC230764

Hon David Parker

BR/23/83GA

Minister of Transport

Action required by:

Hon Damien O'Connor

Tuesday, 29 August 2023

Associate Minister of Transport

Hon Ginny Andersen

Minister of Police

LAND TRANSPORT (ROAD SAFETY) AMENDMENT BILL - ADDITIONAL SUPPLEMENTARY ORDER PAPERS

Purpose

Provide you with two additional Supplementary Order Papers (SOPs), to be tabled today during the Committee of the whole House stage for the Land Transport (Road Safety) Amendment Bill (Road Safety Bill).

Key points

- Ministry officials and Parliamentary Counsel Office (PCO) have identified necessary technical amendments to the Road Safety Bill. These amendments require two additional SOPs to be tabled, upon your agreement.
- We expect that the remaining stages of the Road Safety Bill will take place in the current session of Parliament, either today or tomorrow.
- The first of these SOPs will enable changes made by the Road Safety Bill to section 145(1) of the *Land Transport Act 1998* and Schedule 4 of the *Privacy Act 2020* to come into effect on 1 November 2023. This will enable Waka Kotahi NZ Transport Agency (Waka Kotahi) to begin operating the current safety camera network to at an earlier date.
- Enabling this to occur on 1 November 2023 better aligns with the intent of the earlier Cabinet decision (CAB-19-MIN-0575 refers) to transfer the network from NZ Police to Waka Kotahi through the Tackling Unsafe Speeds programme.
- The commencement date for provisions relating to point-to-point average speed cameras will remain at 1 March 2024
- Cabinet (CAB-23-MIN-0390 refers) has delegated decision making about the commencement date of the Road Safety Bill to the Minister of Transport, Associate Minister of Transport, and Minister of Police. As the Associate Minister is out of the country at present, we recommend that you consider this on his behalf.

- This SOP will also amend the definition of a moving vehicle offence, to clarify that this includes a speeding offence detected by a point-to-point average speed system. This SOP is attached as **appendix one**.
- The second SOP makes minor editorial amendments to the original SOP that was tabled last Thursday 24 August 2023 during the first portion of the Committee of the whole House stage. These amendments are recommended by PCO. This SOP is attached as **appendix two**.

Recommendations

We recommend you:

| | Hon David Parker | Hon Ginny Andersen |
|---|---|--------------------|
| 1 | note that officials and Parliamentary Counsel Office have identified some necessary technical amendments to the Land Transport Amendment (Road Safety) Bill (the Bill). | Noted Noted |
| 2 | note that the commencement clause of the Bill should be amended to enable the changes to section 145(1) of the Land Transport Act 1998 and Schedule 4 of the Privacy Act 2020 to come into effect on 1 November, to ensure the safety camera network can transfer to Waka Kotahi, as agreed by Cabinet under the Tackling Unsafe Speeds Programme. | Noted Noted |
| 3 | note that while Cabinet delegated decisions to the three Ministers (CAB-23-MIN-0390 refers), given Minister O'Connor's travel arrangements, decisions are only being sought from yourselves given the short timeframes | Noted Noted |
| 4 | agree to amend the commencement date of the Bill, so that the Bill generally comes into force on 1 March 2024, but that the amendments in section 145(1) of the Land Transport Act 1998 and Schedule 4 of the Privacy Act 2020 to come into effect on 1 November. | Yes / No Yes / No |
| 5 | agree to release a Supplementary Order Paper that amends the Land Transport (Road Safety) Amendment Bill. | Yes / No Yes / No |
| 6 | agree to release a Supplementary Order Paper that makes minor editorial amendments to Supplementary Order Paper No 420. | Yes / No Yes / No |

APPENDIX ONE

IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Tuesday, 29 August 2023

Land Transport (Road Safety) Amendment Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 2

In *clause 2* (page 5, after line 6), insert as *subclause (2)*:

- (2) However, *section 27A* and *subpart 3 of Part 2* come into force on 1 November 2023.

Clause 4

In *clause 4* (page 6, after line 18), insert as *subclause (2)*:

- (2) In section 2(1), replace the definition of **moving vehicle offence** with:

moving vehicle offence means—

- (a) an offence detected by approved vehicle surveillance equipment that is—
 - (i) a speeding offence; or
 - (ii) an offence in respect of the failure to comply with the directions given by a traffic signal or a traffic sign that is a variable traffic or lane control sign; or
 - (iii) any offence against regulations made under this Act or the Transport (Vehicle and Driver Registration and Licensing) Act 1986 that is declared by regulations under this Act to be a moving vehicle offence for the purposes of this paragraph; or
 - (iv) a toll offence; or

- (b) a speeding offence detected by a point-to-point average speed system

New clause 49BA

Before *clause 49C* (page 40, before line 8), insert:

49BA Principal regulations

This subpart amends the Land Transport (Infringement and Reminder Notices) Regulations 2012.

Explanatory note

This Supplementary Order Paper amends the Land Transport (Road Safety) Amendment Bill (the **Bill**).

SOP No 420 amends the Bill so that it comes into force on **1 March 2024** rather than 6 weeks after Royal assent. This SOP further amends the Bill so that the following provisions will come into force on **1 November 2023**: the clause that amends section 145 of the Land Transport Act 1998 (the **Act**) and the clause that amends the Privacy Act 2020. Those provisions are not linked to amendments that come into force on **1 March 2024**, but rather relate to the operation of existing approved vehicle surveillance equipment.

The current definition of moving vehicle offence is limited to a range of offences detected by approved vehicle surveillance equipment. The new definition is extended to include speeding offences detected by a point-to-point average speed system, which ensures that the Act and regulations made under the Act apply fully to the new method of detecting speeding offences.

The insertion of *new clause 49C* is a technical amendment.

Departmental disclosure statement

The Ministry of Transport considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

APPENDIX TWO

House of Representatives

Supplementary Order Paper

Tuesday, 29 August 2023

Land Transport (Road Safety) Amendment Bill

Proposed amendments to SOP No 420

Hon David Parker, in Committee, to move the following amendments:

Clause 12

In *clause 12(4C)*, *new section 97(3B)(a)* of the Land Transport Act 1998, replace “**96AAA(3) or (4)**” (page 14) with “**96AAA(3) or (4)**”.

Clause 31A: new section 208A

In *clause 31A*, replace *new section 208A(1)* of the Land Transport Act 1998 (page 31) with:

- (1) This section applies to an infringement offence that is a moving vehicle offence.

In *clause 31A*, *new section 208A(3)* of the Land Transport Act 1998, after “system” (page 31), insert “that detected the offence”.

Clause 49A

In *clause 49A(5)(c)*, replace “.” (page 44) with “:”.

In *clause 49A(5)*, replace the paragraph following *new paragraph (d)* (page 44) with:

- (e) in paragraph (b), replace “an owner” with “a registered person or an owner”.

Explanatory note

This Supplementary Order Paper makes minor editorial amendments to Supplementary Order Paper No 420.

Departmental disclosure statement

The Ministry of Transport considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.