

Land Transport (Street and Illegal Drag Racing) Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Land Transport (Street and Illegal Drag Racing) Amendment Bill (the bill) and recommends that it be passed with the amendments shown.

Bill substantially rewritten

During the consideration process the bill was substantially rewritten, and some clauses have been both redrafted and renumbered. This does not represent a fundamental change in the policy behind the bill, but reflects that the bill was originally drafted by a member, and that responsibility for drafting was then given to the Parliamentary Counsel Office. This commentary discusses our consideration of the bill and focuses on the main recommended changes.

Background to the bill

Growing concerns about street racing activities relate both to the destruction caused by the activity itself, and associated crime. These events often involve large numbers of people, both participants and spectators, who occupy areas of road for the purpose of performing unauthorised high speed races and dangerous stunts such as ‘burnouts’ and ‘doughnuts’.¹ Characteristically, the activities take

¹ A ‘burnout’ involves causing the driving wheels of a vehicle to spin while the vehicle is at rest. The brakes on the driving wheels are often first disabled.

place at night, in the weekend. They are in many cases well organised and regular events, with participants using cell phones to warn people of police arrival, and arrange to reassemble at other venues. Local councils and residents report that the damage and disruption caused by street racers is significant, including damage to roads, signs and street lights as well as excessive noise and health issues, particularly distress and lack of sleep. There are obvious safety concerns due to the nature of the activity, the large number of spectators, and the likelihood of loss of control on the road, given that the vehicles often have dangerous modifications to brakes and suspensions and that participants may pour oil and diesel on the roads. Other associated problems include petty crime, intimidation, vandalism, graffiti, drunkenness and litter. A recent shooting in Auckland has also highlighted that the activities can be gang-related.

Current laws not adequate

The Police report that their existing powers do not appear to have been adequate in dealing with the problem of unauthorised street racing and associated activities. Prohibitions against careless, dangerous and reckless driving do currently exist in the Land Transport Act 1998 (the principal Act). In addition, the Traffic Regulations 1976 specify vehicle standards and prohibit a range of undesirable driving behaviours such as driving in a manner likely to cause annoyance and creation of excessive noise. Police already have a power to impound vehicles, but this is directed at disqualified and suspended drivers, and unlicensed drivers who have previously been forbidden to drive. This power is not applicable to street racing. In addition, to exercise these powers, Police need to be able to identify the driver, which has led to practical enforcement difficulties for the Police as street racer events characteristically take place at night amongst large crowds, sometimes making it difficult for the Police

Then the driver floors both brake and accelerator. Diesel or other lubricants are poured on the road to facilitate the spinning of the wheels. The tyres overheat to the accompaniment of clouds of acrid smoke and a loud noise caused by friction between tyres and asphalt. Ultimately they explode. High pressure 'space saver' tyres are preferred for burnouts because the high pressure and thin rubber gives a quick and spectacular explosion. Streetwise racers protect their cars from lumps of molten rubber flying off the tyres by lining the wheel arches with heat resistant matting. A 'doughnut' involves a similar process, except that it involves causing the car to skid slowly sideways in a circle leaving a layer of rubber on the road. A completed circle will leave a black doughnut shape on the road.

to identify the offender. Further, the current power of immobilisation relates to the incapacity of the driver, which is not appropriate for street racers who are often calm and collected, and do not typically indulge in drink driving.² Infringement offence notices alone are not considered to be an adequate deterrent to street racers, many of whom, research indicates, come from middle-class or affluent families and own expensive, high performance vehicles. A number of bylaws passed by local councils have also not proven to be a sufficient long-term deterrent, but have merely had the effect of displacing, rather than diminishing, the activity. There has been a tendency for the street racers to move to venues in residential areas, particularly with the passing of bylaws prohibiting activity in industrial areas, such as that passed by Manukau City Council in 1996 and that passed by Christchurch City Council in 2001. We note the contribution by local government, and those two city councils in particular, in identifying the significant community concern around this issue.

As a result, a number of members of Parliament, namely Ron Mark MP (NZ First), Hon Ken Shirley MP (ACT) and the current chair of the committee, Martin Gallagher MP, have liaised with authorities in various Australian states to obtain a better understanding of the comparative problems experienced in Australian jurisdictions, and the success of legislative measures taken in those jurisdictions.

Origin of the bill

The original initiative to address the problem of unauthorised street and drag racing in a bill came from a member, Clayton Cosgrove, MP for Waimakariri. The bill was subsequently introduced and referred to the House as a government bill on 14 May 2002. The Government considers that a national approach to the problem would be more appropriate, particularly as the activity is of a widespread nature. The bill was carried over to the 47th Parliament for consideration by this committee, with a report back date of 29 November 2002.

² As outlined in section 121 of the principal Act, the Police can immobilise a vehicle (by for example, taking possession of all ignition keys from the driver) if the driver is considered to be incapable due to his or her physical or mental condition.

Aim of the bill

The bill amends the principal Act to empower the Police to impound, at the roadside, vehicles involved in unauthorised street and drag racing, and related dangerous stunts such as ‘burnouts’ and ‘doughnuts’. It also applies existing penalty provisions to new offences created under the bill. Legislation enacted by New South Wales (NSW) provided the conceptual basis for the new street racer offences.³ That legislation has had a positive effect in reducing street racing activity since its enactment in 1996. The intention is that, when enacted, the bill will act as a deterrent to those who engage in street racing and sustained loss of traction (wheel spins and ‘doughnuts’).

Majority of submitters support the bill

We received 72 submissions on the bill, the majority of which were in support of its general intention. However, submitters raised a number of concerns. These concerns broadly fall into three groups. Motoring clubs are particularly concerned that the definition of the words ‘race’, ‘competition’, ‘trial of speed’ and ‘road’, would pick up car club outings and authorised events, so many suggested changes to the bill to ensure the bill does not impact on their legitimate activities. While all 25 local authorities who submitted were in support of the bill, some considered it should contain harsher penalties and provide for greater Police powers, including provisions for the suspension of driver licences and tackling the issue of noise. A main concern of the Legislation Advisory Committee (LAC) is that the bill is unnecessary because the offences are largely covered by existing legislation. Further, the LAC and the New Zealand Law Society are concerned that the bill singles out street racers for special treatment by creating offences and penalties that overlap, and are inconsistent with, existing law which already applies to street racing (such as dangerous driving and reckless operation of motor vehicles). This raises concerns about unequal application of the law, the potential for anomalous outcomes, and infringement of the Bill of Rights Act 1990. The LAC and the New Zealand Law Society also considered the impoundment power, contained in clauses 6, 7 and 8, to be a disproportionate response to the

³ The Traffic Amendment (Street and Illegal Drag Racing) Act 1996, which came into force in NSW on 21 December 1996.

problem targeted, with some other submitters suggesting that a 24-hour impoundment period would be more appropriate.

Change of title and amendment of preliminary provisions

Change of title

To better reflect the purposes of the bill, we recommend changing its title to the Land Transport (Unauthorised Street and Drag Racing) Amendment Bill. We consider that the word ‘unauthorised’ is more appropriate, as it captures the concept that some street racer activities can be authorised.

Commencement to be 28 days after the Royal assent

We recommend that clause 2 be amended to provide for the bill to come into force 28 days after the date on which it receives Royal assent. This will allow sufficient time (following the third reading of the bill) for the Police to print the required notices of impoundment and for other necessary administrative preparations to be completed.

Purpose clause to be redrafted to better reflect the aim of the bill

We note that clause 3 describes the bill’s purpose by reference to behaviour which is largely covered by existing law. We recommend clause 3 be amended to respond to concerns raised by legal experts that the behaviour targeted by the bill is largely already illegal, and to more accurately reflect practical policing concerns. The bill’s primary aim is to provide the Police with an additional enforcement tool to address the problem of unauthorised street and drag racing and other related stunts, for which current Police powers appear to be ineffective and existing penalties inadequate. New clause 3(c) will reflect the bill’s intention to provide rights of appeal in respect of the seizure and impoundment of motor vehicles under the new provisions.

Responsibility provisions

We recommend clause 4 be amended by omitting proposed new sections 7A to 7C and replacing them with new section 22A. The creation of a new section combining the three original offence provisions is to emphasise the special nature of unauthorised street and drag racing. This section should not be located in Part 2 of the

principal Act, which deals only with the duties of ‘participants’ of the land transport system (holders of driver licences and other land transport documents). The offence of pouring oil and other substances on the roads is not confined to participants of the land transport system and is more suited to Part 3, which is broader and relates to members of the public.

Clause 4 (section 7A)—bill amended to ensure that appropriate groups will be targeted

To ensure the bill does not capture the legitimate activities of motor car clubs, but correctly targets the activities of unauthorised street racers, we recommend that clause 4 be redrafted, and that these matters be provided for in new clause 5. The main amendment specifies that street racing and related activities are illegal if not ‘authorised by law’. This will ensure that legitimate competitive events such as motorkhanas, time trials, fuel runs, navigational exercises, charity runs and treasure hunts are not captured by the bill if they are authorised under existing law.⁴ We are aware that in most cases competitive events organised by car clubs comply with the existing traffic laws and pose no unreasonable risk to road or public safety.

We consider the phrase ‘competition, race, or trial of speed’ between motor vehicles (as contained in clause 4) is inappropriate, and considered replacing it with the phrase ‘race or exhibition of speed on a road’. However, the New Zealand Automobile Association (AA) raised concerns that this phrasing may be too vague and may be the subject of litigation. We note that the term ‘exhibition of speed’ or ‘unnecessary exhibition of speed or acceleration’ has appeared in the transport legislation of some states of the United States of America since the 1950s. We note that states have been divided as to whether the phrase ‘exhibition of speed’ is unconstitutionally vague.⁵ Given

⁴ Motor car clubs were particularly concerned that motorkhanas (events designed to test the acceleration, braking and handling of cars and the skill and judgment of drivers), when staged in a car park, would be captured, as the broad definition of ‘road’ encompasses car parks, and any other place to which the public has access.

⁵ The Supreme Court of Kansas held that the phrase failed to adequately inform the defendant of the charges against him. It applied a test of whether the language of the statute conveyed a sufficiently definite warning as to the conduct prescribed when measured by common understanding and practice. Conversely, the Supreme Court of Minnesota held that an ‘unnecessary exhibition of speed’ was not so vague as to be unconstitutional. Minnesota statute contained an addition which said that ‘prima facie evidence of such

that this term may be unclear we consider it would be cautionary to add words to ensure the courts are less likely to misconstrue the conduct being held to be an offence. We recommend the term ‘competition of speed’ be omitted from the bill and the phrase ‘unnecessary exhibition of speed or acceleration’ be applied in new clauses 5, 6, 8 and Schedule, Parts 1 and 2.

The term ‘driver’ is replaced by ‘operator’ for consistency with provisions in the principal Act. Under the principal Act to operate a vehicle is to ‘drive or use the vehicle on a road, or to cause or permit the vehicle to be on a road or to be driven on a road, whether or not the person is present with the vehicle’. The amendment will enable the Police, in appropriate cases, to proceed against the operator of a vehicle (by obtaining the registration number) where it is not possible to identify the actual driver. The bill captures the unauthorised racing of individual vehicles in a time trial by use of the term ‘operate a motor vehicle in a race’. However, as highlighted by the New Zealand Law Society and the LAC, we see no need to include the phrase ‘promotion’ of the targeted activities because this action is already covered by section 66 of the Crimes Act 1961, which captures those who aid or abet an offence. In doing this, we are aware that whether a spectator is a party to an offence would be determined in accordance with existing law under section 66. Finally, in response to concerns that prohibiting street racing on a ‘road’ might make the application of the offence too narrow, we note that the definition of ‘road’ in the principal Act is very broad, encompassing beaches and ‘any place to which the public has access, whether as of right or not’. This generally covers school grounds, parks, car parks and marae. The footnote below fully outlines the definition of ‘road’ as provided in section 2(1) of the principal Act.⁶

unnecessary exhibition of speed shall be unreasonable squealing or screeching sounds emitted by the tyres or the throwing of sand, gravel, by the tyres of said vehicle or both’.

⁶ ‘Road’ includes (a) a street, (b) a motorway, (c) a beach, (d) a place to which the public have access, whether as of right or not, (e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in (d), and (f), all sites at which vehicles may be weighed for the purposes of the principal Act or any other enactment.

Clause 4 (section 7B)—defence of ‘reasonable excuse’ for offences

Clause 4 (section 7B) of the bill aims to capture a person who prepares the road for sustained loss of traction by intentionally placing or pouring substances on the road but who may not actually operate the vehicle. We recommend a defence provision be inserted in the bill, as provided for in new clause 5 (new section 22A(2)) which clarifies that such action would only be an offence if committed ‘without reasonable excuse’. Providing a defence of reasonable excuse is intended to enable a person to avoid liability if he or she is engaging in the activity for a legitimate purpose. We note that ‘reasonable excuse’ is a broad provision used throughout the principal Act, and it will cover lawful activities such as placing substances on roads, which could potentially lead to loss of traction. This provision will address the concerns of Wellington Motorsport Association, Motorsport New Zealand Incorporated and the AA, who assert that clause 4 (section 7B) will impact on legitimate activities such as road maintenance and emergency services washing down roads at accident sites.

We also recommend that new clause 5, section 22A(2) contain a broader definition of ‘substances’, so that it will cover any substance which causes a loss of traction. This will make it clear the offence is not only confined to oil and diesel. We understand that the use of liquid soap is popular at some races.

Offence and penalty provisions

We recommend the proposed specific penalties for street racer offences, in clause 5, be replaced with cross-references to existing penalties for serious driving offences, as set out in new clause 6 (new section 36A). This will address concerns raised by the LAC regarding inconsistency and overlap with existing provisions by ensuring that the penalties in the bill, relating to offences outlined in clause 4, are consistent with those in existing legislation.

Clause 4 (section 7B)—creation of infringement offence

We examined the value of infringement notices for clause 4 (new section 7B) offences, as the Police acknowledge that some offenders treat infringement offence notices as ‘badges of honour’. However, allowing the Police the option of issuing infringement offence notices provides an immediate response in appropriate cases, and

can be an alternative to a protracted court process. In addition, we note that having the option of issuing infringement offence notices is consistent with the general approach of the principal Act in dealing with transport offences at this end of the scale. Therefore, we recommend that the act of intentionally pouring oil or diesel on a road should also be made an infringement notice offence and that the fee be set at \$600 (20 percent of the maximum fine). We expect this penalty will act as a deterrent to those acting as accessories to the unauthorised street and drag racers.

Clause 5 (section 36C and 36D)—penalties for breaching the section 7(B) offence of intentionally placing substances on the road are necessary

We note the LAC's submission that the bill need not address the intentional pouring of substances on a road in a manner likely to cause sustained loss of traction because this is already covered by sections 203(1) and 203(2) of the Crimes Act. These provisions prohibit such behaviour where there is an intent to injure or the act is carried out in a manner likely to injure. We therefore recommend that section 36D, as inserted by clause 5, be deleted. However, we consider that a breach of the Crimes Act may be difficult to prove where there is no intent to injure and the act has not been carried out in a manner likely to injure. Accordingly, we recommend that an offence provision be retained to address situations where no injury has arisen. The bill, as drafted, provides that a breach of this provision attract a fine of \$4,500. We recommend a reduction in this penalty to \$3,000, as we consider it important the bill be consistent with existing penalties. We note that the fine for operating a vehicle carelessly on a road is set at \$3,000, and consider that a breach of section 7B is of a similar level of seriousness.

United Future minority view

United Future understands the rationale that, where a bill amends a principal Act, penalties for proposed new offences should be commensurate with penalties for existing offences of similar seriousness. Our view is that this rationale need not apply to street racer activities (like the proposed offence of pouring substances on the road to provide for loss of traction), which we consider are of such a special nature and circumstance that they warrant an increased deterrent. We would have liked to see the bill prescribe penalties for the

proposed new street racer offences in excess of those already provided for by the principal Act (which in the case of ‘operating a vehicle carelessly on a road’ is set at \$3000).

Clauses 6, 7 and 8—consideration of impoundment provisions

We agree with the intent and content of clauses 6, 7 and 8, which contain the impoundment provisions. However, we recommend these clauses be redrafted to remove duplication with existing impoundment provisions, as proposed sections 123A to 123E mirror existing sections 96, 97, 98, 102 and 110 of the principal Act. The changes made are largely technical, but we also recommend changes to the grounds of appeal to tailor the impoundment regime to street racing offences, and changes to address the issue of noise. These are expanded on below.

Impoundment provision breaches section 21 of the New Zealand Bill of Rights Act 1990

We note the Attorney-General’s report, under section 7 of the New Zealand Bill of Rights Act 1990 that the impoundment power in the bill represents a breach of section 21 of that Act, which contains the right to be free from unreasonable search and seizure. The crux of the Attorney-General’s certificate is that impoundment for 28 days is not a proportionate response, nor is it rationally connected to the objective of the bill because it penalises the unlawful operation of a vehicle by removing the vehicle from the offender, rather than targeting the entitlement to drive.

Notwithstanding the Attorney-General’s report, we note that other provisions in transport bills that have attracted section 7 certificates (random testing, conclusive presumption as to alcohol limits, and impoundment for 28 days) are now accepted mainstays of traffic enforcement in New Zealand.⁷ On the other hand, these provisions differ from the bill in that they are primarily concerned with serious road safety issues associated with unlicensed or intoxicated drivers. However, we consider that impounding vehicles is a powerful deterrent which has proved effective in the case of driver licensing offences in New Zealand, and in the case of street racing offences in NSW. Further, we note that section 123A(5) in clause 8 of the bill

⁷ These are now enacted in the principal Act.

requires that a vehicle be released if the Police decide not to prosecute, and that this is provided for in new clause 8(4) of the bill, which amends section 96(6)(a) of the principal Act. We consider this to be a significant check on a potential abuse of Police powers, as it places a discipline on enforcement officers to apply the impoundment power with care. We consider that ultimately the concerns which gave rise to the bill outweigh concerns of a possible abuse of police power.

Impoundment for 28 days to be retained

We spent some time considering the proposal to empower an officer to impound, for 28 days, a vehicle reasonably believed to be involved in unauthorised street racing activities. We recommend that this proposal be retained, despite suggestions by the New Zealand Law Society, the AA and lawyer, Mr Richard Fisher, that an impoundment period of 28 days may be excessive for first offenders. They propose a system of graduated penalties, such as exists in British Columbia and has been recently enacted in Queensland.⁸ Other jurisdictions have specified impoundment periods of between 30 days and 90 days.⁹ While we acknowledge that a period other than 28 days may also be effective, the experience of the existing impoundment regime has shown that a 28-day impoundment period has been an effective deterrent. A brief impoundment period of 24 hours, as suggested by some submitters, would, in our view, not be of adequate length to have a sufficient deterrent effect, as a person whose car is impounded for 24 hours on a Friday night may be able to recover it and race again the next night. The real value of impoundment is its deterrent effect rather than its actual use. Characteristically, those involved in street racing activities take great pride and joy in their vehicles and invest large sums of money in modifications and improvements in appearance. Providing the Police with the ability to immediately remove the car emphasises that the response to a breach of the law will be 'swift, certain and severe'.

⁸ British Columbia law provides for an impoundment for 48 hours for a first offence and 30 days for re-offending within two years. Queensland has recently enacted legislation that empowers the Police to impound vehicles for 48 hours, with provision for a three-month impoundment for persons who already have a conviction.

⁹ NSW and Australian Capital Territory law provides for 90 days' impoundment and the California State Vehicle Code provides for a 30-day impoundment.

Impoundment is at the discretion of the enforcement officer

We do not recommend any amendments to provide for mandatory impoundment of vehicles involved in street racing activities (as currently applies in the existing impoundment regime). Section 96 of the principal Act obliges an enforcement officer to impound at the roadside, motor vehicles driven by persons who are disqualified from holding or obtaining a driver licence, whose driver licence is suspended or revoked, or who have been forbidden to drive because the person was an unlicensed driver or his or her driver licence has expired. However, we note that, where these circumstances are clear issues of fact, the circumstances targeted in the bill such as ‘racing’ and ‘sustained loss of traction’ are more subjective matters requiring the exercise of judgment.

Provision to place impounded vehicles out of service will address some ‘noise’ concerns

We recommend an amendment requiring all vehicles impounded for offences under the bill to be automatically placed out of service (or ‘green stickered’) under section 115(1) of the principal Act. Under this section, vehicles placed out of service must undergo a new warrant of fitness inspection (WOF) before they may be driven on a road. This will force cars that have had modifications to create excessive noise, such as megaphone exhausts, off the road until they comply with noise standards outlined in regulation 81 of the Traffic Regulations 1976. Our view is that this amendment will go some way toward addressing the issue of noise, considered by many submitters to be a crucial part of the problem of street racing.

We acknowledge there may be some concerns over whether this provision will add anything to existing legislation. Enforcement officers already have the power, under section 115(1) of the principal Act, to order vehicles off the road for non-compliance with existing regulations and rules. However, we consider that making this action mandatory for all vehicles impounded for street racer offences will relieve enforcement officers (who are not trained automotive surveyors) of the current requirement to form a view, on reasonable grounds, that a vehicle does not comply before ‘green stickering’ it. The amendment also links a measure concerned with the enforcement of vehicle standards to the enforcement of driver behaviour (such as involvement in street racing). This may cause concern as it will mean that some vehicles that are in fact are

compliant will be placed out of service. However, we do not share this concern. We anticipate it will address a range of vehicle standards issues in addition to noise, as, in our opinion, there is a practical link between non-compliant vehicles and street racer activity. Further, our view is that it will increase the deterrent effect of the bill, as street racers would also want to avoid impoundment in case unauthorised modifications to their vehicle are brought to light.

Pending legislation will also address the issue of noise

We recognise that inclusion of this provision alone will not completely eradicate noise problems, as existing regulations are open to some interpretation and can be difficult to apply. For example, regulation 29(2) of the Traffic Regulations 1976 applies British noise standards to vehicles entering the country, but is ineffective as it requires specialist instruments and facilities which are not available in New Zealand. This means vehicle inspectors must rely on the subjective noise standard contained in regulation 81. This requires that an exhaust system and silencer of a vehicle must be 'effective and in good working order'. We are hopeful that enforcement of this standard will improve as the Land Transport Safety Authority (LTSA) has this month issued tougher vehicle inspection guidelines which clarify requirements relating to exhaust systems and silencers. The guidelines state that a vehicle may be rejected for a WOF if 'the noise output (of the exhaust system and silencer) is noticeably and significantly higher than should be expected for the vehicle'. We consider that, if properly enforced, these revised guidelines will encourage vehicle inspectors to take a stricter approach to vehicles that have been modified to create more noise.

Two Land Transport Rules currently under development by the LTSA are likely to provide a more robust approach to excessive noise. The draft Road User Rule is expected to contain a provision to deal with the creation of excessive noise by any means, including, for example, 'boom boxes' (powerful sound systems with large bass speakers), and exhaust systems. In addition, the draft Vehicle Equipment Rule is expected to contain requirements to ensure that the level of noise emitted from a new or modified exhaust system (as favoured by street racers) is less than or similar to that from the original exhaust system. However, importantly, we note that these rules and standards may not come into effect for some time. Given that the policy behind the rules is still under development and has yet

to go through the public consultation process, we consider it prudent not to attempt to prejudge the outcome of the rule development process by recommending specific noise controls at this time. We note that the bill, in deterring street racer activities, would have the effect of reducing the noise associated with these activities. However, until more stringent measures can be put in place, we consider the specific problem of noisy vehicles is of sufficient concern and urgency to require that the bill include some measure to address the issue.

We are fully aware that mechanical noise, and noise created by devices (like 'boom-boxes') fitted to street racer vehicles, has a significant detrimental effect/impact on the surrounding community. Our view is that either type of excessive noise should be treated with the same degree of seriousness and carry similar penalties. For the reasons outlined above, it was not possible for both types of excessive noise emissions to be captured by the bill at this time.

Appeals to Police against impoundment of a vehicle

Clause 8, new section 123D, provides four grounds on which owners of impounded vehicles may appeal to the Police against the seizure and impoundment of their vehicle. Subsection (1)(c) specifically provides appeal rights where the owner did not know and could not reasonably be expected to know that the driver of the owner's car would engage in unauthorised street and drag racing activity. Submitters have concerns about this provision as new section 123D(2) states this ground of appeal will not apply where the driver of the car has a previous conviction for this offence. We agree with submitters that this provision is both unnecessary and unfair. We understand that, in practice, the Police intend to keep a record of appeals made by the owner and will be more sceptical if this ground for appeal is used a second time. In addition, the owner of the impounded vehicle need not necessarily be present at the scene of the offence, which will often be the case where a child or youth has taken their parents' car without the parents' knowledge or permission. The exclusion of an appeal right in these circumstances is inconsistent with existing impoundment provisions, which, as already noted, we think should apply to street racer impoundment. We recommend this clause be omitted from the bill and replaced with new clause 8, which will ensure that appeal rights under the existing impoundment regime are equally applicable to the impoundment of vehicles for street racer

offences. We note there is also provision to appeal when other circumstances apply, for example where an owner is intimidated and cannot stop their vehicle being taken for unlawful activities. In the event of an unsuccessful appeal to the Police, appeal to the District Court will be available. In such cases the courts cannot consider any grounds other than those available for argument before the Police.

Consequential amendments

We recommend a number of consequential amendments to the Transport Act 1962, the Summary Proceedings Act 1957, and the Sentencing Act 2002, and an amendment to Schedule 4 of the Land Transport (Offences and Penalties) Regulations 1999.

The bill, as introduced, contains a specific provision empowering the courts to confiscate vehicles upon conviction in the case of a second offence according to procedures contained in the Criminal Justice Act 1985 [these procedures are now contained within the Sentencing Act]. We consider that it is tidier to provide for this by way of a consequential amendment to the Sentencing Act. This has the effect of strengthening the bill as the Sentencing Act provides for discretionary confiscation by a court for a first offence and mandatory confiscation for a second qualifying offence within four years. Such an amendment is also consistent with our recommendation that the penalties applying to street racer offences be imposed by way of cross-references to existing penalties for dangerous driving and reckless operation offences.

The amendment to Schedule 4 of the Land Transport (Offences and Penalties) Regulations 1999 is to alter the impoundment forms used for driver licensing offences committed under section 96(1) of the principal Act. To ensure effective cost management we also recommend the inclusion of new clause 11(4) in the bill, to provide for the Police to continue to use the current forms already in print. These forms will be valid for impoundment of vehicles for driver licensing offences only, not offences contained in this bill. This will enable the Police to use up their existing forms, which have a value of approximately \$6,000 in stock, with more in the field.

Additional issues

Alternative venues

Although we heard a variety of views regarding the effect of alternative venues on the levels of unauthorised street racing, we have no specific recommendations to make regarding the provision of these facilities. Manukau City Council and Christchurch City Council both report they have provided venues of this sort, but they do not appear to have significantly reduced the incidence of unauthorised street racing. It appears that part of the problem is that a significant number of street racers are attracted by the thrill of breaking the law, and have no desire to use the facilities provided. We note that the NSW Police report the threat of impoundment has resulted in a reasonable uptake of alternative venues provided by clubs and local authorities, and that publicity campaigns warning people of the consequences of street racing, and suggesting they use the legal off-road facilities, have been successful. We are confident that the positive outcomes achieved in NSW are indicative that the bill, once passed, will effect a downturn in the incidence of unauthorised street and drag racing events. We encourage local authorities, car clubs and the Police to work together to encourage street racers to take their racing activities off-road, and encourage local authorities and other interested parties to provide facilities for that purpose.

Police resources are sufficient

It is important that the effectiveness of the bill is not compromised by the inability of the Police to adequately enforce the law. We therefore spent some time considering several submitters' concerns that current Police resources are insufficient for this purpose.

We note the New Zealand Law Society and the National Council of Women submitted that, if the Police were resourced adequately and if they treated the issue as a priority, the existing law would be sufficient to deal with the issue. However, the Police note that street racer activity tends to peak during the hours of darkness at the weekends, when other, more serious crime is also peaking. We acknowledge that if more resources were made available it would be appropriate to give priority to policing serious assaults, domestic violence, sexual violation, pub fights, burglaries and traffic crashes involving death or serious injury, rather than street racing.

However, we are satisfied that it is not that resources have been insufficient, but that the current law has not provided the Police with

sufficient powers to address the problem. Given the new powers contained in the bill, the Police confirm they do not anticipate requiring extra resources. No provision for additional Police personnel to impound vehicles was made when the impoundment provisions for driving while disqualified were introduced, yet there has been a 30 percent reduction in the number of apprehensions for that offence since impoundment was introduced. We note that the additional resources required by the impoundment regime are towing services and vehicle storage facilities, and these are covered by fees charged to the owner of the impounded vehicle.

Suspension of licence not considered appropriate

Some submitters suggested an appropriate penalty for unauthorised street or drag racing would be suspension of a driver licence as an alternative or additional penalty to impoundment. However, it is unclear whether this would provide any material benefit, particularly as many of those involved in street racing are already committing licence-related offences, such as acting in breach of their learner or restricted licences. The penalties imposed for those offences do not seem to have had a deterrent effect. We also note that empowering the Police to suspend licences for this type of activity is quite a significant change to the law, as it would confer a discretion to remove a legal entitlement that is more usual for the courts to exercise. It is only under very specific circumstances that the Police suspend licences under the principal Act, and in such cases this is mandatory, not up to the discretion of the officer.¹⁰

Damage to roads and associated costs already covered by existing legislation

We note that the costs associated with damage caused by unauthorised street and drag racing activities is significant, affecting not only roads, but signposts, surrounding properties and trees. Associated activity such as petty crime, drinking, littering and graffiti also results in costly damage, and the antisocial character of street racing events is potentially damaging both to the value of property and to tourism. We do not, however, support submissions

¹⁰ Such circumstances are that the person has been found to have a breath or blood alcohol concentration of more than twice the legal limit, does not undergo a blood test after having been required or requested to do so, or has driven a motor vehicle on a road at a speed exceeding the speed limit by more than 50km an hour.

asking that the bill be extended to provide for reparation to be paid to the road controlling authority for damage to road surfaces and road-side furniture, as section 357 of the Local Government Act 1974 provides for a person convicted of damaging a road to be ordered to pay the council for the cost of repairs.

Provision for storage facilities of impounded vehicles unnecessary in the bill

Under the present impoundment regime, storage of impounded vehicles is provided by authorised storage providers. They are required to obtain insurance to cover the impounded vehicles in their care, and as a condition of providing insurance cover the insurance companies require a high level of security at the vehicle storage facilities. We considered a recommendation by Manukau City Council that the bill make provision for the safe keeping of impounded vehicles, and also noted Christchurch City Council's offer to allow use of its own facilities for such purposes. However, we note that the current system works well and would also apply to vehicles impounded under the bill. Consequently, we do not recommend any changes to the bill in this regard.

2002/0016 Petition of Hon Nick Smith and 351 others

We received and considered the petition 2002/0016 of Hon Nick Smith and 351 others which requests that Parliament support the passage of strengthened road transport laws prohibiting drag racing and dangerous driving on public roads. We consider the bill, as amended, will address the petitioners' concerns, and report this petition to the House accordingly.

APPENDIX

Approach to this examination

The closing date for submissions on the bill was 7 June 2002. We received and considered 72 submissions, of which we heard 20. Hearing of evidence took four hours and 40 minutes. Consideration took 16 hours and 45 minutes. We received advice from the Ministry of Transport and the New Zealand Police.

Committee members

Martin Gallagher (Chairperson)
Georgina Beyer (Deputy Chairperson)
Marc Alexander
Brian Connell
Taito Philip Field
Mahara Okaroa
Edwin Perry
Hon Tony Ryall

**Land Transport (Street and Illegal
Drag Racing) Amendment**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Paul Swain

Land Transport ((*Street and Illegal*)Unauthorised Street and Drag Racing) Amendment Bill

Government Bill

Contents

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Schedule 1
**Consequential amendments to
other enactments**

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Land Transport ((*Street and Illegal*)Unauthorised Street and Drag Racing) Amendment Act **2002**.
- (2) In this Act, the Land Transport Act 1998¹ is called “the principal Act”.

¹ 1998 No 110

New (unanimous)

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

Struck out (unanimous)

3 Purpose

The purpose of this Act is to amend the Land Transport Act 1998 to combat the problem of illegal street and drag racing and the practice of performing wheel spins and other dangerous stunts on public roads.

4 New sections 7A to 7C inserted

The principal Act is amended by inserting, after section 7, the following sections:

“7A Motor racing on road

“(1) A person must not promote or take part in a competition, race, or trial of speed between motor vehicles on a road.

“(2) Nothing in this section or in **section 7B or section 7C** applies to the operation of a motor vehicle for the purposes of a race or trial undertaken in accordance with an approval given under section 77(1)(u) of the Transport Act 1962 or clause 11(e) of the Tenth Schedule of the Local Government Act 1974.

“7B Persons not to intentionally place substances on road

A person must not intentionally pour or place on any road, any petrol, oil, diesel fuel, or any other substance likely to cause loss of traction by any motor vehicle.

“7C Prohibited activity on road

A person must not operate a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction without reasonable excuse.”

5 New sections 36A to 36D inserted

The principal Act is amended by inserting, after section 36, the following sections:

“36A Contravention of section 7A and section 7C

“(1) A person commits an offence if the person contravenes **section 7A or section 7C**.

“(2) If a person is convicted of an offence against **subsection (1)**,—
“(a) the maximum penalty is a fine not exceeding \$4,500:

Struck out (unanimous)

- “(b) the court must order the person to be disqualified from holding or obtaining a driver licence for 6 months or more.
- “(3) The imposition of a mandatory disqualification under this section is subject to section 81.
- “(4) If a person is convicted of a second or subsequent offence against **subsection (1)** (whether or not of the same kind of offence as the previous offence),—
- “(a) the maximum penalty is a fine not exceeding \$6,000:
- “(b) the court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more:
- “(c) the court may make an order for the confiscation of the motor vehicle according to the procedures set out in the Criminal Justice Act 1985.
- “(5) The imposition of a mandatory disqualification under this section is subject to section 81.
- “36B Contravention of section 7A or section 7C involving injury or death**
- “(1) A person commits an indictable offence if the person commits an offence under **section 36A(1)**, and by that act causes an injury to or the death of another person.
- “(2) If a person is convicted of an offence against **subsection (1)**,—
- “(a) the maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000:
- “(b) the court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more:
- “(c) the court may make an order for the confiscation of the motor vehicle according to the procedures set out in the Criminal Justice Act 1985.
- “(3) The imposition of a mandatory disqualification under this section is subject to section 81.
- “36C Contravention of section 7B**
- “(1) A person commits an offence if the person contravenes **section 7B**.

Struck out (unanimous)

“(2) If a person is convicted of an offence against **subsection (1)**, the maximum penalty is a fine not exceeding \$4,500.

“36D Contravention of section 7B involving injury or death

“(1) A person commits an indictable offence if the person commits an offence under **section 36C(1)**, and by that act causes an injury to or the death of another person.

“(2) If a person is convicted of an offence against **subsection (1)**, the maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000.”

6 Vehicles in storage

(1) Section 49(1)(a) of the principal Act is amended by omitting the expression “and 123”, and substituting the expression “123, and **123A**”.

(2) Section 49(1)(b) of the principal Act is amended by omitting the expression “and 123”, and substituting the expression “123, and **123A**”.

7 Powers of entry

Section 119 of the principal Act is amended by,—

(a) omitting from subsection (3) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”:

(b) omitting from subsection (4) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”:

(c) omitting from subsection (5) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”.

8 New sections 123A to 123E inserted

The principal Act is amended by inserting, after section 123, the following sections:

Struck out (unanimous)

“123A Vehicle to be seized and impounded for 28 days in certain circumstances

- “(1) An enforcement officer may seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds that a person drove the vehicle on a road while—
- “(a) taking part in a competition, race, or trial of speed between motor vehicles on a road; or
 - “(b) operating a motor vehicle, in such a manner as to cause the vehicle to undergo sustained loss of traction without reasonable excuse.
- “(2) An enforcement officer who seizes and impounds (or authorises the impoundment of) a motor vehicle under this section must—
- “(a) complete a notice in the prescribed form, or in a form to the same effect, acknowledging the seizure and impoundment, and setting out (if the particulars are reasonably ascertainable)—
 - “(i) the name and address of the driver; and
 - “(ii) the year and make of the vehicle, and its registration plate details or vehicle identification number; and
 - “(iii) the date and time of the seizure; and
 - “(iv) the place where the vehicle is to be impounded; and
 - “(v) an outline of the person’s rights of appeal under **section 123D and section 123E**; and
 - “(b) give the driver a copy of the notice, unless the driver has left the scene; and
 - “(c) give the registered owner of the vehicle a copy of the notice, if the registered owner is present at the time of the seizure, or as soon as practicable send a copy to the registered owner by ordinary post to the registered owner’s last known place of residence or business or postal address, or address as recorded on the Register of Motor Vehicles; and
 - “(d) cause a copy of the notice to be given to the storage provider who stores the motor vehicle; and

Struck out (unanimous)

- “(e) retain a copy of the notice for 12 months.
- “(3) The owner of an impounded vehicle has the rights of appeal provided in **sections 123D and 123E**.
- “(4) Personal property (other than property attached to or used in connection with the operation of the vehicle) present in a motor vehicle at the time of the seizure and impoundment must be released on request to a person who produces satisfactory evidence to the effect that he or she was lawfully entitled to possession of the vehicle or personal property immediately before the vehicle was moved, and goods present in a motor vehicle at the time of the seizure and impoundment must be released subsequently to a person acting on behalf of the owner of the goods if the person produces satisfactory evidence of the owner’s consent to such release.
- “(5) A vehicle to which a notice under this section relates must be released to the owner if—
- “(a) the Police have decided finally that proceedings will not be taken against the person who drove the vehicle in circumstances referred to in **subsection (1)** or such proceedings have been taken and the person is acquitted; and
 - “(b) the vehicle has not already been released.
- “(6) Nothing in this section authorises the seizure or impoundment of a trailer or any other vehicle without motive power that is being towed by or is attached to a motor vehicle.
- “(7) Nothing in **subsection (1)** applies to a person operating a motor vehicle for the purposes of a race or trial undertaken in accordance with an approval given under section 77(1)(u) of the Transport Act 1962 or clause 11(e) of the Tenth Schedule of the Local Government Act 1974.
- “123B Storage of impounded vehicles**
- “(1) A motor vehicle seized and impounded under **section 123A** must be stored where the enforcement officer directs.
- “(2) The owner of the impounded vehicle is liable to pay the fees and charges for towage and storage that are prescribed or

Struck out (unanimous)

assessed in the manner specified by regulations made under section 167.

- “(3) The fees and charges referred to in **subsection (2)** are recoverable from the owner of the vehicle by the vehicle recovery service operator or storage provider.
- “(4) Nothing in **subsection (3)** limits or affects any rights against the owner of the vehicle, or in respect of the vehicle, that may be exercised by the vehicle recovery service operator or storage provider.
- “(5) A person may not remove or release from storage an impounded motor vehicle, unless allowed to do so under this Act.
- “(6) The storage provider must immediately comply with a direction under this Act to release the vehicle to the owner or a person authorised for the purpose by the owner.
- “(7) The Commissioner, or an enforcement officer authorised for the purpose by the Commissioner, may enter into such arrangements with vehicle recovery service operators and storage providers as he or she thinks necessary for the purposes of this section.

“123C **Release of vehicle after 28 days**

- “(1) On or after the close of the 28 day impoundment period, the registered owner of the vehicle, or a person authorised for the purpose by the registered owner, is entitled to remove the vehicle from storage by—
 - “(a) showing the storage provider proof of identity and either proof of ownership of the vehicle or the owner’s copy of the notice of acknowledgement of seizure and impoundment; and
 - “(b) paying the fees and charges for towage and storage of the vehicle, or entering into an arrangement to pay those fees and charges.
- “(2) The storage provider is directed to release the vehicle as soon as practicable after **subsection (1)** is satisfied.

Struck out (unanimous)

- “(3) If—
- “(a) a further 28 days has elapsed since the close of the 28-day impoundment period; and
 - “(b) the owner, or a person authorised for the purpose by the owner, has not claimed the vehicle and has not paid the fees and charges for towage and storage of the vehicle or entered into an arrangement to pay those fees and charges; and
 - “(c) no other person has, within that period, established to the satisfaction of the authorised officer that the person is entitled to possession of the vehicle,—
- the storage provider may apply to an enforcement officer authorised for the purpose by the Commissioner for approval to dispose of the vehicle and may, with the officer’s approval, dispose of the vehicle on such terms and conditions as the officer thinks fit.
- “(4) On obtaining approval under **subsection (3)**, the storage provider becomes the owner of the vehicle for all purposes.

“123D Appeal to Police against impoundment of vehicle

- “(1) An owner whose motor vehicle has been seized and impounded under **section 123A** may appeal to the Police against the seizure and impoundment on the grounds that—
- “(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or
 - “(b) the enforcement officer who seized the vehicle did not have reasonable grounds of belief as required by **section 123A** or did not comply with the notice requirements in **subsection (2)** of that section; or
 - “(c) the owner did not know and could not reasonably have been expected to know that the driver would contravene **section 7A or section 7C**; or
 - “(d) the owner took all reasonable steps to prevent the driver from contravening **section 7A or section 7C**.
- “(2) **Subsection (1)(c)** does not apply where the driver has previously been convicted of an offence against **section 7A or section 7C**.

Struck out (unanimous)

- “(3) An appeal under this section must be set out in a statutory declaration.
- “(4) An enforcement officer authorised for the purpose by the Commissioner may hear and determine the appeal, and if satisfied that a ground referred to in **subsection (1)** has been established, the authorised officer must direct that the vehicle be released immediately to the owner or a person authorised by the owner.
- “(5) The authorised officer must consider and determine the appeal as soon as reasonably practicable, and,—
- “(a) in the case of an appeal lodged on the ground set out in **subsection (1)(a)**, determine the appeal not later than 2 working days after the day of lodgement:
- “(b) in any other case, determine the appeal not later than 5 working days after the day of lodgement.
- “(6) The authorised officer may refuse to consider an appeal under this section if satisfied that the appeal is frivolous or vexatious, or that the appellant has provided insufficient information.

“123E Appeal against refusal of Police to direct release of impounded vehicle

- “(1) A person who unsuccessfully appeals to an enforcement officer under **section 123D** may, on any grounds set out in **subsection (1)** of that section, appeal to a District Court against the decision under that section.
- “(2) The court must determine the appeal on 1 or more of the grounds set out in **subsection (1) or subsection (5) of section 123D** and may not consider any other grounds.
- “(3) The court may—
- “(a) direct that the vehicle be released immediately to the person, in which case that direction has effect as if it had been made under **section 123D** by the authorised enforcement officer; or
- “(b) dismiss the appeal.”

New (unanimous)

3 Purpose

The purpose of this Act is to amend the principal Act—

- (a) to include in that Act additional provisions aimed at combating the problem of unauthorised street racing, drag racing, wheel spinning, and other stunts involving motor vehicles on roads, and the spillage of lubricants on roads without reasonable excuse; and
- (b) to extend the motor vehicle seizure and impoundment regime under Part 7 of the principal Act in order to give enforcement officers additional tools to combat the problem of unauthorised street racing, drag racing, wheel spinning, and other stunts involving motor vehicles on roads; and
- (c) to extend the appeal provisions in Part 8 of the principal Act in order to provide rights of appeal in respect of the seizure and impoundment of motor vehicles under the new provisions.

Part 2

**Substantive amendments to Land Transport Act
1998 and consequential amendments**

4 Drivers and other road users to comply with directions of enforcement officers, etc

Section 13(4)(a) of the principal Act is amended by inserting, after the words “for the vehicle”, the words “or (if the notice was given under **section 96(1B)**) the direction requiring the vehicle not to be driven on a road has been cancelled under **section 102(3)(b)** or **section 110(3)(a)(ii)**”.

5 New section 22A inserted

The principal Act is amended by inserting in Part 3, after section 22, the following section:

“22A Persons not to engage in unauthorised street or drag racing, or other related prohibited activities on roads

“(1) A person must not operate a motor vehicle in a race, or in an unnecessary exhibition of speed or acceleration, on a road

New (unanimous)

unless the operation of the vehicle in that manner is authorised by law.

- “(2) A person must not, without reasonable excuse, intentionally pour onto, place on, or allow to spill onto a road—
- “(a) any petrol, oil, or diesel fuel; or
 - “(b) any other substance likely to cause a vehicle to undergo loss of traction.
- “(3) A person must not, without reasonable excuse, operate a motor vehicle on a road in a manner that causes the vehicle to undergo sustained loss of traction unless the operation of the vehicle in that manner is authorised by law.
- “(4) In this section and in **section 96(9)**, the operation of a motor vehicle in a particular manner is authorised by law if,—
- “(a) in the case of a race or an exhibition of speed or acceleration,—
 - “(i) the speed of the vehicle is within the applicable speed limit or speed limits; and
 - “(ii) the vehicle operator does not contravene any enactment other than this section that applies in relation to the operation of the vehicle; or
 - “(b) the operation is conducted on a road that is closed for the purpose under section 319(h) or section 342 of the Local Government Act 1974, and is conducted in accordance with the conditions (if any) imposed under the Tenth Schedule of that Act; or
 - “(c) the operation is otherwise authorised by or under an enactment other than this section.”

6 New section 36A inserted

The principal Act is amended by inserting, after section 36, the following section:

“36A Contravention of section 22A

- “(1) A person commits an offence if the person—
- “(a) operates a motor vehicle in a race, or in an unnecessary exhibition of speed or acceleration, on a road in contravention of **section 22A(1)**; or

New (unanimous)

- “(b) without reasonable excuse, intentionally pours onto, places on, or allows to spill onto a road—
- “(i) any petrol, oil, or diesel fuel; or
 - “(ii) any other substance likely to cause a vehicle to undergo loss of traction; or
- “(c) without reasonable excuse, operates a motor vehicle on a road in a manner that causes the vehicle to undergo sustained loss of traction in contravention of **section 22A(3)**.
- “(2) A person commits an indictable offence if the person commits an offence against **subsection (1)(a) or (c)**, and by that act or omission causes an injury to or the death of another person.
- “(3) A person who commits an offence against **subsection (1)(a) or (c)** that is an indictable offence is liable to the penalties set out in section 36(2), and section 36(2) and (3) apply as if the offence were an offence against section 36(1)(a) (such as operating a motor vehicle recklessly on a road, and by that act or omission causing an injury to or the death of another person).
- “(4) A person who commits an offence against **subsection (1)(a) or (c)** that is not an indictable offence is liable to the penalties set out in section 35(2), and section 35(2) and (3) apply as if the offence were an offence against section 35(1)(a) (operating a motor vehicle recklessly on a road).
- “(5) A person who commits an offence against **subsection (1)(b)** is liable to a fine not exceeding \$3,000.”

7 Contravening notices, requirements, etc, given or imposed by enforcement officers

Section 52(1) of the principal Act is amended—

- (a) by inserting in paragraph (a), after the words “for the vehicle”, the words “or (if the notice was given under **section 96(1B))** the direction requiring the vehicle not to be driven on a road has been cancelled under **section 102(3)(b)** or **section 110(3)(a)(ii)**”:
- (b) by inserting in paragraph (b), after the words “subsection (5) of that section”, the words “or under **section 96(1D)**”.

New (unanimous)

8 Vehicle to be seized and impounded for 28 days in certain circumstances

- (1) The heading of section 96 of the principal Act is amended by omitting the words “**to be**”.
- (2) Section 96 of the principal Act is amended by inserting, after subsection (1), the following subsections:
 - “(1A) An enforcement officer may seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds that a person—
 - “(a) operated the vehicle in a race, or in an unnecessary exhibition of speed or acceleration, on a road in contravention of **section 22A(1)**; or
 - “(b) without reasonable excuse, operated the vehicle on a road in a manner that caused the vehicle to undergo sustained loss of traction in contravention of **section 22A(3)**.
 - “(1B) An enforcement officer who seizes and impounds (or authorises the impoundment of) a motor vehicle under **subsection (1A)** must, by means of a notice in the form approved for the purposes of section 115(1), direct that the vehicle is not to be driven on a road.
 - “(1C) For the purposes of this Act and any other enactment, a notice given under **subsection (1B)** has effect as a notice given under section 115(1).
 - “(1D) A notice under **subsection (1B)** may include a condition to the effect that the vehicle may continue to be driven to reach a specified place for repair or may continue to be driven for a given time or under limitations as to speed or route or otherwise, unless the direction referred to in that subsection has been cancelled.”
- (3) Section 96(2)(a) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:
 - “(iia) if **subsection (1A)** applies, the date and time of the alleged offence; and”.

New (unanimous)

- (4) Section 96(6)(a) of the principal Act is amended by inserting, after the expression “subsection (1)”, the words “or operated the vehicle in circumstances referred to in **subsection (1A)**.”
- (5) Section 96 of the principal Act is amended by adding the following subsection:
- “(9) Nothing in **subsection (1A)** applies to a person operating a motor vehicle in a manner that is authorised by law within the meaning of **section 22A(4)**.”

9 Appeal to police against impoundment of vehicle

- (1) Section 102(1) of the principal Act is amended by adding the word “; or” and also adding the following paragraphs:
- “(f) if **section 96(1A)** applies, the owner did not know and could not reasonably be expected to know that the operator of the vehicle would contravene **section 22A(1) or (3)** (whichever applies); or
- “(g) if **section 96(1A)** applies, the owner took all reasonable steps to prevent the operator of the vehicle from contravening **section 22A(1) or (3)** (whichever applies).”
- (2) Section 102 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) An enforcement officer authorised for the purpose by the Commissioner may hear and determine the appeal, and, if satisfied that a ground referred to in subsection (1) has been established,—
- “(a) the authorised officer must direct that the vehicle be released immediately to the owner or a person authorised by the owner; and
- “(b) if a direction in respect of the vehicle has been given under **section 96(1B)**, the authorised officer must cancel the direction unless he or she believes on reasonable grounds that the vehicle does not comply with the provisions of the regulations or the rules.”

New (unanimous)

10 Appeal against refusal of police to direct release of impounded vehicle

- (1) Section 110(2) of the principal Act is amended by inserting, before the words “grounds set out”, the word “applicable”.
- (2) Section 110 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) The court may—

 - “(a) make an order—
 - “(i) directing that the vehicle be released immediately to the person, in which case that direction has effect as if it had been made under section 102 by the authorised enforcement officer; and
 - “(ii) if an enforcement officer has given a direction in respect of the vehicle under **section 96(1B)**, cancelling that direction unless the court is satisfied that the vehicle does not comply with the provisions of the regulations or the rules; or

“(b) dismiss the appeal.”

11 Consequential amendments

- (1) The Acts listed in **Part 1** of the **Schedule** are amended in the manner set out in that schedule.
- (2) Schedule 4 of the Land Transport (Offences and Penalties) Regulations 1999 (SR 1999/99) is amended in the manner set out in **Part 2** of the **Schedule**.
- (3) The Land Transport (Ordering a Vehicle off the Road) Notice 1999 (SR 1999/33) is amended in the manner set out in **Part 3** of the **Schedule**.
- (4) If an enforcement officer issues a notice under section 96 of the principal Act in any case to which subsection (1) of that section applies and the notice does not contain any matter that is prescribed by **subsection (2)** of this section, that omission does not of itself invalidate the notice.

New (unanimous)

s 11

**Schedule
Consequential amendments to other enactments**

**Part 1
Acts amended**

Transport Act 1962 (1962 No 135)

Insert in Part IX of the Second Schedule, in the appropriate order and in the appropriate columns:

“36A(1)(b)”	Without reasonable excuse, intentionally pouring on, placing on, or allowing to spill onto a road any petrol, oil, or diesel fuel, etc	600”
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Sentencing Act 2002 (2002 No 9)

Insert in section 128(1)(b), after the expression “35(1)(b),”, the expression “**36A(1)(a) or (c)**,”.

Insert in section 128(2)(b), after the expression “36(1)(a),”, the expression “**36A(1)(a) or (c)**,”.

Insert in section 129(1)(a), after the expression “36(1)”, the expression “**36A(1)(a) or (c)**,”.

Summary Proceedings Act 1957 (1957 No 87)

Insert in the item relating to the Land Transport Act 1998 in Part II of the First Schedule, in the appropriate order and in the appropriate columns:

“36A(1)(a)	Operating a motor vehicle in a race or unnecessary exhibition of speed or acceleration in contravention of section 22A(1)
“36A(1)(c)	Without reasonable excuse, operating a motor vehicle in a manner that causes it to undergo sustained loss of traction in contravention of section 22A(3) ”

**Part 2
Amendments to Schedule 4 of Land Transport (Offences and
Penalties) Regulations 1999**

Insert in Part 1 of the form, after the word “Time”, the words “of seizure”.

Insert in Part 1 of the form, after the line containing the items “Street” and “Location”, the following items:

New (unanimous)

Part 2—*continued*

“Time of offence: Date:/...../.....”

Insert in Part 1 of the form, after paragraph (c) (which appears after the heading “ADVICE TO DRIVER”):

“OR

“I am seizing and impounding, or seizing and authorising the impoundment of, the motor vehicle described below for 28 days because I believe, on reasonable grounds, that—

(Tick appropriate box)

- (a) you operated that vehicle in a race, or in an unnecessary exhibition of speed or acceleration, on a road in contravention of **section 22A(1)** of the Act; or
- (b) without reasonable excuse, you operated that vehicle on a road in a manner that caused the vehicle to undergo sustained loss of traction in contravention of **section 22A(3)** of the Act.”

Add to clause 4 in Part 2 of the form the word “; or” and also:

“(g) if **section 96(1A)** of the Act applies, the owner did not know and could not reasonably be expected to know that the operator of the vehicle would contravene **section 22A(1) or (3)** of the Act (whichever applies); or

“(h) if **section 96(1A)** of the Act applies, the owner took all reasonable steps to prevent the operator of the vehicle from contravening **section 22A(1) or (3)** of the Act (whichever applies).”

Part 3

Amendment to Land Transport (Ordering a Vehicle off the Road) Notice 1999

Add to paragraph 1 of the form in Schedule 1:

“Note: if the vehicle is ordered off the road under **section 96(1B)** of that Act, state ‘a direction under **section 96(1B)** of that Act’ or words to that effect as the reason for non-compliance.”

**Land Transport (*Street and
Illegal*)Unauthorised Street and Drag
Racing Amendment**

Legislative history

14 May 2002

Introduction, first reading and referral to Law and
Order Committee
