



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Name of package	Land Transport (Wheel Clamping) Amendment Bill: Approval for introduction	Date of issue	18 April 2019

List of documents that have been proactively released		
Date	Title	Author
19 March 2019	Land Transport (Wheel Clamping) Amendment Bill: Approval for introduction	Office of the Minister of Commerce and Consumer Affairs
25 March 2019	Cabinet Legislation Committee Minute of Decision: Land Transport (Wheel Clamping) Amendment Bill: Approval for Introduction	Cabinet Office

Information withheld

Some parts of this information release are not appropriate to be released and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified and are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Section of the Act	Reason for withholding
9(2)(f)(iv)	<i>To maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</i>

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

Land Transport (Wheel Clamping) Amendment Bill: Approval for introduction

Proposal

- 1 This paper seeks approval for the introduction of the Land Transport (Wheel Clamping) Amendment Bill (**the Bill**).

Summary of the Bill

- 2 The Bill amends the Land Transport Act 1998 to regulate the maximum fees charged by wheel clamp operators in order to protect motor vehicle users from unreasonable fees.
- 3 This Bill sets a maximum fee of \$100 that can be charged for the removal of a clamp and other associated fees, such as the parking breach. The Bill provides for the ability to amend the maximum fee in regulations.
- 4 The Bill makes it an infringement offence for a person to charge more than the maximum fee.

Policy

- 5 Wheel clamping is a common method of parking enforcement on private land. It involves immobilising a vehicle by attaching a clamp or other device to a wheel to prevent or restrict its movement.
- 6 There is no specific legislation regulating wheel clamping as a method of parking enforcement. Common law rules governing parking rights and enforcement on private land are unclear and seldom tested in the courts. This has meant that motorists are often charged unreasonable fees for the release of their vehicle and that wheel clamping is often the subject of complaints from motorists.
- 7 As the law is not clear on the exact charges that are reasonable, motorists are unlikely to understand in what circumstances they might successfully dispute a fee. Consequently, there are few incentives for wheel clamp operators to charge reasonable fees. Voluntary industry initiatives have not been effective in changing behaviour across the industry.

Policy decisions

- 8 On 13 August 2018 Cabinet agreed [CAB-18-MIN-03792 refers]:
 - 8.1 that a person may not charge more than the maximum amount for a parking breach on private land that requires the removal of a wheel clamp (including the charge for the application and removal of the wheel clamp itself);
 - 8.2 that the maximum amount be set at \$100 (inclusive of GST);
 - 8.3 that a breach of the requirement above be an infringement offence with:

- 8.3.1 an infringement fee of \$1,000 for an individual and \$5,000 for a body corporate;
- 8.3.2 a fine of up to \$3,000 for an individual and up to \$15,000 for a body corporate (if the person is charged with the offence in court);
- 8.4 that, if a wheel clamp operator has breached the maximum fee, motorists will have the right to recover payments made in excess of the maximum fee through normal civil claims processes, including the Disputes Tribunal;
- 8.5 to create a power for the responsible Minister to recommend regulations to amend the amount of the maximum fee;
- 8.6 that New Zealand Police be the enforcement agency for wheel clamping regulation on private land;
- 8.7 to give effect to the above paragraphs through an amendment to the Land Transport Act 1998.
- 9 I am seeking approval to introduce this Bill to give effect to the above decisions.

Report back on additional policy decisions

- 10 Cabinet authorised me to make additional policy decisions, consistent with the above paragraphs, with those decisions to be reported to the Cabinet Legislation Committee.
- 11 In addition to the policy agreed to above, I propose that this Bill provide that:
- 11.1 A wheel clamp operator must remove a wheel clamp as soon as reasonably practicable after a fee is paid, or on request of the motorist if no fee is charged. It will be an infringement offence if a wheel clasper breaches this requirement. If the wheel clasper fails to remove the clamp as soon as reasonably practicable, the motorist may remove or arrange for the removal of the clamp and will be immune from any civil or criminal liability provided that as little damage is caused to the wheel clamp as possible.
- 11.2 A wheel clasper must be reasonably available to respond to requests from the motorist relating to the removal of a wheel clamp. If the wheel clasper is not reasonably available, the motorist may remove or arrange for the removal of the clamp.
- 11.3 An enforcement officer can remove the wheel clamp or direct a wheel clasper to do so.
- 12 The Bill specifies that the requirements will apply to wheel clamping that takes place in a parking place that is not under the control of an enforcement authority (i.e. not a public road such as any motorway, state highway or government road, or any road under the authority of local government).
- 13 The fee cap will not apply to any person clamping with legal authority under an enactment, for example, local authorities who clamp freedom camping vehicles.

- 14 I also intend to draw the Bill to the attention of the Principal Disputes Tribunal Referee. This will help to ensure robust consultation on aspects of this Bill that relate to the Disputes Tribunal's jurisdiction.

Aspects of the Bill that are likely to be contentious

- 15 A concern that is likely to be raised at select committee is why the Government is not proposing to ban wheel clamping, or alternatively to impose a licensing and conduct regime on wheel clampers. I considered these options and concluded that regulating fees will target the problem without significant cost. A comprehensive licensing and conduct regime, for example, would be higher cost with a greater need for administration, monitoring and enforcement. A ban would limit the recourse that people have to prevent parking breaches. We need to strike a balance between protecting motorists and allowing property owners to enforce their rights in a reasonable way.
- 16 The level of the fee cap is also likely to be contentious. This is why this Bill introduces the fee cap in primary legislation, which will enable parliamentary scrutiny and public consultation.

Impact analysis

- 17 A Regulatory Impact Assessment (RIA) recommending these proposals was prepared on 20 April 2018 for the Cabinet policy decision [*CAB-18-MIN-03792 refers*]. A new or amended RIA is not required for this Bill as the proposals outlined in this paper were considered in that RIA and officials' advice is unchanged.

Compliance

- 18 The Bill complies with each of the following:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 18.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to the paper;
 - 18.4 the principles and guidelines set out in the Privacy Act 1993;
 - 18.5 relevant international standards and obligations;
- 19 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 20 The Minister of Transport has been consulted and agreed to the submission of this paper.
- 21 The Ministry of Transport, New Zealand Police, Ministry of Justice, the Department of Internal Affairs, the Treasury and the New Zealand Transport Agency have been consulted on this paper.

- 22 The Department of Prime Minister and Cabinet has been informed.
- 23 I consulted Government coalition parties on these proposals prior to Cabinet policy decisions.

Binding on the Crown

- 24 The Land Transport Act 1998 binds the Crown. This Bill does not propose to amend that provision.

Associated regulations

- 25 Regulations are needed to give effect to Cabinet's decision [CAB-18-MIN-03792 refers] to make a breach of the requirements in this Bill subject to an infringement fee of \$1,000 for an individual and \$5,000 for a body corporate. I will seek Cabinet approval of the draft regulations closer to the enactment of this Bill.

Other instruments

- 26 The Bill contains a new regulation-making power to prescribe the maximum fee that a wheel clamber can charge.

Commencement of legislation

- 27 The Bill will come into force on the 42nd day after it receives the Royal Assent.

Parliamentary stages

- 28 The Bill has a legislative priority [redacted] in the 2019 Legislation Programme. I intend to introduce the Bill on 2 April 2019 and, depending on availability of House time, I will move first reading during the week of 9 April 2019.
- 29 I propose that the Bill be referred to the Transport and Infrastructure Committee for consideration for a period of six months.

Proactive Release

- 30 This paper will be proactively released in part within 30 business days on the Ministry of Business, Innovation and Employment's website, with any redactions in line with the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the Land Transport (Wheel Clamping) Amendment Bill holds a [redacted] on the 2019 Legislation Programme;
2. **note** that the Land Transport (Wheel Clamping) Amendment Bill introduces a prescribed maximum amount that a person can charge for a parking breach that requires the removal of a wheel clamp and makes it an infringement offence to charge more than the prescribed amount of \$100;

3. **agree** to the Land Transport (Wheel Clamping) Amendment Bill providing that:
 - 3.1. a wheel clamp operator must remove a wheel clamp as soon as reasonably practicable after a fee is paid, or on request of the motorist if no fee is charged, and that it will be an infringement offence if a wheel clamber breaches this requirement;
 - 3.2. a wheel clamber must be reasonably available to respond to requests from the motorist relating to the removal of a wheel clamp;
 - 3.3. if a wheel clamber fails to remove the clamp as soon as reasonably practicable or is not reasonably available, the motorist may remove or arrange for the removal of the clamp and will be immune from any civil or criminal liability provided that as little damage is caused to the wheel clamp as possible;
 - 3.4. an enforcement officer can remove the wheel clamp or direct a wheel clamber to do so;
4. **note** that the Minister of Commerce and Consumer Affairs will consult the Principal Disputes Tribunal Referee on this Bill;
5. **approve** the Land Transport (Wheel Clamping) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **agree** that the Bill be introduced on 2 April 2019;
7. **agree** that the Government propose that the Bill be:
 - 7.1. referred to the Transport and Infrastructure committee for consideration;
 - 7.2. enacted by November 2019.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs