

# **Vehicle Confiscation and Seizure Bill**

Government Bill

As reported from the Transport and  
Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Vehicle Confiscation and Seizure Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill forms part of the Government's response to illegal street racing. Its purpose is to reduce traffic offending by strengthening and empowering the courts to order the confiscation and destruction of motor vehicles driven by persistent street racing offenders, and enforce the collection of unpaid fines and reparation. It is an omnibus bill, amending the Sentencing Act 2002, the Summary Proceedings Act 1957, and Schedule 5 of the Privacy Act 1993.

Proposed amendments to the Sentencing Act 2002 seek to strengthen the courts' powers to order the confiscation of motor vehicles to prevent further serious traffic offending, and their destruction when used by persistent offenders. Proposed amendments to the Summary

Proceedings Act 1957 would enable bailiffs and the Police to seize motor vehicles in order to enforce the collection of unpaid fines and reparation, and to reduce opportunities for further traffic offending. Proposed amendments to Schedule 5 of the Privacy Act 1993 seek to authorise the Police to release relevant information regarding the drivers and owners of impounded vehicles directly to the Ministry of Justice, to enable the seizure of the vehicles and to find people who have unpaid fines.

## **Part 1: Amendments to Sentencing Act 2002**

### **Confiscation of motor vehicles**

Clause 6 would amend section 128 of the Sentencing Act 2002, to allow the motor vehicle of a substitute for the offender to be confiscated if it had been used to commit an offence. A person becomes a substitute for the offender if, after the receipt of a written caution about the use of the person's vehicle by an offender committing a traffic offence, a person's motor vehicle is used again by the offender to commit a further traffic offence within four years. A court could not order the confiscation if the substitute could not reasonably have known that the offender would commit the offence, or if the substitute took all reasonable steps to prevent the offence from occurring. We recommend an amendment to ensure that failure to stop for a police officer would also qualify for discretionary confiscation under this section.

### **Written caution to persons with interest in motor vehicles involved in offences**

New section 129B provides for situations where an offender commits an offence eligible for confiscation in a motor vehicle that belongs to a third party. The vehicle owner would be served with a written caution, which must warn the owner that if the offender commits a further offence in a vehicle owned by the person within four years, the motor vehicle could be confiscated or, if the offender is convicted of three illegal street racing offences within four years, confiscated and destroyed.

In order to minimise the resource implications of serving of cautions, we recommend an amendment to authorise personal serving on an adult family member (other than the offender) living at the same ad-

dress as the vehicle owner. In the common situation where a vehicle is owned by the offender's parents, this would allow a caution to be served personally on both parents by means of personal serving on only one of them, or on another adult family member (other than the offender) living at the same address.

Subsection 129B(7) would authorise the serving of written cautions by employees or agents of the Ministry of Justice. We recommend an amendment to make it clear who could serve written cautions, and that cautions could be served by police and court officers, people authorised by a court Registrar or a Judge, and process servers contracted by the Secretary for Justice.

We also recommend an amendment in new section 129BA to provide for warning notices to secured parties if confiscation is not ordered for second illegal street racing offences. This amendment would replace the proposed amendments to section 129 (inserting subsections (6)–(8)) in the bill as introduced.

New section 129C would allow a person served with a written caution to apply to the court for cancellation of the caution on certain grounds. If there were more than one substitute, the written caution would be set aside only in respect of the applicant. We recommend an amendment providing for a court to set aside written cautions issued to people other than the applicant if the court is satisfied that the vehicle was stolen or rented.

New section 129E provides that if a substitute's vehicle is confiscated, this person can appeal the confiscation on the grounds set out in section 129C; or on the ground that the person took all reasonable steps to prevent the commission of the offence, or could not reasonably have known that the offence would be committed.

It would be appropriate to cancel the written caution for all substitutes only if the court were satisfied that the vehicle had been stolen or was hired at the time of the offending. We recommend an amendment to this effect in new sections 129C and 129E.

### **Sale of motor vehicle surrendered or recovered**

New section 137C, clause 16, provides for a repossessed motor vehicle to be sold, subject to the same requirements regarding dismantling and destruction set out in new section 137B, which includes provision for failure to comply with such requirements. The sale

proceeds are to be used first to recoup the costs of repossession and sale, with any balance being given to the original purchaser.

New section 137C assumes that the second purchase price obtained will always be less than the original purchase price plus the confiscation, repossession, and sale costs. A submitter suggested that the payment to the original purchaser should be limited to the original purchase price, and any additional proceeds should be applied in the usual priority order. We recommend that this section be amended to clarify that, in the unlikely event of the second purchase price being greater than the original purchase price plus costs, any additional money should be distributed in accordance with section 137(3).

#### **Party with an interest may apply to a court**

Clause 20 would amend section 141, which protects the rights of secured creditors in confiscated vehicles. It authorises court registrars to transfer confiscated vehicles to creditors, to be sold on behalf of the courts. Creditors would be required to transfer the proceeds of sales to court registrars.

After deducting confiscation costs incurred by the courts, registrars would be required to use the proceeds to repay the loans and to reimburse the creditors for their sale costs. Any remaining money would be used to pay any penalties owed by offenders, and any balances would be paid to offenders or substitutes.

We recognise that the current process adds unnecessary administrative costs, and recommend further amendments to section 141 to

- require creditors to pay the court's confiscation costs as well as any impoundment costs before vehicles are transferred for sale
- authorise creditors to deduct outstanding loans, their sale costs, and the confiscation and any impoundment costs that they have already paid from the sale proceeds, and to pay any balance to registrars.

#### **Order may be cancelled on application from bona fide purchaser**

Clause 21 would consequentially amend section 142 of the Sentencing Act 2002 to permit the cancellation of confiscation and destruction orders on the application of a person who had purchased the vehicle in good faith. We are advised that some offenders sell their ve-

hicles after confiscation orders have been made, before the vehicles can be seized. At present, section 142 provides that the court must cancel the confiscation order if it is satisfied that the new owner purchased the vehicle in good faith and without knowledge of the offender's conviction.

To deter such sales we recommend amending the Act by substituting a new section 142(2) to make it clear that on cancelling a confiscation or confiscation and destruction order under section 142, the court must order the offender not to acquire a new interest in a vehicle for 12 months from the date of the original confiscation order. This would ensure that an offender did not evade the 12-month prohibition by selling their vehicle before it was seized.

We also recommend an associated amendment in new clause 12A, inserting new section 132A to make it an offence punishable by a maximum fine of \$2,000 to sell a vehicle after a confiscation or confiscation and destruction order is made.

## **Part 2: Amendments to Summary Proceedings Act 1957**

### **Written cautions to persons holding interest in motor vehicles**

New section 100B provides that if defendants incur overdue traffic fines in motor vehicles owned by other persons, court registrars may issue written cautions to the owners. Personal serving of written cautions would be necessary to ensure that vehicle owners were aware of the risk of seizure, and had an opportunity to prevent it by not allowing defendants to incur further traffic penalties in their vehicles. To minimise resource implications, we recommend an amendment to authorise personal serving on the same basis as for written cautions to persons with an interest in motor vehicles involved in offences described above in new section 129B of the Sentencing Act 2002.

Subsection 100B(5) seeks to authorise the serving of written cautions by employees or agents of the Ministry of Justice. We recommend an identical amendment to that recommended regarding the serving of written cautions to persons with an interest in motor vehicles involved in offences, described above regarding new section 129B(7).

**Review of written caution**

New section 100C would enable the court to cancel a written caution on various grounds, including a vehicle's being stolen or hired. We recommend an amendment to also allow cancellation of a caution regarding substitutes if the court is satisfied that the vehicle had been stolen or was hired at the time of the offending.

**Seizure of motor vehicle**

New section 100E provides for the seizure of a motor vehicle, including one owned by a substitute for a defendant, under a warrant to seize property in order to recover overdue penalties. The Summary Proceedings Act 1957 authorises the seizure of property that appears to belong to a defendant, because it is not always possible to determine ownership at the time of seizure. We recommend an amendment to similarly authorise the seizure of vehicles that appear to belong to a substitute. This would ensure that substitutes could not sell or hide vehicles while ownership was being determined.

**Seized motor vehicle to be retained by or for court Registrar**

New section 100H would require the bailiff or constable executing a warrant to take seized motor vehicles to the court Registrar or to a place or person specified by the court Registrar. Vehicles that did not comply with the statutory registration or licensing requirements could be towed. As it is currently illegal to tow such vehicles we recommend an amendment to provide clear immunity from criminal and civil liability arising from the seizure of an unlicensed or unregistered vehicle.

**Sale of motor vehicle seized**

New section 100L would authorise the court to sell a seized vehicle if the overdue fines and costs were not paid, even though it failed to comply with the statutory registration and licensing requirements. The purchaser could only tow the vehicle, and must comply with the statutory requirements as soon as possible. We recommend an amendment to provide immunity for the purchaser from criminal and civil liability arising from the sale, purchase, and towing of an unlicensed or unregistered vehicle.

**Release of motor vehicle to certain owners**

New section 100P would require the court Registrar to release a motor vehicle to the owner where the Registrar was satisfied that the defendant did not own the vehicle, and that the owner was not a substitute or a nominee for the defendant, or the substitute. If the vehicle had been seized from an impoundment yard, it could not be released until the prescribed impoundment costs had been paid and the 28-day impoundment period had expired.

We recommend an amendment to authorise the Registrar to sell the vehicle if the prescribed impoundment costs have not been paid within a specified period. The sale proceeds would be applied to the outstanding costs and the balance would be returned to the claimant.

**Appeal against seizure by persons treated as substitutes**

New section 100Q seeks to provide for appeals by substitutes against the seizure of their vehicles on grounds set out in this section. We recommend amendments to prescribe the way the appeal process would operate.

**Claims by owners, lessors, and creditors**

New section 100R provides for the determination of claims by vehicle owners other than the defendant or a substitute, or joint owners with the defendant or a substitute. New section 100S would authorise the court to return to the lessor a seized motor vehicle that was leased; and new section 100T would authorise the court to release a seized motor vehicle to a secured creditor.

We recommend amendments to authorise the court Registrar to sell the vehicle if the prescribed impoundment costs have not been paid by a claimant, a lessor, or a creditor within a specified period. The sale proceeds would be used to pay the outstanding costs, and the balance would be returned to the claimant, lessor, or creditor.

We also recommend a requirement that lessors and creditors pay the seizure costs as well as the impoundment costs before the vehicle is released. Lessors, instead of the court, would need to recover these costs from the defendant. Creditors would be able to recover these costs from the sale proceeds.

**New Zealand Bill of Rights issues**

We are aware of a view that the confiscation, destruction, and seizure of vehicles infringe provisions in the New Zealand Bill of Rights Act 1990. However, the Crown Law Office advised the Attorney-General that it did not consider that there are inconsistencies with the Act because the offences provided for in the bill are not criminal in nature.

**New Zealand Labour minority view**

The Labour members are extremely sympathetic to the communities and families who are subjected to the nuisance, intimidation, and unlawful behaviour associated with illegal street racing. We acknowledge that communities and citizens are suffering serious harm, particularly in those areas like Christchurch, and will support any workable measures to address the ongoing issues.

Labour is supporting the companion bill to this (the Land Transport (Enforcement Powers) Amendment Bill), because we believe that it has some useful powers that will enhance the ability of enforcement officers to deal with the menace of illegal street racing.

However, it is Labour's view that this bill actually weakens the powers of vehicle confiscation. Current legislation provides that after one offence a judge can, and after two offences over four years a judge must, confiscate the vehicle.

This bill will amend that situation to one where after three separate offences over a four-year period, judges have the discretionary power to order the confiscation and destruction of a vehicle.

Given the Minister has said that perhaps only nine or ten cars a year will be crushed under the weakened provisions for confiscation in this bill, there are likely to be even fewer vehicles confiscated; Labour cannot support these measures.

Labour believes the destruction orders introduced in this bill are counterproductive because destruction of a vehicle makes it less likely that fines owed by the offender will be able to be recovered. The destruction orders will not go any further towards reducing the harm and nuisance to communities caused by illegal street racers because confiscation of a vehicle achieves the same purpose.

Labour would have liked to have seen much stronger examination of why so few cars are confiscated under the current legislation (which is one of the reasons given for introducing this bill) and efforts made

to address those issues, rather than introducing another weaker piece of legislation.

During the committee of the whole stages of the bill in the House, Labour will be proposing amendments to reinstate mandatory confiscation of vehicles on the second offence.

Labour supports the provisions in this bill that extend confiscation to vehicles that are owned by a third party who allows an offender to use his or her vehicle; however Labour believes those provisions can be introduced without the need to weaken the current confiscation provisions. We therefore intend to propose an amendment to require a written caution to be sent to all those with an interest in the vehicle on a first offence, and mandatory confiscation on a second offence.

Labour members are concerned that proposed cuts to Police resources will impact negatively on the ability to effectively deal with problems arising from illegal street racing.

## **Appendix**

### **Committee process**

The Vehicle Confiscation and Seizure Bill was referred us on 2 June 2009. The closing date for submissions was 3 July 2009. We received and considered 58 submissions from interested groups and individuals. We heard 30 submissions, which included holding hearings in Christchurch.

We received advice from the New Zealand Police, the Ministry of Justice, Parliamentary Counsel, the Ministry of Transport, and the New Zealand Transport Agency.

### **Committee membership**

David Bennett (Chairperson)

Dr Jackie Blue

Carol Beaumont

Darien Fenton

Jeanette Fitzsimons

Hon Tau Henare

Moana Mackey

Allan Peachey

Michael Woodhouse

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Judith Collins*

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Vehicle Confiscation and Seizure Act **2009**.
- 2 Commencement**  
This Act comes into force on **1 December 2009**.

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|--|--|----|
| <b>Part 1</b>  |  | 5  |
| <b>Amendments to Sentencing Act 2002</b>                     |  |    |
| <b>3 Principal Act amended</b>                               | This <b>Part</b> amends the Sentencing Act 2002.   |    |
| <b>4 Purpose</b>   | The purpose of this <b>Part</b> is to reduce traffic offending by—   | 10 |
|  | (a) strengthening the powers of the courts to order the confiscation of motor vehicles:                                  |    |
|  | (b) empowering the courts to order the destruction of motor vehicles used by persistent illegal street racing offenders. | 15 |
| <b>5 Interpretation of terms used in sections 128 to 142</b> |  |    |
| (1)  | Section 127(1) is amended by inserting the following definitions in their appropriate alphabetical order:                |    |

“**impoundment costs**, in relation to a motor vehicle that has been confiscated while impounded under the Land Transport Act 1998, means the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167 of that Act, and, where those fees and charges have already been paid by the chief executive of the Ministry of Justice, means the amount required to reimburse the chief executive for that payment 5

“person who is registered, in relation to a motor vehicle, means the person who is registered under the Land Transport Act 1998 in respect of the vehicle, and where several persons are so registered, means any one of those persons 10

“~~registered owner~~, in relation to a motor vehicle, means the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of the vehicle, and where several persons are so registered, means any one of those persons 15

“**written caution** means a caution issued under **section 129B**.”

(2) Section 127 is amended by adding the following subsection: 20

“(3) For the purposes of sections 128 to 142, a person is, in relation to an offender, a **substitute for the offender** or a **substitute** if—

“(a) the person is served with a written caution, under **section 129B**, about an offence committed by the offender; and 25

“(b) within 4 years after the date of the commission of the offence for which that written caution was served, the offender commits a further offence specified in section 128(1) involving a motor vehicle that, at the time of the commission of that offence, the person owns or has an interest in.” 30

**6 Confiscation of motor vehicle**

(1AA) Section 128(1)(b) is amended by inserting “52(1)(aa), 52(1)(c) (but only in relation to failing to stop in accordance with section 114(2) or failing to give particulars in accordance with section 114(3)),” after “39(1),”. 35

- (1) Section 128 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) A court may exercise the power in subsection (3) if a person is convicted of an offence referred to in subsection (1) and the court by or before which the offender is convicted is satisfied—
- 5 “(a) that a motor vehicle—
- “(i) was used to commit or facilitate the commission of the offence, whether or not the offender was the driver or person in charge; or 10
- “(ii) in the case of an offence against any of the provisions of sections 35(1)(a) and (b), 36(1)(a), 36A(1)(a) and (c), 38(1), 39(1), 52(1)(aa) and (c), and 56 to 62 of the Land Transport Act 1998, was being driven by, or in the charge of, the offender at the material time; or 15
- “(iii) was used by the offender, whether or not the offender was the driver or person in charge, to facilitate the offender’s flight or avoid his or her detection or arrest after the commission of the offence; and 20
- “(b) that, at the time of the conviction, the offender or a substitute for the offender owns the motor vehicle or has an interest in the motor vehicle.”
- (2) Section 128 is amended by inserting the following subsection after subsection (3): 25
- “(3A) The court must not make an order under this section in respect of a motor vehicle that a substitute for an offender owns or has an interest in if satisfied that—
- “(a) the substitute did not know, and could not reasonably have known, that the offender would commit the offence or offences; or 30
- “(b) the substitute took all reasonable steps to prevent the offender from committing the offence or offences.”
- (3) Section 128(5)(a) is amended by inserting “or, as the case requires, to the substitute for the offender” after “the offender”. 35
- (4) Section 128(5)(c) is amended by inserting “, or, as the case requires, the interest of the substitute for the offender,” after “offender’s interest”.

**7 Confiscation of motor vehicle after second offence**

Section 129 is amended by adding the following subsections:

- “(6) This subsection applies if—
- “(a) the first offence and the second offence are each against section 36A(1)(a) or (c) of the Land Transport Act 1998; and
  - “(b) the court by or before which the offender is convicted of the second offence is satisfied that a motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has any interest was being driven by, or in the charge of, the offender at the material time; and
  - “(c) the court does not order the confiscation of the motor vehicle.
- “(7) If **subsection (6)** applies, the Registrar must—
- “(a) check whether a financing statement has been registered in respect of the motor vehicle on the personal property securities register kept under the Personal Property Securities Act 1999; and
  - “(b) issue a warning notice stating that any motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has an interest is liable to be confiscated and destroyed if the offender commits another offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 before the expiry of 4 years from the commission of the first offence; and
  - “(c) send the warning notice, by ordinary post, to every person (other than the offender or the substitute) who the Registrar believes is a party to an encumbrance relating to the motor vehicle.
- “(8) The jurisdiction of a court to make a confiscation and destruction order under section **129A or 136(4)** or the validity of any order made under those sections is not affected by a failure to comply with **subsection (7)**.”

**8 New sections 129A to 129E 129F inserted**

The following sections are inserted after section 129:

**“129A Confiscation and destruction after third illegal street racing offence**

“(1) This section applies if—

“(a) an offender commits an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 (the **current offence**); and 5

“(b) the offender has previously been convicted of 2 offences (the **previous offences**) against section 36A(1)(a) or (c) of the Land Transport Act 1998 that were each committed within the period of 4 years before the commission of the current offence. 10

“(2) For the purpose of **subsection (1)**, it does not matter whether or not the offences are of the same kind, but the current offence and each of the previous offences must arise from different incidents. 15

“(3) The court by or before which the offender is convicted of the current offence may order the confiscation and destruction of any motor vehicle if satisfied that the offender was driving, or was in charge of, the motor vehicle at the material time and that— 20

“(a) the offender owns or has any interest in the motor vehicle; or

“(b) a substitute for the offender owns or has an interest in the motor vehicle if the written caution served on the substitute was issued in respect of an offence specified in **subsection (1)(a)**. 25

“(4) The court must not make an order under **subsection (3)** if it will result in extreme hardship to the offender or undue hardship to any other person, including, without limitation, to any substitute for the offender. 30

**“129B Written caution to persons with interest in motor vehicles involved in offences**

“(1) **Subsection (2)** applies whenever—

“(a) a court convicts an offender of an offence specified in section 128(1) involving a motor vehicle; and 35

“(b) the court is satisfied the offence was committed in circumstances that would permit or require the confiscation of the motor vehicle under section 128, 129, or

- 129A** if the offender owned or had an interest in it at the time of conviction; and
- “(c) it appears to the court that the offender does not own or have an interest in the motor vehicle.
- “(2) The court by or before which the offender is convicted must order that a written caution be served on ~~every person (other than the offender) who is a registered owner of the motor vehicle~~ every person (other than the offender) who is registered in respect of the motor vehicle or who the court believes owns or has an interest in the motor vehicle.
- “(3) Despite **subsection (2)**, a written caution must not be served—
- “(a) on anyone if the court is satisfied that the motor vehicle—
    - “(i) was stolen or converted at the material time; or
    - “(ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998;
  - “(b) on a person who the court is satisfied—
    - “(i) did not own or have an interest in the motor vehicle at the material time; or
    - “(ii) is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender.
- “(4) On any 1 occasion, ~~no more than a court may only order that~~ 1 written caution is to be served on each recipient described in **subsection (2)**, regardless of the number of convictions entered against the offender.
- “(5) A written caution must provide the following information:
- “(a) the name and identifying details of the offender;
  - “(b) the relevant convictions against the offender;
  - “(c) the identifying details of the motor vehicle;
  - “(d) that the recipient is believed to own or have an interest in the motor vehicle and that none of the exceptions stated in **subsection (3)** has been established to the satisfaction of the court;
  - “(e) a warning that if the offender is convicted of a further offence specified in section 128(1) that involves a motor vehicle owned by the recipient or in which the recipient

- has an interest, the motor vehicle is liable to be confiscated or confiscated and destroyed:
- “(f) the recipient’s right to seek a review of the court’s decision to order the service of the written caution on the recipient. 5
- “(6) The written caution remains current for 4 years after the date of the commission of the offence for which that written caution is served.
- “(7) ~~A written caution must be served personally by an employee or agent of the Ministry of Justice on every person ordered to be served.~~ 10
- “(7) A written caution ordered to be served on a person must be served on the person in one of the following ways:
- “(a) by being delivered to the person personally or by being brought to the person’s notice if the person refuses to accept it: 15
- “(b) by being left for the person at the person’s place of residence with another person (other than the offender) who appears to be of or over the age of 14 years.
- “(7A) A written caution may be served by one of the following persons: 20
- “(a) a Police employee:
- “(b) an officer of the court:
- “(c) any person who is authorised to serve the written caution under a general or particular authority given by a District Court Judge or Registrar: 25
- “(d) any officer or employee of a corporation that is authorised by the Secretary for Justice to serve the written caution.
- “(8) An endorsement on a copy of a written caution stating the fact, the date, and the time of service and purporting to be signed by an employee or agent of the Ministry of Justice a person of a kind described in subsection (7A) is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with **subsection (7)** this section. 35
- “129C **Review of written caution**
- “(1) A person served with a written caution may, within 20 working days after the date of service, apply to the court that ordered

the service of the written caution for a review of the decision to serve the applicant on 1 or more of the following grounds:

“(a) the motor vehicle was stolen or converted at the material time:

“(b) the ~~person~~ applicant did not own or have an interest in the motor vehicle at the material time: 5

“(c) the ~~person~~ applicant is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender:

“(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998. 10

“(2) Every application must include a statutory declaration that specifies a ground stated in **subsection (1)** and why that ground applies. 15

“(3) The Registrar must promptly forward a copy of the application to the prosecuting agency in the proceeding that resulted in the relevant conviction.

“(4) The prosecuting agency may, within 10 working days after the day on which the copy of the application is forwarded to the agency, make a written submission to the court. 20

“(5) The court must conduct the review on the papers, unless the court considers a hearing necessary.

“(6) ~~If satisfied that a ground stated in **subsection (1)** applies, the court must cancel the written caution so far as it applies to the applicant and in that case the written caution is deemed not to have been served on the applicant.~~ 25

“(6) If satisfied that a ground stated in **subsection (1)** applies, the following provisions apply:

“(a) the court must cancel the written caution served on the applicant: 30

“(b) if the ground for cancelling the applicant’s written caution is that stated in **subsection (1)(a) or (d)**, the court must also cancel the written caution served on any other person under the same order that required service of the written caution on the applicant: 35

“(c) the Registrar must advise, by ordinary post, facsimile, email, or other electronic means, every person (other

than the applicant) whose written caution is cancelled of that outcome:

“(d) if a written caution served on a person is cancelled, the written caution is deemed not to have been served on the person.

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**“129D Written caution of no effect if conviction quashed**

“(1) If all of the convictions in respect of which a written caution has been served on a person are quashed, and no convictions for offences qualifying for confiscation under section 128, 129, or **129A** are substituted, the written caution ceases to have effect and is deemed not to have been served.

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“(2) If a written caution ceases to have effect under **subsection (1)**, the Registrar must, by ordinary post, facsimile, email, or other electronic means, advise every person served with the written caution of that outcome.

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**“129E Appeal against confiscation by persons treated as substitutes**

“(1) If the court orders, under section 128 or **129A**, the confiscation of a motor vehicle on the basis that the person who owns it, or has an interest in it, is a substitute for the offender, that person may, within 20 working days after the date of the order, or within any further time that the appropriate court allows, appeal to the appropriate court against the order on 1 or more of the following grounds:

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“(a) the ~~person~~ appellant did not own or have an interest in the motor vehicle at the material time:

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“(b) the motor vehicle was stolen or converted at the material time:

“(c) the ~~person~~ appellant did not know, and could not reasonably have known, that the offender would commit the offence or offences:

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“(d) the ~~person~~ appellant took all reasonable steps to prevent the offender from committing the offence or offences:

“(e) the ~~person~~ appellant had not, prior to the commission of the offence or offences, been served with a written caution under **section 129B** in relation to the offender:

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- “(f) the ~~person~~ appellant is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender:
- “(g) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998. 5
- “(2) ~~The prosecuting agency in the proceeding that resulted in the relevant conviction is a party to the appeal and the person must serve the notice of appeal on that prosecutor.~~
- “(2) The appellant must serve the notice of appeal on— 10
- “(a) the prosecuting agency in the proceeding that resulted in the relevant conviction; and
- “(b) any other person treated as a substitute who owns or has an interest in the motor vehicle.
- “(2A) The persons described in **subsection (2)** are parties to the appeal. 15
- “(3) The right of appeal under **subsection (1)** is independent of the offender’s right of appeal against conviction and sentence for the relevant offence or offences.
- “(4) ~~The court must set aside the confiscation of the motor vehicle if satisfied that ~~1~~ or more of the grounds stated in **subsection (4)** apply to the person and, where any other persons treated as substitutes own or have an interest in the motor vehicle, also apply to each of those other persons:~~ 20
- “(4) The court must set aside the confiscation of the motor vehicle if satisfied that— 25
- “(a) a ground stated in **subsection (1)(b) or (g)** applies; or
- “(b) another ground stated in that subsection applies to the appellant and to every other person who is treated as a substitute for the offender. 30
- “(5) For the purposes of **subsection (1)**,—
- “(a) if the order was made in a District Court, the appeal must be brought in the High Court in accordance with the High Court Rules:
- “(b) if the order was made in the High Court, the appeal must be brought in the Court of Appeal in accordance with the rules of court governing civil appeals to that court. 35

**“129F Warning notice to secured parties if confiscation not ordered for second illegal street racing offence**

- “(1) This section applies if—
- “(a) an offender commits an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 (the **current offence**); and 5
  - “(b) the offender has previously been convicted of an offence (the **previous offence**) against section 36A(1)(a) or (c) of the Land Transport Act 1998 committed within the period of 4 years before the commission of the current offence; and 10
  - “(c) the court by or before which the offender is convicted of the current offence is satisfied that a motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has any interest was being driven by, or in the charge of, the offender at the material time; and 15
  - “(d) the court does not order the confiscation of the motor vehicle.
- “(2) The Registrar must— 20
- “(a) check whether a financing statement has been registered in respect of the motor vehicle on the personal property securities register kept under the Personal Property Securities Act 1999; and
  - “(b) issue a warning notice stating that any motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has an interest is liable to be confiscated and destroyed if the offender commits another offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 before the expiry of 4 years from the commission of the previous offence; and 25
  - “(c) send the warning notice, by ordinary post, facsimile, email, or other electronic means to every person (other than the offender or the substitute) who the Registrar believes is a party to an encumbrance relating to the motor vehicle. 35
- “(3) The jurisdiction of a court to make a confiscation and destruction order under **section 129A or 136(4)** or the validity of

any order made under those sections is not affected by a failure to comply with **subsection (2)**.

**9 Court may order declaration of ownership to be completed**

- (1) Section 130(1) is amended by omitting “section 128 or section 129” and substituting “section 128, 129, or **129A**”. 5
- (2) Section 130(2)(b) is amended by inserting “(including any encumbrance)” after “any interest”. 5

**10 New section 130A inserted**

The following section is inserted after section 130: 10

**“130A Court may disregard disposal of motor vehicle by person after written caution**

- “(1) This section applies if—
  - “(a) a person has been served with a written caution under **section 129B** in respect of an offender; and 15
  - “(b) after being served with the written caution, the person purports to dispose of his or her ownership interest or other interest in the motor vehicle described in the written caution; and
  - “(c) following that disposition, the offender is convicted of a further offence specified in section 128(1) involving that motor vehicle; and 20
  - “(d) it appears to the court that the offender does not own or have an interest in the motor vehicle.
- “(2) If the circumstances of the further offence described in **subsection (1)(c)** would, but for that disposition, enable the court to order the confiscation of the motor vehicle under section 128 or **129A** on the basis that the person is a substitute for the offender, and the court is not satisfied that the disposition was made with a bona fide intention to dispose permanently of the person’s ownership or interest in the motor vehicle,— 25 30
  - “(a) the court may, if it thinks fit, set the disposition aside; and
  - “(b) section 128 or **129A**, as the case may be, applies as if the disposition by the person had not occurred. 35

“(3) Before making an order under **subsection (2)**, the court must give any person to whom the disposition of the motor vehicle was made an opportunity to be heard.”

**11 If motor vehicle has been disposed of, court may prohibit offender from acquiring another motor vehicle** 5

(1) Section 131 is amended by repealing subsection (1) and substituting the following subsection:

“(1) This section applies if, in any case to which any of section 128, 129, or **129A** would otherwise apply, the offender or any substitute for the offender has, before the date of the offender’s conviction, ceased to be the owner of the motor vehicle or to have any interest in it.” 10

(2) Section 131(2)(b) is amended by inserting “or the substitute for the offender” after “if the offender”.

(3) Section 131(3) is amended by inserting “or the substitute for the offender” after “made by the offender”. 15

(4) Section 131(3) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) section 128, 129, or **129A**, as the case may be, applies as if the disposition by the offender or by the substitute for the offender had not occurred.” 20

**12 Enforcement of confiscation order**

(1) Section 132 is amended by repealing subsection (1) and substituting the following subsection:

“(1) If a court makes a confiscation order under any of sections 128, 129, and **129A**, it must specify in that order the time and place at which the offender or the substitute for the offender must surrender the motor vehicle to the Registrar or to a bailiff or constable.” 25

(2) Section 132(2) is amended by inserting “or the substitute for the offender” after “the offender”. 30

(3) Section 132(5)(a) is amended by inserting “or a substitute for an offender” after “an offender”.

**12A New section 132A inserted**

The following section is inserted after section 132: 35

**“132A Offence to sell or dispose of motor vehicle subject to confiscation order**

- “(1) This section applies in any case where a motor vehicle—  
“(a) is subject to an order under any of sections 128(3),  
129(3), **129A(3)**, and **136(4)**; but 5  
“(b) has not yet been surrendered to, or seized by, a Registrar,  
bailiff, or constable.  
“(2) Every person commits an offence, and is liable on summary  
conviction to a fine not exceeding \$2,000, who sells or dis-  
poses of the motor vehicle or any part of the motor vehicle.” 10

**13 Offender must not acquire new interest in motor vehicle for 12 months**

- (1) Section 136(1)(a) is amended by omitting “section 128 or section 129” and substituting “any of sections 128, 129, and **129A**”. 15
- (2) Section 136 is amended by repealing subsections (4) and (5) and substituting the following subsections:
- “(4) If a court convicts a person of an offence against this section, then instead of, or in addition to, imposing a fine, the court may order that the motor vehicle concerned be confiscated and, where this section applies because of an order under **section 129A**, may also order that the motor vehicle be destroyed. 20
- “(5) If a court orders the confiscation, or the confiscation and destruction, of a motor vehicle under **subsection (4)**, sections 130, 131 to 135, this section, and sections **136A** to 142 apply accordingly.” 25

**14 New section 136A inserted**

The following section is inserted after section 136:

- “136A Registrar must seek deregistration of motor vehicle subject to confiscation and destruction order** 30
- If, under **section 129A** or **136(4)**, the court orders a motor vehicle to be confiscated and destroyed, a Registrar must, before the motor vehicle is sold, seek to have the registration of the motor vehicle cancelled by ~~complying, so far as practicable,~~ 35  
~~with the obligations imposed on an owner by section 27(1) of the Transport (Vehicle and Driver Registration and Licensing)~~

Act 1986 taking, so far as practicable, any steps required to be taken, under the Land Transport Act 1998, for that purpose by the owner of, or the person who is registered in respect of, the motor vehicle.”

- 15 Sale of confiscated motor vehicles** 5
- (1) Section 137(1) is amended by omitting “court may direct” and substituting “Registrar, subject to any direction by the court, thinks fit”.
- (2) Section 137 is amended by repealing subsection (3) and substituting the following subsections: 10
- “(3) Subject to **subsection (4)**, the proceeds of the sale must be applied in the following manner and order of priority:
- “(a) if the motor vehicle has been impounded under the Land Transport Act 1998, in paying any impoundment costs:
- “(b) in payment of the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale): 15
- “(c) in satisfaction of any amount owed under any encumbrance brought to the notice of the Registrar within 1 month after the date of sale and established to the Registrar’s satisfaction: 20
- ~~“(d) in payment of any sum known by the Registrar to be payable by the offender in respect of any fine, or under any sentence or order of reparation, imposed on the offender, or in payment of any court costs ordered to be paid by the offender: 25~~
- “(d) in payment of any sentence or order of reparation payable by the offender:
- “(da) in payment of any fine or court costs payable by the offender: 30
- “(e) to the offender or, as the case requires, the substitute for the offender.
- “(4) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the offender or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in **subsection (3)**, except that the payment described in **paragraph paragraphs (d) and (da)** 35

of that subsection ~~is~~ are limited to sums imposed in respect of offences committed by the offender in a motor vehicle that, at the material time, was owned by the substitute or in which the substitute had an interest.”

- 16 New sections 137A to 137C inserted** 5  
 The following sections are inserted after section 137:
- “137A Certain sales conditional on dismantling and destruction**
- “(1) This section applies if any motor vehicle sold under section 137 is subject to a confiscation and destruction order under **section 129A** or section **136(4)**. 10
- “(2) The sale of the motor vehicle is subject to a condition that the purchaser dismantle the motor vehicle for any saleable parts and destroy the remainder of the motor vehicle, to the satisfaction of the Registrar.
- “(3) The condition imposed by **subsection (2)** must be fulfilled within 30 working days after the date of the sale, or within any longer period that the Registrar specifies in writing. 15
- “(4) The property in the motor vehicle does not pass from the Crown to the purchaser until the condition imposed by **subsection (2)** has been fulfilled. 20
- “137B Failure to comply with condition to dismantle and destroy**
- “(1) Where the sale of a motor vehicle is subject to a condition imposed by **section 137A(2)** and that condition is not fulfilled within the appropriate time, the Registrar may require any person in possession of the motor vehicle to surrender it to the Registrar, or a bailiff or constable, at a specified time and place. 25
- “(2) If the person in possession of the motor vehicle fails to surrender the motor vehicle at the time and place specified by the Registrar, the court may issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to recover the motor vehicle. 30
- “(3) For the purpose of executing a warrant issued under **subsection (2)**, the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if that officer has 35

reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises.

“(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person. 5

“(5) If a motor vehicle is surrendered to or recovered by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar of the court.

“(6) Sections 133 and 134 apply, with any necessary modifications, in respect of a motor vehicle surrendered or recovered under this section and to a warrant issued under this section. 10

**“137C Sale of motor vehicle surrendered or recovered under section 137B**

“(1) As soon as practicable after a motor vehicle is delivered into a Registrar’s custody under **section 137B**, the Registrar must arrange for the sale of the motor vehicle, and sections 137(1) and (2), **137A**, and **137B** apply to that sale with any necessary modifications. 15

“(2) The proceeds of the sale must be applied in the following manner and order of priority: 20

“(a) in payment of the costs of the sale (including all costs incurred in recovering the motor vehicle, and towing and storing the vehicle):

“(b) in payment of the purchase price to the purchaser to whom the motor vehicle was sold under section 137: 25

“(c) in payment of any unsatisfied amounts described in **section 137(3)** in accordance with that section and with all necessary modifications.”

**17 Disposal of unsaleable confiscated vehicle** 30  
Section 138 is amended by inserting “or **137B**” after “section 132”.

**18 New section 138A inserted**  
The following section is inserted after section 138:

**“138A Offender liable for outstanding costs of seizure, storage, and sale**

- “(1) If the amount realised from the sale of a motor vehicle under section 137 or its disposal under section 138 is less than the costs described in **subsection (2)**, the offender is liable for the shortfall between that amount and those costs. 5
- “(2) The costs are,—
  - “(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs; and
  - “(b) the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale). 10
- “(3) **Subsection (1)** applies regardless of whether the offender owned or had an interest in the motor vehicle. 15
- “(4) Part 3 (except sections 84 and 85) of the Summary Proceedings Act 1957 or (as the case may require) sections 19 to 19F of the Crimes Act 1961 apply with any necessary modifications to any amount the offender is liable to pay under **subsection (1)** as if it were a fine. 20
- “(5) A certificate appearing to have been signed by the Registrar that, following the sale or disposal of a motor vehicle, the offender is liable to pay a sum under **subsection (1)** is, in the absence of proof to the contrary, sufficient evidence of the facts certified, without proof of the signature or office of the person appearing to have signed the certificate.” 25

**19 New section sections 140 to 141B substituted**

~~Section 140~~ is Sections 140 and 141 are repealed and the following ~~section~~ sections substituted:

- “140 Lessor under leasing agreement may apply to Registrar** 30
- “(1) The lessor (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) under a leasing agreement of a confiscated motor vehicle (not being a motor vehicle that is to be destroyed under **section 129A** or section **136(4)**) may apply to the Registrar, at any time before the Registrar has sold the motor vehicle, for the transfer of the motor vehicle to the lessor as if the offender or the substitute had breached the terms of the agreement. 35

“(2) If **subsection (1)** applies, the Registrar may transfer the motor vehicle to the lessor accordingly.

“(3) ~~In the case of a motor vehicle that has been seized while impounded under the Land Transport Act 1998, the motor vehicle may not be transferred unless any impoundment costs are first paid into court.~~ 5

“(3) This section is subject to **section 141A**.

**“141 Secured party may apply to court**

“(1) Any party (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) to any encumbrance (other than a leasing agreement) over a confiscated motor vehicle may apply to the court, at any time before the Registrar has sold the motor vehicle, for an order under **subsection (3)**. 10

“(2) **Subsection (1)** does not apply to a motor vehicle that is to be destroyed under **section 129A or 136(4)**. 15

“(3) The court may, if it thinks fit, make an order—

“(a) directing the Registrar to transfer the motor vehicle to that other party; and

“(b) directing that party to sell the motor vehicle and account for the proceeds of sale in accordance with **section 141B**. 20

“(4) This section is subject to **section 141A**.

**“141A Certain payments required before transfers take effect**

“(1) An order for the transfer of a motor vehicle under **section 140 or 141** does not take effect unless the following costs have been paid into court: 25

“(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs;

“(b) any costs incurred in seizing, towing, and storing the motor vehicle. 30

“(2) Any costs required to be paid by **subsection (1)** must be paid within 10 working days after the day on which the lessor or the secured party is notified of the Registrar’s decision to transfer the vehicle, or within any longer period specified by the Registrar in writing. 35

“(3) If the costs specified in **subsection (1)** are not paid within the time required by or under **subsection (2)**, the Registrar may proceed with the sale of the vehicle under section 137.

**“141B Application of proceeds of sale by secured party**

“(1) Every person to whom a motor vehicle is transferred under **section 141** must, on disposing of the motor vehicle,— 5

“(a) account to the Registrar for the proceeds of the sale:

“(b) pay into court the proceeds of the sale, less any costs paid under **section 141A**, and—

“(i) if the encumbrance is a hire purchase agreement and the motor vehicle is used or was acquired for use primarily for personal, domestic, or household purposes, the amount of the costs and expenses of, and incidental to, the sale within the meaning of section 33 of the Credit (Repossession) Act 1997 and the amount required to settle the agreement under section 31 of that Act; or 10

“(ii) in any other case, the amount of the costs and expenses of, and incidental to, the sale within the meaning of section 33 of the Credit (Repossession) Act 1997 and the amount owed by the offender under the encumbrance. 15

“(2) The Registrar must then apply the balance remaining in accordance with **section 137(3)(d), (da), and (e)** with all necessary modifications.” 20 25

**20 Party with interest may apply to court**

(1) Section 141 is amended by repealing subsection (1) and substituting the following subsections:

“(1) Any party (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) to any encumbrance over a confiscated motor vehicle may apply to the court, at any time before the Registrar has sold the motor vehicle, for an order under subsection (2): 30

“(1A) **Subsection (1)** does not apply to an encumbrance that is a leasing agreement or to a motor vehicle that is to be destroyed under **section 129A** or **136(4)**.” 35

(2) Section 141(2) is amended by inserting “or the substitute for the offender, as the case may be,” after “the offender”.

(3) Section 141 is amended by inserting the following subsection after subsection (2):

“(2A) If a motor vehicle to be transferred under subsection (2) has been impounded under the Land Transport Act 1998, any impoundment costs must be paid before the motor vehicle is transferred.”

## 21 Order may be cancelled on application by bona fide purchaser

(1) Section 142(1) is amended by inserting “(including a confiscation and destruction order under **section 129A** or **136(4)**)” after “confiscation order”.

(2) Section 142 is amended by repealing subsection (2) and substituting the following subsections:

“(2) In the circumstances described in subsection (1), the court—  
 “(a) must make an order prohibiting the offender from acquiring any interest in a motor vehicle within 12 months after the date of the confiscation order or confiscation and destruction order:

“(b) may make any other consequential order or orders that it thinks just and reasonable.

“(3) Section 136 applies with any necessary modifications to an order made under **subsection (2)(a)**.”

## 22 Transitional provisions

(1) **Section 129(6) to (8) and sections 129A and 129B**Sections 129A, 129B, and 129F of the principal Act, as inserted by **sections 7 and section 8** of this Act, do not apply in respect of any offence (whether described in those sections as a first offence, second offence, current offence, previous offence, or in any other way) committed before the commencement of **sections 7 and section 8**.

(2) Sections 140 to 142 of the principal Act, as in force before the commencement of **section 19** of this Act, continue to apply to any motor vehicle confiscated before that commencement.

- (3) In the period commencing on the commencement of this Act and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009—
- (a) any reference to a person who is registered in respect of a motor vehicle in **sections 129B and 136A** of the principal Act (as inserted by this Act) must (despite the definition of that term in section 127(1) of the principal Act) be read as a reference to a registered owner within the meaning of the Transport (Vehicle and Driver Registration and Licensing) Act 1986: 5
- (b) the reference in **section 136A** of the principal Act (as inserted by this Act) to the Land Transport Act 1998 is taken to be a reference to the Transport (Vehicle and Driver Registration and Licensing) Act 1986. 10

**Part 2** 15  
**Amendments to Summary Proceedings Act 1957**

- 23 Principal Act amended**  
 This **Part** amends the Summary Proceedings Act 1957.
- 24 Purpose** 20  
 The purpose of this **Part** is to reduce traffic offending by strengthening the provisions that govern the seizure of motor vehicles to enforce the collection of unpaid fines and reparation.
- 25 New section 93A inserted** 25  
 The following section is inserted after section 93:  
 “**93A Seizure and disposal of motor vehicles: application of sections 100A to 100V instead of sections 94 to 100**  
 Sections 94 to 100 do not apply to any property that is a motor vehicle; **sections 100A to 100V** apply instead.” 30
- 26 Seizure and delivery of property**  
 Section 94(3) is repealed.

- 27 Sections 94A and 94B repealed**  
Sections 94A and 94B are repealed.
- 28 New heading and sections 100A to 100V inserted**  
The following heading and sections are inserted after section 100: 5  
*“Seizure, release, and sale of motor vehicles*
- “100A Interpretation**
- “(1) In this section and in **sections 100B to 100V**, unless the context otherwise requires,—
- “**encumbrance**, in relation to a motor vehicle, includes— 10
- “(a) a hire purchase agreement:
- “(b) a leasing agreement:
- “(c) any other agreement entered into between the defendant and another party under which the other party obtains or retains any interest in the motor vehicle 15
- “**hire purchase agreement** means a hire purchase agreement within the meaning of section YA 1 of the Income Tax Act 2007
- “**impoundment costs**, in relation to a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, means the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167 of that Act, and, where those fees and charges have already been paid by the chief executive of the Ministry of Justice, means 20  
the amount required to reimburse the chief executive for that payment 25
- “**interest** means any proprietary interest, whether legal or equitable, and whether vested or contingent
- “**leasing agreement** does not include any agreement entered into between the defendant and the holder of a rental service licence under the Land Transport Act 1998 30
- “**person who is registered**, in relation to a motor vehicle, means the person who is registered under the Land Transport Act 1998 in respect of the vehicle, and where several persons are so registered, means any one of those persons 35

~~“registered owner means the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of the motor vehicle, and where several persons are so registered, means any one of those persons~~

~~“traffic offence means—~~

~~“(a) any offence against the Transport Act 1962, the Road User Charges Act 1977, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, or the Land Transport Act 1998, or against any regulation or bylaw made under any of those Acts:~~

~~“(b) any offence against any regulation or bylaw made under any other Act if the offence relates to the use of motor vehicles or parking places or transport stations~~

~~“use, in relation to a motor vehicle, means driving, or being in charge of, the motor vehicle~~

~~“use, in relation to a motor vehicle, includes driving, drawing, towing, or propelling by means of another vehicle, and permitting to be on any road~~

~~“written caution means a caution issued under **section 100B**.~~

~~“(2) For the purposes of **sections 100B to 100V**, a person is, in relation to a defendant, a **substitute for the defendant** or a **substitute** if—~~

~~“(a) the person is served with a written caution, under **section 100B**, about the defendant’s default in paying a fine for a traffic offence committed by the defendant, and~~

~~“(b) within 4 years after the date of the commission of the offence for which that written caution was served, the defendant commits a further traffic offence involving a motor vehicle that, at the time of the commission of that offence, the person owns or has an interest in:~~

~~“(b) within 4 years after the date of service of that written caution, the defendant defaults, and continues to be in default, on a further fine for a traffic offence committed while using a motor vehicle that, at the time of the commission of that offence, the person owned or had an interest in.~~

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- “(3) For the purposes of **sections 100B to 100V**, a motor vehicle is owned by a person whether the person owns it solely or as a joint tenant or tenant in common with any other person.
- “(4) For the purposes of the exercise of any power, or the performance of any duty or function, under this Part, the ~~registered owner of person who is registered in respect of a motor vehicle~~ is taken to be the owner of the motor vehicle unless the person exercising the power or performing the duty or function is satisfied that the ~~registered owner of the motor vehicle is not the owner of the motor vehicle~~ person who is registered is not the owner of that motor vehicle. 5 10
- “(5) A reference in **sections 100B to 100V** to a person holding a motor vehicle as nominee for a defendant or for a substitute for the defendant is a reference to a person who purports to be the owner or who is the ~~registered owner of person who is registered in respect of~~ registered in respect of the motor vehicle but whose purported ownership or registration is subject to an understanding or arrangement that the person— 15
- “(a) is not to acquire any rights, or only limited rights, in the motor vehicle; and 20
- “(b) will, in relation to the motor vehicle, act on behalf of the defendant or the substitute for the defendant.
- “100AB Purpose of sections 100B to 100V**  
The purpose of sections 100B to 100V is—
- “(a) to enable fines in default to be collected more effectively through the seizure of motor vehicles; and 25
- “(b) in cases where the fines in default relate to traffic offending, to reduce opportunities for offending of that kind.
- “100B Written caution to person holding interest in motor vehicle** 30
- “(1) If a defendant defaults in paying any fine for a traffic offence committed while using a motor vehicle in which the defendant does not appear to have an interest, the Registrar may ~~issue a written caution to any other~~ order that a written caution be served on any person who appears to own or to have an interest in the motor vehicle. 35

- “(2) Despite **subsection (1)**, a written caution is not to be ~~issued~~  
served—
- “(a) on anyone if the Registrar is satisfied that the motor vehicle—
- “(i) was stolen or converted at the material time; or 5
  - “(ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998:
- “(b) ~~to~~ on a person who the Registrar is satisfied is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender. 10
- “(3) The written caution must state that any motor vehicle in which the ~~other~~ person has an interest is liable to be seized if the defendant defaults in paying a fine for any further traffic offence committed— 15
- “(a) while using a motor vehicle in which the person has an interest as owner or otherwise; and
  - “(b) within 4 years after the date on which the written caution is served on the person.
- “(4) A written caution must provide the following information: 20
- “(a) the name and identifying details of the defendant:
  - “(b) the relevant traffic fine that the defendant has defaulted in paying:
  - “(c) the identifying details of the motor vehicle in which the relevant traffic offence or traffic offences were committed: 25
  - “(d) that the recipient is believed to ~~own or have an interest~~ have owned or to have had an interest in the motor vehicle at the material time and that none of the reasons stated in **subsection (2)** for ~~not issuing the written caution to the recipient~~ has been established to the satisfaction of the Registrar: 30
  - “(e) the recipient’s right to seek a review of the Registrar’s decision to order the ~~issue~~ service of the written caution on the recipient. 35
- “(5) The written caution must be served personally on the other person by an employee or agent of the Ministry of Justice.
- “(5A) A written caution ordered to be served on a person must be served on the person in one of the following ways:

- “(a) by being delivered to the person personally or by being brought to the person’s notice if the person refuses to accept it:
- “(b) by being left for the person at the person’s place of residence with another person (other than the offender) who appears to be of or over the age of 14 years. 5
- “(5B) A written caution may be served by one of the following persons:
- “(a) a Police employee:
- “(b) an officer of the court: 10
- “(c) any person who is authorised to serve the written caution under a general or particular authority given by a District Court Judge or Registrar:
- “(d) any officer or employee of a corporation that is authorised by the Secretary for Justice to serve the written caution. 15
- “(6) An endorsement on a copy of a written caution stating the fact, the date, and the time of service and purporting to be signed by an employee or agent of the Ministry of Justice a person of the kind described in **subsection (5B)** is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with **subsection (5)** this section. 20
- “**100C Review of written caution**
- “(1) A person served with a written caution under **section 100B** may, within 20 working days after the date of service, apply to the Registrar who issued the written caution court for a review by a District Court Judge of the decision to serve the person, on 1 or more of the following grounds: 25
- “(a) the motor vehicle was stolen or converted at the material time: 30
- “(b) the person did not own or have an interest in the motor vehicle at the material time:
- “(c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant: 35
- “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.

- “(2) Every application must include a statutory declaration that specifies a ground stated in **subsection (1)** and why that ground applies.
- “(3) The Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary. 5
- “(4) ~~If satisfied that 1 or more of the grounds stated in **subsection (1)** apply, the Judge must cancel the written caution so far as it applies to the applicant, and in that case the written caution is deemed not to have been served on the applicant.~~
- “(4) If satisfied that a ground stated in **subsection (1)** applies, the following provisions apply: 10
- “(a) the court must cancel the written caution served on the applicant:
- “(b) if the ground for cancelling the applicant’s written caution is that stated in **subsection (1)(a) or (d)**, the court must also cancel the written caution served on any other person under the same order that required service of the written caution on the applicant: 15
- “(c) the Registrar must advise, by ordinary post, facsimile, email, or other electronic means, every person (other than the applicant) whose written caution is cancelled of that outcome: 20
- “(d) if a written caution served on a person is cancelled, the written caution is deemed not to have been served on the person. 25
- “**100D Written caution of no effect if fine quashed or set aside**
- “(1) If the fine in respect of which a written caution has been served on a person is quashed or set aside, the written caution ceases to have effect and is deemed not to have been served.
- “(2) If a written caution ceases to have effect under **subsection (1)**, the Registrar must send, by ordinary post, facsimile, email, or other electronic means, a notice advising every person served with the written caution of that outcome. 30
- “**100E Seizure of motor vehicles**
- “(1) In addition to the matters provided for by section 93(1), a warrant to seize property issued under section 83(2)(a), 87(1)(a), or 88(3)(a) also authorises the seizure of any motor vehicle in 35

- which the defendant or a substitute for the defendant ~~has~~ appears to have an ownership interest or other interest.
- “(2) For the purpose of executing any warrant to seize property, the bailiff or constable executing it may enter on any premises, by force if necessary, if that bailiff or constable has reasonable cause to believe that a motor vehicle is on the premises, being a motor vehicle ~~that in which~~ the defendant or a substitute for the defendant owns or has an interest in appears to have an ownership interest or other interest. 5
- “(3) If any person is in actual occupation of the premises, the bailiff or constable must, on entering, produce the warrant to that person. 10
- “(4) Where the fine is paid on the production of a warrant to seize property, the payment must be recorded on the warrant and the warrant is then of no further effect. 15
- “(5) Without limiting anything in **section 100I**, any bailiff or constable seizing a motor vehicle under a warrant to seize property may ~~in the first place,~~ instead of or while seizing the vehicle, immobilise the vehicle by attaching to the vehicle any device designed for that purpose. 20
- “(6) When a motor vehicle is seized, under a warrant to seize property, the bailiff or constable must forthwith give the defendant or the substitute a notice in the prescribed form—
- “(a) identifying the motor vehicle seized; and
- “(b) directing the defendant or the substitute for the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the defendant or the substitute owns or has an interest in the motor vehicle and the name and address of any other person who owns or has an interest (including any encumbrance) in the motor vehicle. 25 30
- “(7) The notice required to be given by **subsection (6)** must be delivered to the defendant or the substitute, or left for the defendant or the substitute in a conspicuous place at the premises from which the motor vehicle is seized, or sent to the defendant or the substitute by ordinary post, ~~fax~~ facsimile, email, or other electronic means. 35

**“100F Seizure of motor vehicles impounded under Land Transport Act 1998**

- “(1) Any motor vehicle in which the defendant or a substitute for the defendant ~~has~~ appears to have an ownership interest or other interest may be seized under a warrant to seize property even if it is impounded under section 96 or 96A of the Land Transport Act 1998, as long as it has been impounded under that Act for at least 14 days. 5
- “(2) The power to seize a motor vehicle described in **subsection (1)** is not limited by any appeal pending under section 102 or 110 of the Land Transport Act 1998. 10

**“100G Purposes of seizure**

- “(1) A motor vehicle may be seized under this Part for the purpose of ~~reducing opportunities for traffic offending, as well as for the purpose of recovering the fine that is in default.~~ 15
- “(2) A motor vehicle may be seized under this Part even though the value of the vehicle, or the value of the interest that the defendant or any substitute for the defendant has in the vehicle, is likely to be less than the amount of the fine in default.

**“100G Seizure not precluded by low value or low interest** 20

Consistent with the purpose stated in **section 100AB**, a motor vehicle may be seized in accordance with this Part even though the value of the vehicle, or the value of the interest that the defendant or any substitute for the defendant has, or appears to have, in the vehicle, is, or is likely to be, less than the fine in default. 25

**“100H Seized motor vehicle to be retained by or for Registrar**

- “(1) The bailiff or constable executing a warrant to seize property must ensure that a motor vehicle seized under the warrant is— 30
  - “(a) taken to the Registrar; or
  - “(b) if the Registrar so directs, taken to, or retained by, any person or at any place specified for the purpose by the Registrar.
- “(2) If any motor vehicle that is seized under a warrant to seize property fails to comply in any respect with section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 35

- ~~1986, the vehicle may, despite that Act or any other enactment, be towed to any place specified by the Registrar.~~
- “(2) If any motor vehicle that is seized under a warrant to seize property fails to comply in any respect with section 242 of the Land Transport Act 1998, then— 5
- “(a) the vehicle may, despite that Act or any other enactment, be towed to any place specified by the Registrar; and
- “(b) no person who seizes, retains, or disposes of the vehicle in accordance with this Act is under any criminal or civil liability merely because of the failure of the vehicle to comply with that section. 10
- “(3) The Registrar must ensure the seized motor vehicle is retained until the motor vehicle is sold or released in accordance with a determination of the Registrar or a District Court Judge.
- “**100I Immobilisation of motor vehicles** 15
- “(1) Any bailiff or constable executing a warrant to seize property may, while seizing or instead of seizing any motor vehicle, immobilise the vehicle by attaching to the vehicle any device designed for the purpose, pending the payment of the fine in default. 20
- “(2) No motor vehicle may be immobilised under **subsection (1)** unless, at the time of its immobilisation, it is—
- “(a) on private property; or
- “(b) in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue in- 25  
convenience to other persons.
- “(3) Where any motor vehicle is immobilised under **subsection (1)**, any bailiff or constable—
- “(a) may at any time seize the vehicle;
- “(b) must, on the direction of a Registrar, seize the vehicle. 30
- “(4) When the motor vehicle is seized under **subsection (3)**, **section 100H** applies accordingly.
- “(5) If, 14 days after the date of the immobilisation of any motor vehicle under **subsection (1)**, the fine remains unpaid, the Registrar must direct a bailiff or constable to seize the vehicle. 35
- “(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—

- “(a) tampers with, removes, or attempts to remove a device attached to a motor vehicle under **subsection (1)**; or
- “(b) removes, or attempts to remove,—
  - “(i) a motor vehicle to which a device is, or has been, attached; or 5
  - “(ii) any part of that vehicle; or
  - “(iii) any other property from that vehicle.

**“100J Personal property securities register to be checked**

- “(1) If a motor vehicle is seized under a warrant to seize property, the Registrar must, on the next working day after the vehicle is seized, check whether a financing statement has been registered in respect of the vehicle on the personal property securities register kept under the Personal Property Securities Act 1999. 10
- “(2) If a financing statement has been registered, the Registrar must forthwith notify the person named as the secured party in the financing statement of the following: 15
  - “(a) that the Registrar may, under **section 100L**, sell the motor vehicle after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made in respect of the vehicle by a person other than— 20
    - “(i) the defendant; or
    - “(ii) a substitute for the defendant; or
    - “(iii) a nominee for the defendant or the substitute: 25
  - “(b) of the rights that may be available to the person under **sections 100M, 100S, and 100T**.

**“100K Release of vehicles if fine and other costs paid or if certain appeals successful**

- “(1) If no claims under any of **sections 100P, 100S, and 100T** are pending in respect of a A motor vehicle that has been seized and is retained by the Registrar, the motor vehicle may be returned to the person from whom it was seized or to the person apparently lawfully entitled to it if the following are paid: 30
  - “(a) the fine: 35

- “(b) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, any impoundment costs:
- “(c) all costs incurred in seizing, towing, and storing the motor vehicle. 5
- “(1A) **Subsection (1)** applies even though claims under any of **sections 100P, 100S, and 100T** are pending in respect of the motor vehicle.
- “(1B) If the motor vehicle has been seized from a substitute for the defendant, the only type of fines required to be paid under **subsection (1)(a)** are ones imposed in respect of traffic offences committed by the defendant in a motor vehicle that, at the time of the commission of the offence, was owned by the substitute or in which the substitute had an interest. 10
- “(2) If the motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released under **subsection (1)** before the day after the close of the 28-day period for which the vehicle would otherwise be required to be impounded under that Act. 15
- “(3) **Subsection (2)** is subject to **section 100T(1)(a) and (3)**. 20
- “(4) Despite **subsection (1), section 100L, and sections 100P to 100T**, if an appeal, under section 102 or 110 of the Land Transport Act 1998, against the impoundment of the motor vehicle is allowed before the expiry of the 28-day period for which the vehicle would otherwise be required to be impounded under section 96 or 96A of the Land Transport Act 1998, the Registrar must release the vehicle to the registered owner of person who is registered in respect of the vehicle. 25
- “(5) **Subsection (4)** does not apply if the motor vehicle has already been released to a lessor or creditor under **section 100S** or **100T(1)(a)** or been sold under **section 100T(1)(b)**. 30
- “**100L Sale of motor vehicle seized**
- “(1) If any fine remains unpaid, any motor vehicle seized under a warrant to seize property may, after the expiry of the relevant period specified in **subsection (2)**, be sold at public auction or in any other manner directed by a District Court Judge or the Registrar, and the purchaser of the motor vehicle so sold obtains, by virtue of this section, good title to the motor vehicle 35

despite the interests of the owner or any other person in the motor vehicle before the sale.

- “(2) The relevant period referred to in **subsection (1)** is 7 days after the day on which the motor vehicle was seized or, if the motor vehicle was seized while impounded under section 96 or 96A of the Land Transport Act 1998, the later of—
- “(a) the day after the close of the 28-day period for which the motor vehicle would otherwise be required to be impounded under that Act; or
- “(b) the expiry of 8 days after the day on which the motor vehicle was seized.
- “(3) A motor vehicle may be sold under this section even though it fails to comply in any respect with ~~section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 section 242 of the Land Transport Act 1998,~~ and the purchaser of that motor vehicle—
- “(a) is, despite that Act or any other enactment, entitled to tow the motor vehicle to any appropriate place; and
- “(ab) in so towing the vehicle, is under no criminal or civil liability merely because of the failure of the vehicle to comply with that section; and
- “(b) must comply in all respects with that Act as soon as the motor vehicle has been towed to that place.
- “(4) If the Registrar considers that a motor vehicle is not roadworthy and that it would be uneconomic to render it roadworthy, the Registrar must, before the motor vehicle is sold under this section, seek to have the registration of the motor vehicle cancelled by ~~complying, so far as practicable, with the obligations imposed on an owner by section 27(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 taking, so far as practicable, any steps required to be taken, under the Land Transport Act 1998, for that purpose by the owner of, or by the person who is registered in respect of, the motor vehicle.~~
- “(5) The sale of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 is not affected by any appeal that is pending after the 28-day period for which the motor vehicle would otherwise

be required to be impounded under that Act or by any appeal that is determined after that period.

~~“(6) If, in respect of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, any impoundment costs remain outstanding on the 38th day after the day on which the motor vehicle was impounded, the Registrar may, whether or not the fine has been paid, order that the motor vehicle be sold.”~~ 5

“(6) In any case where a motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the vehicle may be sold under this section (even if the fine and all costs incurred in seizing, towing, and storing the vehicle have been paid) if any impoundment costs are not paid within— 10

“(a) 10 days after the close of the 28-day period for which the vehicle would otherwise be required to be impounded under that Act; or 15

“(b) any longer period specified by the Registrar in writing.

“(7) The sale of a motor vehicle by the Registrar is deferred by a pending claim in respect of the motor vehicle only if the costs of storage have been paid under **section 100M** or a deposit has been paid, or security has been provided, under **section 100P**. 20

**“100M Registrar must defer sale if storage costs paid**

~~The defendant or a claimant to the motor vehicle~~ Any person may pay into court the costs incurred by the court in storing ~~the~~ a motor vehicle for at least 8 days and as long as those costs, and any recurring storage costs, are paid, the Registrar must defer the sale of the motor vehicle. 25

**“100N Application of proceeds of sale**

“(1) When a motor vehicle is sold under **section 100L**, the proceeds of the sale must be applied in the following manner and order of priority: 30

“(a) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, in payment of any impoundment costs: 35

- “(b) in payment of the costs of the sale (including all costs incurred in seizing, towing, and storing the motor vehicle, and complying with the provisions of this Part preliminary to sale):
- “(c) in satisfaction of any amount owed under any encumbrance established, before the proceeds of the sale are fully applied, to the satisfaction of the Registrar or a District Court Judge: 5
- “(d) in payment of any sentence or order of reparation ~~imposed on~~ payable by the defendant: 10
- “(e) in payment of the fine specified in the warrant:
- “(f) to the defendant or, as the case requires, to the substitute for the defendant.
- “(2) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the defendant or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in **subsection (1)**, except that the payments described in **paragraph (d)** or **(e)** of that subsection are limited to ~~sums~~ amounts imposed in respect of traffic offences committed by the defendant in a motor vehicle that, at the ~~material time of the commission of the offence,~~ was owned by the substitute or in which the substitute had an interest. 15 20
- “(3) The Judge may, on application or on his or her own initiative, give any directions as to the application of the proceeds of sale under this section. 25

**“100O Remission of fine and costs of sale in certain cases**

- “(1) This section applies where a sale of a motor vehicle under **section 100L** (other than a sale ordered under **section ~~100T(1)(b)~~ 100T(1)(a) or (b)**) does not result in a reduction of the defendant’s fine by more than \$100. 30
- “(2) If this section applies, the Registrar—
  - “(a) must remit the costs of the sale of the motor vehicle, as described in **section 100N(1)(a) and (b)**; and
  - “(b) must remit—
    - “(i) the entire fine in default, in any case where the amount of that fine is \$100 or smaller: 35

- “(ii) \$100 less any proceeds of that sale that have been applied towards paying the fine, in any case where the fine in default is greater than \$100.
- “(3) The reference to **fine** in **subsection (2)(b)** does not include any reparation that the defendant is liable to pay, but includes any court costs and other costs that have been added to that reparation. 5
- “**100P Release of motor vehicle to certain owners**
- “(1) If satisfied that the defendant does not own the seized motor vehicle, the Registrar or a District Court Judge must release the motor vehicle to a person who satisfies the Registrar or the Judge that the person— 10
- “(a) is the owner of the motor vehicle; and
- “(b) is not a substitute for the defendant; and
- “(c) is not a nominee for the defendant or the substitute. 15
- “(2) If a person other than the defendant claims to own the motor vehicle and the Registrar is not satisfied of the matters specified in **subsection (1)**, the Registrar must issue a summons calling before the court the claimant and the defendant, and, in that event, any action brought in respect of the claim is stayed. 20
- “(3) Where a summons has been, or is to be, issued under **subsection (2)**, the Registrar may release the motor vehicle to the defendant or to the substitute for the defendant if a deposit is paid or security is provided for whichever is the lesser of— 25
- “(a) the value of the seized motor vehicle; or
- “(b) the fine in default, including the seizure costs, the costs of storage, costs incurred in seizing, towing, and storing the motor vehicle, and any impoundment costs.
- “(4) If, on the determination of the claim, the claim is dismissed, the amount of the deposit or the amount obtained from the security may be applied as if it were the proceeds of the sale of the motor vehicle. 30
- “(5) ~~If the motor vehicle was seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released under this section unless any impoundment costs are first paid into court and the 28-day impoundment period has expired.~~ 35

- “(5) In any case where a motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle—
- “(a) may not be released under this section unless—
- “(i) the 28-day period for which the vehicle would otherwise be required to be impounded under that Act has expired; and 5
- “(ii) any impoundment costs have been paid into court within 10 days after the close of that period or within any longer period specified by the Registrar in writing; and 10
- “(b) may be sold under **section 100L** if those costs are not paid in accordance with **paragraph (a)(ii)**.

**“100Q Appeal against Challenge of seizure by persons treated as substitutes** 15

- “(1) If a motor vehicle is seized on the basis that the person who owns, or appears to own, it, or has, or appears to have, an interest in it, is a substitute for the defendant, that person may, within 7 days after the date of the seizure, ~~appeal against~~ apply to a District Court Judge to challenge the seizure on 1 or more 20 of the following grounds:
- “(a) the person did not own or have an interest in the motor vehicle at the material time:
- “(b) the motor vehicle was stolen or converted at the material time: 25
- “(c) the person took all reasonable steps to prevent the defendant from committing the traffic offence or traffic offences:
- “(d) the person had not, prior to the commission of the relevant traffic offence, been served with a written caution 30 under **section 100B** in relation to the defendant:
- “(e) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:
- “(f) the motor vehicle was let on hire at the material time in 35 accordance with a rental service licence under the Land Transport Act 1998.

- “(2) Every application must include a statutory declaration that specifies a ground stated in **subsection (1)** and why that ground applies.
- “(3) The Judge must consider the application on the papers unless the Judge considers that a hearing is necessary. 5
- “(4) The Judge may order the return of the motor vehicle if satisfied that—
- “(a) a ground stated in **subsection (1)(b) or (f)** applies; or
- “(b) another ground stated in that subsection applies to the applicant and to every other person who is treated as a substitute for the defendant. 10
- “100R Determination of claim by owners**
- “(1) In determining a claim under **section 100P(3)**, a District Court Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to the claimant if satisfied that—** 15
- “(a) the defendant does not have an interest in the motor vehicle; and**
- “(b) the claimant is not a substitute for the defendant; and**
- “(c) the claimant owns the motor vehicle neither as nominee for the defendant nor for the substitute.** 20
- “(2) The Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to a person whose motor vehicle was seized because the person was taken to be a substitute for the defendant if satisfied that 1 or more of the following grounds apply:** 25
- “(a) the person did not own or have an interest in the motor vehicle at the material time:**
- “(b) the motor vehicle was stolen or converted at the material time:**
- “(c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:** 30
- “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.** 35
- “(3) The Judge may ask any claimant to satisfy the Judge that any agreement, transfer, or change in registration or ownership is genuine if the Judge has reason to question whether the**

claimant is a nominee for the defendant or any substitute for the defendant.

“(4) A person who claims to have acquired a motor vehicle from the defendant after the commission of any offence or after the taking of any enforcement action against the defendant must satisfy the Judge that the transaction on which the acquisition was based was genuine. 5

“(5) ~~In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released unless any impoundment costs are first paid into court and the 28-day impoundment period has expired.~~ 10

“(5) In any case where the motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle— 15

“(a) may not be released under this section unless—

“(i) the 28-day period for which the vehicle would otherwise be required to be impounded under that Act has expired; and

“(ii) any impoundment costs have been paid into court within 10 days after the close of that period or within any longer period specified by the Registrar in writing; and 20

“(b) may be sold under **section 100L** if those costs are not paid in accordance with **paragraph (a)(ii)**. 25

“(6) If the claimant succeeds in the claim to the motor vehicle,—

“(a) any deposit paid or security provided by the claimant must be returned to the claimant; and

“(b) a District Court Judge may order the defendant to reimburse the claimant for any costs the claimant has paid into court under **section 100M**. 30

“**100S Lessor under leasing agreement may apply to Registrar**

“(1) The lessor (not being the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) under a leasing agreement of a seized motor vehicle may apply to the court, at any time before the Registrar has sold the motor vehicle, for the release of the motor vehicle to the lessor as if the defendant or the substitute for the defendant or the nominee 35

for the defendant or the substitute had breached the terms of the agreement.

“(2) If **subsection (1)** applies, the Registrar or a District Court Judge may release the motor vehicle to the lessor.

“(3) ~~The Registrar or a Judge may order the lessor to pay the costs incurred in seizing, towing, and storing the motor vehicle.~~ 5

“(4) ~~In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released unless any impoundment costs are first paid into court.~~ 10

“(5) A motor vehicle may also be released under **subsection (2)** if it has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 even though the 28-day period of impoundment for which the motor vehicle would otherwise be required to be impounded under that Act has not yet expired. 15

“(6) This section is subject to **section 100TA**.

“Compare: 2002 No 9 s 140

#### “100T Claims by creditors

“(1) Where, on an application or on his or her own initiative, the Registrar or a District Court Judge is satisfied that a person (not being the defendant or a substitute for the defendant) is a creditor under an encumbrance (other than a leasing agreement) over the seized motor vehicle, the Registrar or Judge may, if the motor vehicle has not yet been sold,— 20

“(a) release the motor vehicle to the creditor and direct the creditor to sell the motor vehicle and account for the proceeds of sale in accordance with ~~subsection (6)~~**section 100TB**; or 25

“(b) order the sale of the motor vehicle under **section 100L**.

“(2) ~~In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released unless any impoundment costs are first paid into court.~~ 30

“(3) A motor vehicle may also be released under **subsection (1)(a)** if it has been seized while impounded under section 96 or 96A of the Land Transport Act even though the 28-day period of impoundment for which the motor vehicle would 35

otherwise be required to be impounded under that Act has not yet expired.

~~“(4) The Registrar or a Judge may order the creditor to pay the costs incurred in seizing, towing, and storing the motor vehicle.~~

“(5) A purchaser of a motor vehicle that is sold to the purchaser in compliance with a direction under **subsection (1)(a)** obtains, by virtue of this section, good title to the motor vehicle despite the interests of the owner or any other person in the motor vehicle before the sale. 5

~~“(6) The creditor— 10~~

~~“(a) must account to the Registrar for the proceeds of the sale of the motor vehicle; and~~

~~“(b) may retain out of those proceeds the actual and reasonable costs of the sale and any amount owed to the creditor under the encumbrance concerned; and 15~~

~~“(c) must pay into court any balance of those proceeds.~~

~~“(7) The Registrar must apply that balance in accordance with **section 100N**, with all necessary modifications.~~

~~“(8) This section is subject to **section 100TA**.~~

**“100TA Certain payments required before release to lessor or creditor takes effect 20**

**“(1) An order for the release of a motor vehicle under **section 100S(2) or 100T(1)(a)** does not take effect unless the following costs have been paid into court:**

**“(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs: 25**

**“(b) any costs incurred in seizing the motor vehicle, towing, and storing the motor vehicle, and complying with the provisions of this subpart.**

**“(2) Any costs required to be paid by **subsection (1)** must be paid within 10 working days after the day on which the lessor or creditor is notified of the decision to release the vehicle, or within any longer period specified by the Registrar in writing. 30**

**“(3) If the costs specified in **subsection (1)** are not paid in accordance with **subsection (2)**, the motor vehicle may be sold under **section 100L**. 35**

**“100TB Application of proceeds of sale by creditor**

**“(1)** Every person to whom a motor vehicle is released under **section 100T(1)(a)** must, on disposing of the motor vehicle,—

**“(a)** account to the Registrar for the proceeds of the sale:

**“(b)** pay into court the proceeds of the sale, less any costs paid under **section 100TA**, and— 5

**“(i)** if the encumbrance is a hire purchase agreement and the motor vehicle is used or was acquired for use primarily for personal, domestic, or household purposes, the amount of the costs and expenses of, and incidental to, the sale within the meaning of section 33 of the Credit (Repossession) Act 1997 and the amount required to settle the agreement under section 31 of that Act; or 10

**“(ii)** in any other case, the amount of the costs and expenses of, and incidental to, the sale within the meaning of section 33 of the Credit (Repossession) Act 1997 and the amount owed by the offender under the encumbrance. 15

**“(2)** The Registrar must then apply the balance remaining in accordance with **section 100N(2)(d) to (f)** with all necessary modifications. 20

**“100U Failure by creditor to sell or account for proceeds**

**“(1)** If the creditor fails to comply with a direction under **section 100T(1)(a)**, the Registrar must issue, in the prescribed form, a warrant to recover property and the motor vehicle may be recovered under that warrant as property of the defendant or the substitute for the defendant, and **section 100E** applies in respect of the motor vehicle with all necessary modifications. 25

**“(2)** As soon as practicable after a motor vehicle is delivered into a Registrar’s custody under **subsection (1)**, the Registrar must arrange for the sale of the motor vehicle and apply the proceeds of sale in accordance with **section 100N(1)** or, as the case requires, in accordance with a direction under **section 100N(3)**. 30 35

**“(3)** A creditor who fails, in whole or in part, to pay into court the money required under **section 100T(6)(c) 100TB(1)** is liable

to the Crown for any amount not paid, and that amount may be recovered from the creditor as a debt due to the Crown.

**“100V Compensation to person with interest in motor vehicle sold**

- “(1) This section applies if— 5
  - “(a) a person (other than the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) suffers loss through the sale under **section 100L** of a motor vehicle in which the person had an interest; and 10
  - “(b) the defendant or the substitute had not before the sale notified the Registrar of the person’s interest in the property.
- “(2) If this section applies, a Judge may, on the application of that person, order the defendant to pay to the person compensation in respect of the loss. 15
- “(3) **Subsection (1)** does not limit or affect any other remedy that a person may have in respect of loss referred to in that subsection.”

**28A Transitional provisions relating to Transport (Vehicle and Driver Registration and Licensing) Act 1986** 20

In the period commencing on the commencement of this Act and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009—

- (a) any reference to a person who is registered in respect of a motor vehicle in **sections 100A to 100V** of the principal Act (as inserted by this Act) must (despite the definition of that term in **section 100A(1)** of the principal Act) be read as a reference to a registered owner within the meaning of the Transport (Vehicle and Driver Registration and Licensing) Act 1986: 25
- (b) the reference in **section 100H(2)** and **100L(3)** of the principal Act (as inserted by this Act) to section 242 of the Land Transport Act 1998 is taken to be a reference to section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986: 30

- (c) the reference in **section 100H(4)** of the principal Act (as inserted by this Act) to the Land Transport Act 1998 is taken to be a reference to the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

**28B** Transitional provisions relating to pre-commencement fines and warrants 5

- (1) The principal act as amended by **sections 25 to 28** of this Act applies to the enforcement of any fine whether adjudged, ordered, or deemed to be ordered, to be paid before or after the commencement of this Act. 10
- (2) Despite **subsection (1)**, any motor vehicle seized under a warrant issued, before the commencement of this Act, under section 83(2)(a), 87(1)(a), or 88(3)(a) of the principal Act must be dealt with as if this Act (other than this subsection) had not been enacted. 15

### Part 3

#### Amendment to Privacy Act 1993

**29** **Principal Act amended**

This Part amends the Privacy Act 1993.

**30** **Schedule 5 amended** 20

Schedule 5 is amended in the manner set out in the Schedule of this Act.

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**Schedule****s 30****Schedule 5 amended**

Insert after the item relating to Vehicles of interest under the heading *Police Records*:

Vehicles impounded under Land Transport Act 1998	<p>Particulars of an impounded vehicle, including <del>type, model, and identifier on the registration plates</del> <u>make, model, type, registration plate number, vehicle identification number</u>; the section of the Land Transport Act 1998 under which it is impounded, the date on which it was impounded, and the place where it is impounded; <u>whether any appeals are yet to be determined; particulars of the person who was driving the vehicle immediately before its impoundment, including the full name, full address, telephone number, occupation, driver licence number, and</u></p>	<p>Ministry of Justice (access is limited to giving effect to action taken, under Part 3 of the Summary Proceedings Act 1957, to enforce the payment of fines, reparation, and related payments)</p>
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**Vehicle Confiscation and Seizure Bill**

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before its impound-  
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**Legislative history**

26 May 2009  
2 June 2009

Introduction (Bill 42-1)  
First reading and referral to Transport and Industrial  
Relations Committee

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